

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. S-29 of 2021

Appellant : Noor Hassan Malik son of Abdul Ghani
through Mr. Mushtaq Ali Langah, advocate.

The State : Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh

Date of Hearing : 06.10.2022
Date of Decision : 06.10.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J-Through captioned criminal appeal, the appellant has challenged the judgment dated 15.04.2021, passed by the learned 1st Additional Sessions Judge, Kandhkot in Sessions Case No. 606 of 2020(*Re: the State v. Noor Hassan*), emanated from Crime No. 72/2020, registered at P.S. Tangwani for the offence under Section 23(1)(a) of the Sindh Arms Act, 2013 (SAA 2013), whereby the appellant has been convicted under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to suffer rigorous imprisonment for two years with fine of Rs. 20,000/-, defaulting in payment of which the appellant was to suffer further simple imprisonment of three months. Benefit of Section 382-B Cr.PC was extended to him.

2. Facts in brief of the prosecution case are that complainant ASI Qamardin Malik along with his subordinate staff left the police station for patrolling and held a snap checkpoint where after some time, they spotted the appellant arriving on a motorbike who allegedly tried to turn away, but was apprehended. They asked for his name and then conducted his search, recovering a pistol from him. The pistol was sealed and the motorbike was impounded while the appellant was also arrested, brought back to the police station and then the FIR was lodged against him for bearing of a firearm without license in terms of Section 23(1)(a) of the Sindh Arms Act 2013.

3. On completion of all the formalities, a formal charge was framed against the appellant to which he pleaded not guilty and claimed trial.

4. At the trial, prosecution examined in all three witnesses namely PW-1 SIP Qamardin Malik, PW-2 Saddam Hussain and PW-3 SIP Abdul Sattar, all of whom produced various documents in their evidence, whereafter prosecution side was closed.

5. Statement of the appellant/accused under Section 342 Cr.P.C was recorded in which, while admitting the possession of the pistol, he produced his weapon license issued to him on 04.05.2005 and claimed that his brother had produced the same before the police after which the investigating officer had submitted report for disposal of the case under "C" class.

6. On conclusion of the trial, learned trial Court after hearing the learned Counsel for the parties convicted and sentenced the appellant as discussed in paragraph-1 (supra).

7. Learned Counsel for appellant has primarily contended that the pistol recovered from the appellant was a licensed one which was renewed on 18.03.2013 up to 31.12.2020 vide P.O No. H-8796 of Post Office Dera Murad Jamali, Balochistan; that the learned trial Court has failed to discuss the evidence of the prosecution witnesses; that no independent evidence was led by the prosecution though recovery was allegedly made on the Rasoolabad Link Road which is a busy place; that the evidence produced at trial is insufficient to warrant conviction of the appellant; that prosecution miserably failed to prove its case against the appellant, as such he prays for the acquittal of the appellant.

8. Conversely, learned D.P.G has supported the impugned judgment while stating that the prosecution has proved its case by examining two witnesses, and, per him, they have supported the prosecution case.

9. I have heard the learned Counsel for appellant along with learned D.P.G and have perused the material available on the record.

10. The prosecution case rests on the admission of the appellant of owning the pistol and the question whether the same was licensed or not. In his 342 Cr.PC statement, the appellant stated that the alleged pistol had in fact been recovered from him at the time of incident and when confronted with the FSL report, he admitted the contents of the same as well. His prime contention was that the weapon was licensed and he had been involved by the police solely due to the police looking to prove their efficiency to higher ups. Learned trial Court, in the impugned judgment, did not give any observation regarding the evidence of the prosecution witnesses and solely based its reasoning on the genuineness or otherwise of the weapon license. It is an admitted fact that during investigation, after six days of arrest of the appellant, his brother appeared before the investigating officer/PW-3 SIP Abdul Sattar and produced his brother/appellant's weapon license bearing No. 318420, which was issued to the appellant on 04.05.2005. The investigating officer had sent the license produced by the brother of the appellant to the Deputy Commissioner Jacobabad for verification, however through letter No. DC/JB/2020 dated 02.11.2020, he revealed that all the old record had been burnt in the 2007 riots following the assassination of Benazir Bhutto, as such it could not be verified. Learned trial Court, while keeping this in view, observed in the impugned judgment that:-

“The verification letter was also issued to Post Master Post Office Dera Murad Jamali, Baluchistan Code 80700 to verify the renewal of above said Arms license and such report was received wherein it is revealed that as per P.O No.H-8796, license bearing No.448 dated 07.02.2019 is registered in the name of Dost Muhammad son of Qaiser Khan. It is further revealed that above license in the name of accused Noor Hassan is not renewed by the Post Office Dera Murad Jamali. Such report of Post Master Dera Murad Jamali has proved that duplicate license produced by accused Noor Hassan is fake and accused has produced fake license before I.O with fake renewal entry by Post Office Dera Murad Jamali.”

