

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

**Criminal Appeal No. S-421 of 2019**

Appellant: Ghulam Mustafa son of Ghulam Rasool by caste Panhwar, through Mr. K.B. Lutuf Ali Leghari, Advocate.

Complainant: The State through Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Date of hearing: **22.08.2024**

Date of decision: **11.10.2024**

**J U D G M E N T**

**ZULFIQAR ALI SANGI, J.** - The appellant/accused named above has preferred instant Criminal Appeal, whereby he has impugned the judgment dated 05.12.2019 passed by Model Criminal Trial Court-I Hyderabad, in Sessions Case No.855 of 2016 (re-The Sate v. Ghulam Mustafa) arising out of Crime No.91 of 2016, for offence under section 25 Sindh Arms Act, registered at Police Station Hali Road, District Hyderabad, whereby he was convicted for offence punishable under section 25 Sindh Arms Act, 2013 and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.50,000/-. In case of default of payment of fine amount, the appellant/accused shall undergo S.I for one month and 15 days with benefit of 382-B Cr.P.C.

**2.** The accusation against present appellant/accused is that on 06.10.2016, during interrogation of main case/FIR No.63 of 2016, under sections 302 & 34 P.P.C, he disclosed that on 07.07.2016 he exchanged hot words with Zahid Hussain on mobile phone stating him to stop at shop he is coming, then appellant having armed with riffle 44, his brother Nadeem and his friend Allah Bux alias Sheedo with pistols reached there and with their common intention committed murder of Zahid Hussain by firing from their respective weapons and escaped from place of occurrence. He further disclosed that he hidden crime weapon viz. riffle with bullets in the bushes of Al-Rehman nursery behind choori ground and had become ready to produce the same and led police party and produced rifle 44 bore with magazine at 1730 hours from bushes. The rifle was unloaded and checked containing five live bullets of 44 bore rifle in its magazine. Police

inquired about rifle for which appellant disclosed that same is unlicensed. The mashirnama of arrest and recovery was prepared in presence of mashirs Hussnain Raza and Nasir Shahzad and on return to police station, he was booked and challaned in the present case.

**3.** The formal charge was framed against the present appellant/accused, to which he pleaded not guilty and claimed trial.

**4.** To prove the charge against the appellant/accused, the prosecution examined in all two witnesses i.e mashir Hussnain Raza, and ASI Muharram Ali, who all produced certain documents and items in support of the prosecution case. Thereafter, learned State Counsel closed the side of prosecution.

**5.** In his statement recorded in terms of Section 342 Cr.PC, the appellant/accused denied the allegations leveled against him by pleading his innocence. He, however, did not examine himself on oath in disproof of the charge nor led any evidence in his defence.

**6.** The learned trial Court on appraisal of material brought on record and hearing counsel for parties convicted and sentenced present appellant/accused vide impugned judgment, as detailed above.

**7.** Per learned defence counsel, the instant case is false and fabricated against present appellant/accused; that the evidence of mashir Hussnain Raza and Moharram Ali being contradictory have no credibility and thus cannot be used for maintaining conviction without independent corroboration; that the recovery of alleged crime weapon has been foisted upon appellant/accused just to strengthen main case wherein he has already been convicted. Summing up his contentions, the learned defence counsel submitted that the present accused has been involved in this case falsely by the police on the instance of complainant of main murder case and thus concluded that the case of prosecution is doubtful and has no foundation against the appellant/accused, therefore, he deserves to be acquitted in the circumstances of case.

**8.** In rebuttal to above, learned Assistant Prosecutor General, Sindh for the State contends that all the witnesses have fully supported the case of prosecution and no major contradiction is noticed in their evidence; that the recovery of crime weapon on

analysis has substantiated the involvement of present appellant/accused in the commission of offence; that the FSL report has fully supported the case of prosecution. Lastly, she submitted that the learned trial Court finding the appellant/accused guilty of the offence has rightly convicted and sentenced him by way of impugned judgment which calls for no interference by this Court, therefore, the appeal filed by him being devoid of merits is liable to be dismissed.

**9.** Heard arguments of learned counsel for the parties and have minutely gone through the material made available on record with their able assistance.

**10.** I have scrutinized the evidence of all the prosecution witnesses carefully. It is observed that complainant Inspector Ahmed Nawaz died before recording his evidence and PW-2 ASI Moharam Ali was examined being well conversant with the signature of complainant and he exhibited the FIR and certain documents and verified the signature upon said documents to be the same of Inspector Ahmed Nawaz. Mashir Husnain Raza who is the private mashir deposed that on 06.10.2016 he received Abid phone call who informed that he was not feeling well due to kidney problem but he received phone call from PS and police is calling. He requested him that he should go to PS with Nasir Shahzad due to his illness. They went to PS where police informed them that accused Ghulam Mustafa was ready to produce crime used riffle. They with the police and accused proceeded from PS. He and Nasir Shahzad were on motorcycle, while, police and accused were on official mobile. They went to Rehman Nursery, Choori Ground, where accused got the vehicle stopped. Accused led the police towards bushes. Riffle was recovered from the bushes. It was 44 Rifle. Police took the Rifle in possession and checked. Five bullets were found in magazine. Memo was prepared and rifle was sealed. Their signatures were obtained on memo. He has produced such memo at Ex.6/A and said that it is the same and bears his signature. He was cross-examined at some length but defence counsel failed to bring on record any material favourable to the appellant.

**11.** On re-assessment of the evidence, I, find that the prosecution has proved the charge against appellant beyond reasonable shadow of doubt, for the reasons that F.I.R was lodged promptly; an unlicensed

44 bore Rifle with magazine containing 5 bullets was recovered and sealed at the spot. The crime weapon was recovered from the appellant and FSL report in respect of such weapon is in positive. There appear no major contradictions in the evidence of the prosecution witnesses. However, the learned counsel for appellant pointed out some minor contradictions in the evidence of the witnesses. In this context, it is observed that minor contradictions / omissions in the evidence of eye witnesses are natural phenomena and no importance can be attached to such minor contradictions. It is also well settled law that minor contradictions, which do not affect the materiality of the evidence can be ignored. The reliance in this regard is placed on case of *Zakir Khan v. State* reported in **1995 SCMR 1793**.

**12.** Worth to observe that one witness is private person and the other is the police witness who is as good and reliable as other witness, provided that no enmity exists between him and the accused. In this case no enmity has been suggested against any of police witnesses; as such the police had no reason to falsely implicate the appellant in a false case. The appellant has not even alleged any enmity against police witness in his statement recorded under Section 342 Cr.P.C.

**13.** Thus, for the reasons discussed above, I find that the prosecution has proved its case against the appellant beyond a reasonable shadow of doubt in respect of the above offence for which he was convicted and sentenced vide impugned judgment. As such, the appeal fails and consequently stands **dismissed**.

J U D G E