

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.296 of 2023

Appellant: Shahzad Saleem through Mr. Shuhabuddin Channa, advocate

The State: Mr. Zafar Ahmed Khan, Additional Prosecutor General Sindh

Date of hearing: 09.08.2023

Date of judgment: 09.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant with one more culprit assembled for committing robbery and on arrest from him was secured unlicensed pistol of 30 bore with magazine containing 03 live bullets of same bore by police party of Mari Pur Karachi, for that he was booked and reported upon by the police. On conclusion of trial, he was convicted under Section 23(1)(a) of Sindh Arms Ordinance, 2013 and sentenced to undergo rigorous imprisonment for 06 years and to pay fine of Rs.10,000/- and in default in payment whereof to undergo simple imprisonment for 03 months with benefit of Section 382(b) Cr.P.C by learned XIIth -Assistant Sessions Judge Karachi West vide judgment dated 11.05.2023 which he has impugned before this Court by preferring the instant Crl. 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 pistol; there is no independent witness to the incident and evidence of PWs being doubtful in its character has been believed by learned trial Court without lawful justification and more-so the appellant has already been acquitted in main case for making preparation to commit robbery even by learned trial Court, therefore, he is entitled to be acquitted in the present case by extending him benefit of doubt, which is opposed by learned Addl. PG for the State by contending

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

3. Heard arguments and perused the record.

4. It is stated by complainant HC Malik Tahir and PW /Mashir PC Amanat Ali that on the date of incident they with the rest of police personal were conducting patrol within jurisdiction of their police station when reached at Turtle Beach they found the appellant and one more culprit on their motorcycles, who after noticing their arrival put an attempt to make their scape good but were apprehended; on search from the appellant was secured unlicensed pistol of 30 bore with magazine containing 03 live bullets besides motorcycle. The pistol secured from the appellant as per memo was found embossed with words "Zigana-2 Sport Zigana Sport Made Turkeiya (MM7.62)". It was further stated by them that co-accused Moosa and the appellant with the recovery so made from them were taken to PS Maripur there they besides involvement in a case for making preparation to commit robbery were booked separately in Arms Ordinance cases and further investigation of the case was conducted by I.O/ASI Habibullah. As per him, he recorded 161 Cr.PC statements of the PWs and dispatched the pistol recovered from the appellant to ballistic expert. The report of ballistic expert indicates that the pistol examined was found containing words "Identifier FD/FA/4248/21" on it, which prima facie suggests that the pistol examined by the ballistic expert was different to the one which allegedly was secured from the appellant. There is no independent witness. The motorcycle allegedly secured from the appellant at the time of incident has never been produced at trial; such omission on the part of prosecution could not be overlooked. The appellant has pleaded innocence. In these circumstances, it would be safe to conclude that 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.

5. In the 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".

6. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court; he is present in Court on bail, his bail bond is cancelled and surety is discharged.

7. The instant Criminal Appeal is disposed of accordingly.

JUDGE