However, this observation was not based on any factual documentation. Not only did the trial Court fail to examine the Post Master as a Court Witness to ascertain the genuineness or otherwise of the said license's

renewal, it also failed to confront the appellant with the same or invite his attention to it while recording his statement under Section 342 Cr.P.C which is fatal to the prosecution case. It is by now well settled that a piece of evidence which is not put to an accused while recording his statement under Section 342, Code of Criminal Procedure cannot be used against him. In this respect, reliance is made to the case of *QADDAN & Others v. STATE (2017 SCMR 148)*. For ease of reference, the statement of the appellant recorded by the trial Court under section 342, Code of Criminal Procedure is reproduced as under:-

“Q:1. You have heard the prosecution evidence, it is alleged that on 27.10.2020, at 0600 hours, at link road leading towards village Rasool Abad, taluka Tangwani, you accused were arrested by police party headed by ASI Qamardin Malik of PS Tangwani, and from your possession one unlicensed TT pistol No:SR-08458 Pak Made of 30 bore along with 04 live bullets of same bore and one cover containing 14 bullets, such live bullets of same bore and one cover containing 14 bullets, such memo was prepared in presence of mashirs which has been produced by prosecution at Ex:4/C and such case property was also produced in open court during deposition of I.O and witnesses, what have you to say?

Ans: Sir, recovered pistol is licensed pistol.

Q:2. It is further alleged that weapon viz. one unlicensed TT pistol was sent to FSL laboratory and such report of FSL has been produced at Ex:6/H, what do you say?

Ans: I agree with report as pistol is licensed one.

Q:3. Whether case property (allegedly recovered from your possession) present in the court is same?

Ans: Yes sir.

Q:4. Why the P.Ws have deposed against you?

Ans: I/O had disposed of case under “C” class as pistol was licensed one.

Q:5. Do you want to examine any witness in your defense?

Ans: No sir.

Q:6. Do you want to examine yourself on oath?

Ans: No sir.

Q:7. What else you want to say?

Ans: My pistol is licensed one and license was produced before I/O during investigation. I have committed no offence. I pray for justice. I produce P.S copy of license as Ex. 8A, original license is lying with police.”

11. Not only this, a perusal of the record suggests that the documents relied upon by the learned trial Court were not even exhibited in the evidence to begin with. This approach of the learned trial Court was not legally correct and cannot sustain in the eyes of law, however prosecution cannot be allowed to fill its lacunas and prepare a better case as that was required to be done before the trial Court. By not confronting the appellant with the said piece of evidence, trial Court failed to properly ascertain whether the renewal of the license occurred or not and in the absence of such, there exists doubt as to whether the license was genuinely renewed through P.O No.H-8796, whether it was incorrectly mentioned on

the license or whether it was forged with *malafide* intent. Learned trial Court also rejected the delivery of license of weapon on the ground that it was delivered to the investigating officer with a delay of six days by the brother of the appellant; however this observation too was unreasonable. The appellant had been arrested and it would be reasonable to assume that he had no contact with people from his home since he was in custody and in the first instance of knowledge, his brother had brought the license to the investigating officer. The license, on bare perusal, appears to be genuine and duly stamped by the Deputy Commissioner Jacobabad's Office. The prudent presumption here as such is that the pistol so recovered from the appellant was licensed especially in view of the fact that the number of pistol also finds mention in the license produced by the appellant being **SR-08458**. These aspects of the case raise serious doubts in the prosecution case and it is a well-settled law that if the circumstances in the prosecution evidence create doubt, the benefit thereof must go to the accused as a matter of right. For the purposes of safe administration of criminal justice, some minimum standards of safety are to be laid down so as to strike a balance between the prosecution and the defence in order to obviate chances of miscarriage of justice. Such minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty, which cannot be left at the mercy of police officers without production of proper and independent evidence. It was crucial for the trial Court to ensure the examination of all relevant records and introduction of the appellant to all documents and evidence used against him, but this was not done.

12. Keeping in view the above discussion and circumstances, I am of the considered opinion that the case against the appellant is doubtful. As such, while extending benefit of doubt to the appellant, he was acquitted from the charge and the conviction and sentence recorded by the learned trial Court vide impugned judgment dated 15.04.2021 were set aside vide short order dated 06.10.2022. These are the reasons for the same.

JUDGE