

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 176 of 2023

Present:
Naimatullah Phulpoto, Acting
Chief Justice.
Irshad Ali Shah, J.

Appellants: Muhammad Zubair through M/s.
Shamsul Hadi and Abdul Jalil, advocates

Respondent: The State through Mr. Khadim Hussain
Khuharo, Additional Prosecutor General
Sindh

Date of hearing: 28.08.2024

Date of announcement: 28.08.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant was apprehended in injured condition after an armed encounter and from him was secured an unlicensed pistol of 30 bores with a magazine containing one live bullet of the same bore by police party of PS Defence Karachi led by ASI Rana Amjad Ali, for which he was booked and reported upon. The appellant denied the charge and the prosecution to prove the same examined eight witnesses and then closed its side. The appellant in his statement recorded under Section 342 Cr.PC denied the prosecution's allegation by pleading innocence; he did not examine anyone in his defence, however, examined himself on oath. On completion of the trial, he was convicted under Section 23(i)(a) of the Sindh Arms Act, 2013 and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.20,000/- and in default in payment whereof to undergo simple imprisonment for six months with

benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XX Karachi vide judgment dated 18.09.2023, which is impugned by him before this Court by way of the instant Spl.Crl. AT Appeal.

2. Heard arguments and perused the record.

3. Admittedly, the appellant was apprehended after an armed encounter whereby no police official sustained fire shot injury which appears to be surprising. The police mobile allegedly sustained damage that had never been produced at the trial; its non-production could not be overlooked. The pistol allegedly secured from the appellant as per memo of recovery was bearing the description, same on forensic examination was found with its number rubbed which suggests its manipulation and/or foistation. No independent person has been examined by the Investigating Officer to ascertain the correctness of the incident. The fire shot injury as per the appellant has been caused to him by the police official only to justify his false involvement in the present case. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond a shadow of reasonable doubt and to such benefit he is found entitled.

4. 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".

5. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside and he is acquitted of the charged offence and shall be released forthwith, if not required to be detained in any other custody case.

6. Above are the reasons for our short order of even date, whereby the instant Spl. Crl. AT Appeal was allowed.

ACTING CHIEF JUSTICE

JUDGE

Nadir/PA