

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-75 of 2021

Appellant Hazaro son of Ghous Bux Bheri **through** Abdul Rehman Farooq Pirzada, advocate.

The State Through Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General for the State.

Date of hearing 08-11-2023

Date of decision 08-11-2023.

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that on arrest from the appellant was secured unlicensed Kalashnikov with magazine containing 12 live bullets which he allegedly used while committing murder of Shahnawaz, for that he was booked and reported upon by the police. On conclusion of trial he was convicted u/s 25 of Sindh Arms At, 2013 and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 30,000/- and in default whereof to undergo simple imprisonment for three months with benefit of section 382(b) Cr.P.C by learned Ist Additional Sessions Judge (MCTC), Ghotki vide judgment dated 23-08-2021 which they have impugned before this Court by preferring the instant CrI. Jail Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellant that the appellant was wanting to examine Jam Thario in his defence to prove his innocence; he has not been examined by his counsel by filing such statement without his consent which has prejudiced him in their defence. By pointing out so, he suggested for remand of the case with direction to learned trial Court to call and examine the above named defence witness, which is not opposed by learned DPG for the State.

3. Heard arguments and perused the record.

4. The omission which has been pointed out by learned counsel for the appellant takes support from the record, same being incurable in

terms of section 537 Cr.P.C has not only occasioned in failure of justice but has denied right of fair trial to the appellant, which is guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; consequently the impugned judgment is set aside with direction to learned trial Court to call and examine the above named defence witness and then to make disposal of the case afresh independently without being influenced by earlier findings

5. The instant Criminal Jail Appeal is disposed of accordingly.

J U D G E

Nasin/P.A