

Arms Case

471

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. S – 185 of 2015

Muhammad Alam S/O Haji Arbab Gehlro  
CONFINED IN CENTRAL PRISON & CORRECTIONAL FACILITY  
HYDERABAD

===== APPELLANT

VERSUS

THE STATE

===== RESPONDENT

Sessions Case No.64/2014  
Crime No. 20/2014  
U/S 23(i) Sindh Arm Act,  
P.S Samaro , Umerkot

off  
17/11/16

472

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.S- 185 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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29.11.2023.

Mr. Imtiaz Ali Chanio, Advocate for appellant.  
Ms. Sana Memon, A.P.G for State.  
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I have heard the learned counsel for appellant and learned  
A.P.G for State. Reserved for Judgment.

Tufail

Arms Case Arrested on Spot

473

IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Criminal Jail Appeal No. S- 185 of 2015

MUHAMMAD ALAM

Versus

THE STATE

Appellant : Muhammad Alam s/o Haji Arbab Gehlro.	Through Mr. Imtiaz Ali Chanio, Advocate.
Respondent : The State	Through Ms. Sana Memon, Assistant Prosecutor General, Sindh.
Date of hearing	29.11.2023.
Date of judgment	06.12.2023.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Jail Appeal is directed against the judgment dated 19.12.2015, passed by the learned Sessions Judge, Umerkot, in Sessions Case No. 64 of 2014 (re: The State versus Muhammad Alam), emanating from Crime No.20 of 2014, registered at Police Station Samaro, under section 23(i) of Sindh Arms Act, 2013, whereby the appellant Muhammad Alam has been convicted u/s 23(i) of Sindh Arms Act, 2013 and sentenced to suffer imprisonment for a period of 14 years. He was also directed to pay fine of Rs.20,000/- (Rupees Twenty Thousand); and, in case of non-payment of fine, the appellant shall undergo R.I for a period of 06 months more. The benefit of Section 382-B Cr.P.C was extended to the appellant.



2. The brief facts of the prosecution case as mentioned in the FIR are as under:-

*"On 06.04.2014, complainant ASI Ali Nawaz Leghari lodged F.I.R at P.S Samaro alleging therein that he along with his subordinate staff PC Nazar Hussain, PC Kirshan with arms and ammunitions left P.S in Government vehicle, driver HC Saleem vide entry No.5 at 1030 hours for investigation of Crime No.19 of 2014 u/s 302 PPC. During investigation, PW Lakhano met him and disclosed that wanted accused Muhammad Alam Gehlro standing at Ramjago Mori of Mithrao canal and waiting for conveyance, on such information, they reached at 1230 hours at pointed place where they saw a person standing, PW Lakhano pointed accused Muhammad Alam Gehlro, who seeing police mobile tried to escape but he was apprehended and on enquiry, he disclosed his name as Muhammad Alam s/o Haji Arbab Gehlro resident of village Jan Muhammad Gehlro, during personal search secured a 30 bore pistol from left side fold of his shalwar with empty magazine, the accused disclosed that pistol belongs to him and same is without license and he committed murder of his brother Jan Muhammad with same pistol, such mashirnama of arrest and recovery was prepared in presence of mashirs PC Nazar Hussain and PC Lakhano. The pistol was sealed in a parcel. Later on, the accused and case property were brought at PS and F.I.R was lodged."*

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 02 witnesses and exhibited numerous documents and other items. The statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication by the complainant. However, neither he examined himself on Oath nor led any evidence in his defense.

5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that



the pistol was foisted on the appellant; that there were no independent witnesses in violation of S.103 Cr.PC and as such for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed his reliance on the case of **Mehrab alias Mehro versus The State** [2022 YLR 2460].

7. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment and contended that the appeal be dismissed. In support of her contentions, she placed reliance on the case of **Amjad versus The State** [2018 MLD 1541].

8. I have considered the submissions of the parties and have perused the material available on record and considered the relevant case law.

9. This is an offshoot case of the main murder case of which the appellant was convicted by the trial court. According to the evidence on record as per PW 2 ASI Ali Nawaz he was investigating a murder case when PW Lakhano whose evidence was recorded in the murder case disclosed to him the whereabouts of the appellant who was wanted in the murder case. PW 2 ASI Nawaz Ali and PW 1 Nazar Hussain then proceeded with other police officers to the pointed place where PW Lakhano pointed out the appellant as the wanted person. The appellant on seeing the police tried to run away however he was caught and arrested on the spot by the police who recovered an unlicensed firearm from him. Neither of the police PW's had any ill will or enmity towards the appellant and had no reason to implicate him in a false case. Their evidence is in complete unison on all salient point and neither witness was dented during cross examination. It is well settled by now that in the above circumstances the evidence of such police witnesses is as good as any other witness and I can rely on the same which I do as I find it to be reliable, trustworthy and

confidence inspiring and believe the same. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474). The FIR was filed with promptitude naming the appellant who was caught red handed on the spot. The recovered pistol was sealed on the spot and kept in safe custody and was sent with promptitude for FSL along with the empties which were found at the crime scene. The pistol was found to be in working order and matched the empties at the crime scene of the murder. The appellant failed to produce a license for the recovered pistol. It is true that no independent mashir was associated with the arrest and recovery however according to PW 1 Nazir Hussain at the time of the arrest and recovery no independent mashir was present. Even other wise it has virtually become a judicially recognized fact those independent persons (members of the public) are unwilling to associate themselves with criminal case nowadays which might lead to them having to attend trials of dangerous criminals.

10. Thus, based on the above discussion I find that the prosecution has proved its case against the appellant beyond a reasonable doubt and maintain the conviction. However, with regard to sentencing I find that the sentence imposed on the appellant to be rather harsh as he has been given the maximum sentence for the offence and as such despite the fact that the unlicensed pistol was used in a murder case I hereby reduce the sentence of the appellant to 10 years RI but maintain any fines, compensation or imprisonment in default in the impugned judgment.

11. The appeal is therefore dismissed subject to modification in sentence as mentioned above.

*\*Hafiz Fahad\**