

**THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr. Jail Appeal No.S-153 of 2020

*Date of Hearing:* 30.05.2022

*Date of Judgment:* 30.05.2022

*Appellant/accused:* *Sain Bux S/o Abdul Hakeem Magsi, through  
Mr. Naveed Jarwar, advocate*

*The State:* *Mr. Fayaz Hussain Sabki, Assistant P.G*

**JUDGMENT**

**Salahuddin Panhwar, J.-** Through captioned appeal, appellant has challenged the judgment dated 08.10.2020 passed by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Shaheed Benazirabad in Sessions Case No.697 of 2020 (*Re: the State v. Sain Bux*) arising out of FIR No.11 of 2020, registered at Police Station Mari Jalbani, for offence under Section 25 Sindh Arms Act, 2013, whereby the appellant was convicted under Section 25 of Sindh Arms Act, 2013 and sentenced to suffer five (05) years Rigorous Imprisonment and to pay fine of Rs.10,000/- (Rupees Ten Thousand) and in default whereof he was ordered to suffer Six months S.I more. The appellant was also extended benefit of section 382-B Cr.P.C.

2. Precisely, the facts of the prosecution case are that on 01.06.2020 SIP/complainant Mehmood Ahmed Jat, SHO of P.S Mari Jalbani interrogated present accused in a murder case being Crime No.09/2020 of P.S Mari Jalbani and during interrogation, the accused admitted his guilt and led the police party to a place where he concealed pistol of 30-bore used in aforesaid crime. The complainant and his subordinate staff alongwith accused boarded in a police mobile and reached at banana orchard, the place where accused concealed pistol. The accused produced a plastic bag lying under banana leaves in which pistol of 30-bore with magazine loaded with two live bullets was lying. The accused also disclosed that he fired shot from that pistol on his wife Mst. Rukhsana and committed her murder. The

said pistol along with live bullets was sealed on spot and such memo of arrest and recovery was prepared in presence of private mashirs namely Nisar Ahmed and Sajjad Hussain and thereafter the accused and case property were brought at P.S, where F.I.R No.11 of 2020 under Section 25 of Sindh Arms Act 2013 was lodged against accused on behalf of state.

3. After completion of usual investigation, accused was sent up for trial. The learned Trial Court seized of the matter framed charge against accused at Ex.2 to which accused pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced following prosecution witnesses:

PW-01 SIP / complainant / I.O Mehmood Ahmed at Ex-3, who produced mashirnama of arrest and recovery at Ex3/A, daily diary entries No.7, 8, 12 at Ex.3-B, daily diary entry No.13 at Ex-3/C, FIR at Ex-3/D, RC No.17 at Ex-3/E and report of ballistic expert at Ex.3/F.

PW-02 Mashir Nisar Ahmed was recorded at Ex-4.

PW-03 WHC Mumtaz Ali was examined at Ex-5, who produced entry of register No.19 regarding depositing parcel of case property in malkhana of P.S at Ex-5/A. Thereafter, learned ADPP closed his side vide statement at Ex-6.

4. On the conclusion of the prosecution case, the accused got recorded his statement under Section 342 Cr.P.C at Ex.7, wherein he denied the prosecution allegations by stating that he has been falsely implicated in this case by police and case property has been foisted upon him. The accused neither examined himself on oath nor led any evidence in his defence.

5. On conclusion of the trial, the learned Trial Court vide its judgment dated 08.10.2020 convicted and sentenced the appellant as detailed above.

6. At the outset, learned Counsel for the appellant has inter-alia contended that this is a case of misreading and non-reading of evidence; that there are material contradictions in the evidence of prosecution witnesses; that the prosecution evidence has not been appreciated properly by the trial Court while passing the impugned judgment; that there is delay in sending the empties of weapon recovered from the place of incident to ballistic expert and therefore the question of safe custody of empties arises as those empties were sent to expert after recovery of pistol, which even otherwise has been foisted upon the appellant, hence the appellant is liable




to be acquitted in this offshoot case. In support of his submissions, he has relied upon the cases of MUHAMMAD ASHRAF alias ACCHU v. The STATE (2019 SCMR 652), BASHEER AHMED v. The STATE (2021 P.Cr.LJ 1086), MUHAMMAD NOMAN and another v. The STATE (2020 P.Cr.LJ Note 174) and AFAQ AHMED v. The STATE (2020 YLR 676).

7. Learned A.P.G has contended that prosecution has proved its case against appellant who himself has admitted murder of his wife by firing from the pistol, which pistol was produced by the appellant himself before the complainant; that no doubt there are some minor contradictions in the evidence of the prosecution witnesses as well as there is delay in sending the empties and weapon to the ballistic expert, but the same would not affect the prosecution case and could not be considered for acquittal of appellant. He lastly, contended that acquittal of the appellant in this offshoot case will effect on main case, hence he prayed for dismissal of appeal.

