

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.223 OF 2022

Appellant Johan Masih s/o Arif Masih through Ms. Fariyal Ishaque, Mr. M. Sathi Ishaque and Mr. S.K. Lodhi, Advocates

Respondent The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh assisted by Mr. Mumtaz Ali Shah, Assistant Prosecutor General Sindh.

Date of Hearing : 11.09.2024

Date of Judgment : 11.09.2024

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellant Johan Masih son of Arif Masih was tried in the Court of IXth Additional District & Sessions Judge at Karachi in Sessions Case No.1998 of 2020 arising out of FIR No.88 of 2020 under Section 23(i) A Sindh Arms Act, 2013 registered at PS Sahil Karachi and vide Judgment dated 22.03.2022 was convicted and sentenced under 23(i) A SSA 2013 to suffer R.I. for 03 years with fine of Rs.10000/- (Rupees Ten Thousand Only). In case of default in payment of fine he shall suffer SI for (03) months more.

2. The brief facts of the case are on the accused and his co-accused along with absconding accused robbed Falix and Moona Liza by threatening on fire arms on 16.08.2020 at about 2330 hours in the night time whereupon a police party arrived and chased the accused and the accused (Johan) was arrested on the spot alongwith an unlicensed pistol. Hence the aforesaid FIR was lodged.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined four (04) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. wherein he claimed that he is innocent.

He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. After reading out the evidence, learned counsel for the appellant, under instructions, does not press this appeal on merit provided that the he was given a reasonable reduction in sentence handed down to him on the following mitigating circumstances:

- i) The appellant is first time offender and capable for reformation;
- ii) The appellant had a large family to support;
- iii) That by accepting his guilt he has shown genuine remorse;
- iv) That appellant had served out a substantial portion of his sentence.

7. Based on the above mitigating circumstances learned APG had no objection to the reduction in sentence to some reasonable extend.

8. I have gone through the record and found that unlicensed pistol recovered from the appellant by a police official, who had no enmity or ill will with the appellant and had no reason to implicate him in a false case. I find the evidence of PWs in particular PW-1 & 2 who arrested the appellant on spot red-handed with unlicensed pistol to be reliable, trustworthy and confidence inspiring. I find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

9. With regard to sentence, based on the mitigating circumstances mentioned earlier in this judgment and in particular the fact that the appellant has served out substantial portion of his sentence and the no objection extended by the learned Addl. PG I hereby reduce the appellant's sentence to the time already undergone in custody and waive off any fine. The appellant shall be released unless he is wanted in any other custody case.

10. The instant Criminal Appeal is disposed of in the above terms.

JUDGE