

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Special Anti-Terrorism Appeal No.D-39 of 2023

Before:

Mr. Justice Irshad Ali Shah,
Mr. Justice Zulfiqar Ali Sangi.

Appellant: Muhammad Sadiq son of Jam Naseer Dhanudhu
through M/s Shabbir Ali Bozdar and Raja Ifitkhar
Hussain Ansari, advocates.

The State: **Through** Mr. Imran Mobeen Khan, Assistant
Prosecutor General.

Date of hearing 18-01-2024
Date of decision 18-01-2024

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged by the prosecution that on arrest from the appellant was secured unlicensed repeater gun of 12 bore, which he allegedly used while undertaking an encounter with police party of PS Reti led by complainant/SIP Ghulam Safdar, for that he was booked and reported upon by the police. On conclusion of trial he was convicted u/s 24 of Sindh Arms Act, 2013 and sentenced to undergo rigorous imprisonment for seven years with benefit of section 382 (b) Cr.P.C by learned Judge, Anti-Terrorism Court, Ghotki, vide judgment dated 21-06-2023, which he has impugned before this Court by preferring the instant Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police by foisting upon him the unlicensed weapon and has been convicted and sentenced on the basis of improper assessment of evidence, which was doubtful in nature; therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by learned Assistant P.G for the State by contending

that the prosecution has been able to prove its case against the appellant beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant/ SIP Ghulam Safdar and PW/mashir PC Ajab Gul that on the date of incident they with rest of the police officials were conducting patrol within jurisdiction of PS Reti, when reached at the place of incident, there they found coming the appellant and others on a motorcycle, they were asked to stop, on that they started to make fires at them, they also fired at the appellants in self defence, such firing continued for about 10/15 minutes, during course whereof DPC Akbar Ali sustained fire shot on his right thigh; the appellant together with two more culprits was apprehended; from him was secured unlicensed repeater gun of 12 bore and he with the recovery so made from them, were taken to PS Reti and was booked in present case accordingly. The evidence of the complainant and PW/PC Ajab Gul takes support from evidence of PW/DPC Akbar Ali. On asking it was stated by the complainant that FIR of the incident was written by WHC Ahmed Malik. In same breath, he stated that the memo of arrest and recovery and FIR of the present case are under one and same hand. WPC Ahmed Malik was not a member of police party which undertook the alleged encounter; therefore, the memo of arrest and recovery being under hand of WPC Ahmed Malik prima-facie suggest that it was prepared by him at police station. The motorcycle, which was produced before the Court at trial, as per the complainant was without registration number, without chassis number, without chain with both of its tyres punctured. How a motorcycle, which was having no chain was used by the appellant for traveling purpose at the time of incident? It is mystery. On the next date, appellant was referred to Taluka Hospital Ubauro for examination of his injuries, treatment and certificate. He as per medical officer

PW Abdul Rehman, was found semiconscious and sustaining injuries on his head with hard and blunt substance. Who caused such injury to him? Record is silent. Possibly, he was maltreated at police station after his arrest. As per I.O/SIP Aftab Ahmed Farooqi, the memo of place of incident and recovery of empties was prepared by WPC Mushtaq Ahmed at his dictation. There is nothing in such memo, which may suggests that it was actually prepared by WPC Mushtaque Ahmed. As per report of ballistic expert, the empties and unlicensed repeater gun were sent to him jointly. Those ought to have been dispatched to him separately to maintain transparency; such omission on part of prosecution could not be over looked. The appellant during course of his examination has pleaded innocence; his such plea could not be lost sight off in the circumstances of the case.

5. The above discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit, he is found entitled.

6. In case of *Muhammad Javed vs. The State (2016 SCMR 2021)*, it has been held by Apex Court that;

“....although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a carbine had been recovered from the custody of the appellant.”

7. In case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, he is acquitted of the offence with which he was charged, tried, convicted and sentenced by learned trial Court; and shall be released forthwith, if not required to be detained in any other custody case.

9. The instant Criminal Special Anti-Terrorism Appeal is disposed of accordingly.

JUDGE

JUDGE