

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Jail Appeal No. 120 of 2018**

Appellant : Zain Nasir @ Banti
through Mr. Habib-ur-Rehman Jiskani, Advocate

Respondent : The State
through Ms. Robina Qadir, DPG

Date of judgment : 3rd December, 2018

JUDGMENT

Omar Sial, J.: A police party of the Model Town police station was on normal patrol duty when the appellant Zain Nasir passing by on a motorcycle appeared suspicious to them. Zain was stopped and upon his search an unlicensed .30 bore pistol along with two live bullets were found in his possession. He was arrested and F.I.R. No. 117 of 2017 was registered against him under section 23(1)(a) of the Sindh Arms Act, 2013.

2. The appellant pleaded not guilty to the charge against him and claimed trial. The prosecution examined A.S.I. Mohammad Essa Jatoy as its first witness. He was the complainant of the case. P.C. Mohammad Fahim was examined as the second prosecution witness. He was the witness to the memo of arrest and recovery prepared by the complainant. The third prosecution witness was A.S.I. Syed Mutayab Hussain Kazmi who was the investigating officer of the case.

3. Zain Nasir recorded his statement under section 342 Cr.P.C. on 14-12-2017 and professed his innocence. He further stated that the false case was registered against him as he had refused to pay the police party a bribe.

4. After a full dress trial, the learned 1st Additional Sessions Judge, Karachi (East) vide judgment dated 2312.2017 convicted the appellant for the offence with which he was charged and sentenced him to rigorous imprisonment for five years and a fine of Rs. 10,000 and in the event he failed to pay the fine he would have to remain in prison for another six months. It is this judgment of the learned trial court that has been impugned in these appeal proceedings.

5. I have heard the learned counsel for the appellant as well as the learned D.P.G and have also examined the record with their able assistance. My observations are as follows:

6. Mohammad Essa testified that on the day that the appellant was arrested i.e. 5.7.2017 he along with P.C. Mohammad Fahim, P.C. Kamran and Driver Shaukat Ali left for patrolling in Mobile No. 1 from the police station. The departure entry however that Essa himself produced at trial shows that P.C. Mohammad Fahim and P.C. Kamran had not left the police station in Mobile No. 1 but on a motorcycle. This discrepancy was not explained at trial.

7. The appellant was also accused by the police party for riding a motorcycle which had previously been stolen. No record that the said motorcycle was stolen was produced at trial. The investigating officer admitted that he did not even know the registration number of the motorcycle that the appellant was said to be driving. It appears that the accusation of riding a stolen motorcycle was an exaggerated one which reflects ill will on the part of the police party, members of which are the only witnesses to the alleged occurrence. The complainant claimed that as there was no other person available on the spot he could not conduct the search and recovery in the presence of a private and independent witness. Keeping in view the area where the arrest took place and the time of the day when the same happened, I do not believe the version for non-association of an independent witness in the arrest and recovery proceedings as given by the complainant.

8. The pistol was sent to the ballistic expert on 6-7-2017 under cover of a letter of even date. It is obvious from the cover letter that was exhibited at trial that the words "sealed" in Urdu have been inserted in the said letter. While the cover letter exhibited at trial has a date written on it clearly, the report issued by the Fire Arms Examiner records that the pistol received by him was under a cover of an undated and unnumbered letter. No description of the weapon seized was recorded in the memo of arrest and recovery. The Fire Arms Examiner has also issued a stereo typed report that shows no description of the weapon that was sent to him for examination. The F.I.R. registered against the appellant was under section 23(1)(a) Sindh Arms Act, 2013. The FSL report shows the insertion of sections 392 and 34 P.P.C. as well. In view of the foregoing facts it was not conclusively established that the weapon seized was the same as the one sent for examination or produced at trial.

9. Absolutely no investigation was carried out by the investigating officer to determine the truth of the matter. A.S.I. Syed Mutayab Hussain Kazmi acted simply as a post office in treating the version of the complainant as gospel truth.

10. The prosecution, in my opinion, was unable to prove its case against the appellant beyond reasonable doubt. The benefit of such doubt should have gone to the appellant in accordance with well established principles of law.

11. In view of the above, the appeal is allowed and the appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE