

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Revision Application No.S-02 of 2015

Applicant : Abu Bakar through Mr. Ghulamullah Chang, Advocate.

Respondent : The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Date of hearing : 19.02.2024
Date of decision : 19.02.2024

J U D G M E N T

AMJAD ALI SAHITO, J- Through captioned revision application, Abu Bakar (“applicant/convict”) has challenged the judgment dated 06.12.2014, passed by the learned IInd Additional Sessions Judge, Dadu (“**Appellate Court**”) in Criminal Appeal No. 28 of 2014 wherein the convict had challenged the judgment dated 26.06.2014 passed by the IInd Civil Judge and Judicial Magistrate, Dadu (“**Trial Court**”) in Criminal Case No. 59 of 2013 whereby the applicant Abu Bakar was convicted for the offence punishable u/s 13-E West Pakistan Arms Ordinance, 1965 and sentenced him to suffer rigorous imprisonment for two years and to pay fine of Rs.10,000/- failing thereof accused would further suffer simple imprisonment for two months. He was extended benefit of S. 382-B CrPC.

2. The brief facts are that on 20.02.2013, the present applicant was interrogated in relation to FIR No.31 of 2013 by ASI Ali Asghar Panhwar wherein he became ready to produce crime weapon allegedly to have been used in commission of said offence. He led the police party to his home and produced one pistol of 30 bore along-with magazine from cup-board of his home for which he failed to produce valid license, hence ASI Ali Asghar Panhwar lodged FIR against him so also conducted investigation.

3. Upon completion of all requisite procedural formalities, a formal charge was framed against the applicant. Responding to the charge, the applicant asserted his innocence and pleaded not guilty.

4. At trial, prosecution examined in all two witnesses namely PW-1 complainant ASI Ali Asghar Panhwar, he produced numerous

documents in his evidence viz. departure entry, memo of arrest and recovery, FIR and report of ballistic expert at Ex.3/A to Ex.3/D and then PW-2 Atta Muhammad Magsi. Thereafter, prosecution side was closed. Statement of the applicant/convict under section 342 CrPC was recorded in which he denied all the allegations levelled against him and claimed to have been falsely implicated in the present case. However, he neither examined himself on oath nor produced any evidence in his defence.

5. On conclusion of the trial, learned trial Court after hearing the learned counsel for the parties convicted and sentenced the applicant as discussed in paragraph-1 (supra). The said judgment was appealed and the conviction awarded to the applicant maintained by the Appellate Court, hence this Criminal Revision Application.

6. Per learned counsel for the applicant, in fact the applicant in the main murder case having been registered being Crime No.31 of 2013 at P.S Dadu A-Section for offence under sections 302 and 34 P.P.C has been acquitted vide judgment dated 19.04.2017 on the ground that prosecution has failed to prove the case and benefit of doubt was given to him. He argued that the prosecution has failed to prove the main case and this case of recovery of pistol being its off-shoot was foisted upon the applicant; that there are various contradictions in the evidence of the prosecution witnesses; that the case of the prosecution is not free from doubt and benefit of the same is to go with the applicant as a matter of right, therefore, he prayed for acquittal.

7. Learned Assistant Prosecutor General Sindh supported the impugned judgment while contending that sufficient material is available on the record to connect the applicant with the alleged offence, therefore, she vehemently opposed for acquittal of the applicant.

8. I have heard the learned counsel for the respective parties and perused the record available before me.

9. The case of the prosecution is supported by the testimonies of complainant ASI Ali Asghar and P.W Atta Muhammad, who is the maternal cousin of deceased and Ghulam Hyder Magsi, the complainant in Crime No. 31 of 2013 initiated against the present appellant, in which he was ultimately acquitted after full-fledged trial by the learned Trial Court by way of judgment passed in said crime

holding that there exists enmity between the parties, as such, false implication cannot be ruled out. The impugned judgments passed by the learned Courts below appear to have fallen short in accurately assessing the prosecution evidence, particularly the contradictions made by the prosecution's witnesses. As per deposition of Mashir Atta Muhammad the accused was arrested by the police on 12th or 13th of February 2013 while accused produced the pistol on 20th February 2013 after the delay of seven days. Moreover, the weapon was sent to the Forensic Science Laboratory with a further delay of seven days for which no plausible explanation was given by the I.O as to where and in whose custody the pistol remained for this period and whether it was in safe hands or not. Neither the malkhana entry has been presented, nor the Malkhana incharge has been examined nor the person who delivered the weapon to the Laboratory. The Hon'ble Apex Court in the case of **Kamal Din alias Kamala v. The State (2018 SCMR 577)** has observed that:-

“... Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial Court through production of any witness concerned with such custody and transmission.”

10. The primary role of a court is always to administer justice, which the trial Court could not have accomplished. Additionally, aside from the complainant, the only other witness is PW Atta Muhammad, whom this Court perceives to be highly interested. These elements of the case cast considerable doubt on the validity of the appellant's charge and it is a firmly entrenched principle of law that any doubt engendered by the circumstances presented in the prosecution's evidence should, as a matter of right, favour the accused. In order to ensure the safe and fair administration of criminal justice, minimum safety standards must be established to strike a balance between the prosecution and the defence, thereby mitigating any risk of a miscarriage of justice. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, that being beyond reasonable doubt. Moreover, the benefit of any doubt is to be given to the accused person as of right, not as of concession. In this respect, reliance is placed on the case of **Tariq Pervez v. The State (1995 SCMR 1345)**.

11. For what has been discussed above, the prosecution has failed to establish the case against the applicant beyond reasonable shadow of doubt, therefore, captioned revision application is allowed; accordingly the judgments of the Courts below impugned herein are set aside along-with conviction and sentences awarded to the applicant / convict. Consequently while extending benefit of doubt to the applicant, who is present before the Court is acquitted from the charge.

JUDGE