8. Heard and perused the record.

9. Admittedly, the appellant was arrested in main case bearing F.I.R No.09 of 2020 and during interrogation, the appellant disclosed that the pistol through which he fired upon his deceased wife was concealed by him in banana orchard and thereby he led the police party to the place where he produced pistol loaded with two live bullets. After perusal of evidence of prosecution witnesses, it is very clear that there are so many material contradictions in their evidence. PW-1 SIP Mehmood Ahmed has stated that he sealed the recovered pistol with three seals on parcel, whereas PW-2 Nisar Ahmed (*Mashir*) has deposed that two seals were affixed on parcel in which bullets were secured, but the report of ballistic expert shows that he received one parcel with three seals. PW-1 SIP Mehmood Ahmed has also admitted in his cross-examination that Monogram of star is available on the plastic butt plates on pistol but it was not mentioned in mashirnama of recovery. It is further noted that P.W-1 SIP Mehmood in his evidence has stated that recovered pistol was without number whereas in the Ballistic expert report, it was shown rubbed number. Further, the first F.I.R bearing Crime No.09 of 2020 was registered against appellant on 25.05.2020 and subsequently upon interrogation and on the pointation of appellant pistol was allegedly secured and instant F.I.R No.11 of 2020 under Section 25 of



Sindh Arms Act, 2013 was lodged on 01.06.2020 and during that intervening period the empties, so recovered from the place of first incident were kept with police and after alleged recovery of the pistol, the pistol and the said empties were sent to Forensic Science Laboratory on 03.06.2020; thus admittedly there is delay of two days in sending crime weapon and nine days in sending crime empties, therefore, the expert report is inconsequential. To this effect, learned Counsel has rightly relied upon the case of MUHAMMAD ASHRAF alias ACCHU v. The STATE (2019 SCMR 652) in which the Hon'ble Apex Court has held as under:-

*"6.....After scrutiny of evidence, it has been observed by us that no such corroboration is available on record because the empties secured from the spot and the .30 bore pistol allegedly recovered from the possession of appellant at the time of his arrest were sent to the office of FSL on the same day i.e. on 21.03.2002 after the arrest of appellant on 23.01.2002. In these circumstances, the report of FSL cannot be relied and is legally inconsequential."*

10. In view of the above facts and evidence, I have no hesitation to hold that there are several infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. By now it is settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. Reliance can be placed upon the case of Muhammad Mansha vs. The State (2018 SCMR 772).

11. With regard to the argument of learned APG that acquittal of the appellant in this case would affect the main case, I would say that acquittal or conviction of the accused in case under charge of an offence under section 13(d) Arms Ordinance cannot be used as a shield against conviction in main case because allegation and nature of charge in main case are different from that of case under off-shoot. Reliance can be placed upon the case reported as Abdul Khaliq vs. The State (2015 YLR 1015), (authored by me), wherein it has been observed as under:

*"21. The learned counsel for the appellant/accused has put much stress upon acquittal of the accused/appellant from the charge of 13(d) Arms Ordinance. In this respect I would say that recovery of crime weapon is always corroborative piece of evidence which is not of much importance more particularly where the case is otherwise*



proved, the corroboration from recovery of crime weapon or otherwise become immaterial. Reference on this point can well be given to case-law, reported as Muhammad Nadeem alias Deemi v. The State (2011 SCMR 872). Without prejudice to this, I would say that acquittal or conviction of the accused in case under charge of an offence under section 13(d) Arms Ordinance cannot be used as a shield against conviction in main case because allegation and nature of charge in main case are different from that of case under off-shoot..... Moreover, "it is settled principle of law that while deciding a case, the evidence of another case cannot be taken into consideration but the case should be decided on the evidence brought on the record of that particular case", reference can be made to the cases of The State v. Khan Muhammed alias Khanan, reported in 2005 PCr.LJ 811, Khalid Hussain v. Naveed alias Qalab Ali reported in PLD 2007 Kar. 442, Muhammad Khan v. The State, 2010 YLR 648."

12. In the present case, appellant has been awarded the sentence of five years with fine of Rs.10,000/- and I am only confined to the sentence of appellant in the present case and not going to decide his main appeal i.e. Criminal Jail Appeal No.D-77 of 2020 (Confirmation Case No.19 of 2020) which is also pending before this Court which would be decided on its own merits on the basis of evidence brought in that case.

13. For what has been discussed above, I am of the considered view that the prosecution has failed to prove its case against the appellant. Consequently, appeal is allowed, impugned judgment dated 08.10.2020 in S.C.No.697/2020, arising out of Crime No. 11/2020 PS Mari Jalbani under Section 25 of Sindh Arms Act 2013, is set aside and appellant is acquitted of the charge with direction that he shall stand released in the instant crime only. Needless to mention that this decision for acquittal of appellant in the present case shall not affect the merits of main appeal pending before this Court, which shall be decided on its own merits.

  
JUDGE 10/06/2022