

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Crl. Appeal No.554-P/2014

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal is directed against the judgment dated 24.09.2014, passed by learned Trial Court/ Additional Sessions Judge-IV, Kohat, whereby appellants (1) Muhammad Khan and (2) Shah Nawaz, have been convicted under section 13 Arms Ordinance, 1965 and sentenced to undergo 03 years S.I. each. They have been further convicted under section 417 PPC and sentenced to undergo 06 months S.I. each. However, co-accused Wali Khan and Waqar Abbas, were acquitted.

2. The prosecution case as unfolded in First Information Report is that, on 26.02.2012, on receipt of information from Abdul Qiyas HC Incharge Highway Checkpost, qua smuggling of arms and ammunitions via motorcar, Arman Gul SHO alongwith other police officials

rushed to Highway Checkpost. At 15.05 hours, a motorcar bearing registration No.FDW-810, coming from Dara Adam Khel side was intercepted. Its driver disclosed his name as Waqar Abbas and a person sitting beside him in front seat as Wali Khan. In its rear seat, two persons wearing veils, on search by a lady constable were discovered to be male, who on query disclosed their names as Muhammad Khan and Shah Nawaz (appellants convicts herein). On search of a polythene bag in possession of Muhammad Khan, twelve 30 bore pistols alongwith fixed and spare chargers and a pen pistol were recovered while from possession of accused Shah Nawaz, a Kalashnikove and a stain gun were recovered. The accused/appellants were arrested on the spot alongwith acquitted co-accused. Arman Gul SHO drafted murasila Exh.Pw.5/2 on the basis of which FIR No.186 dated 26.02.2012, was registered against the accused under sections 13 and 14 Arms Ordinance, 1965 and Ss.417 and 419 PPC, in Police Station Muhammad Riaz Shaheed, Kohat. He also took into possession the recovered arms and ammunitions vide recovery memo Exh.PW.5/1 and examined the same through Armourer vide report Exh.PW.4/1.

3. On completion of investigation, challan was submitted against the accused before the learned Trial

Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. To prove its case prosecution examined six witnesses. After closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed their innocence. They, however, declined to be examined on oath under section 340 (2) Cr.P.C. or to produce evidence in defence. On conclusion of trial, learned Trial Court, after hearing both the sides, convicted the appellants as mentioned above, however, acquitted co-accused Waqar Abbas and Wali Khan, hence, this appeal by the convicts.

4. Arguments heard and record perused.

5. I deem it appropriate to mention here that during pendency of the instant appeal, appellant-convict Muhammad Khan absconded, as such his sureties were proceeded under section 514 Cr.P.C. My this judgment shall only govern the case of appellant Shah Nawaz.

6. It was the duty of the prosecution to prove the alleged recovery through cogent and confidence inspiring evidence beyond shadow of reasonable doubt, particularly, by producing and exhibiting the arms and ammunitions allegedly recovered from possession of appellant Shah Nawaz before the learned Trial Court

during evidence, but neither the arms nor the veil allegedly wearing by the appellant at the time of his arrest have been produced/exhibited before the Trial Court, in absence whereof, mere allegation of recovery in the FIR, would not be sufficient to prove the guilt of the appellant. The learned Trial Court by squarely overlooking this important aspect of the case reached to an erroneous conclusion by holding the appellant guilty of the offence. The non-production and exhibition of the case property has totally shattered the entire edifice of the prosecution case, benefit of which is to be extended to the appellant.

6. Accordingly, I while partially allowing this appeal to the extent of appellant Shah Nawaz, hereby set aside his conviction and sentence, recorded vide impugned judgment dated 24.09.2014 and hereby acquit him of the charges levelled against him. He is on bail, his bail bonds stand cancelled and sureties are absolved from liability of bail bonds.

7. This appeal to the extent of appellant Muhammad Khan is kept pending and shall be restored/taken up again, on his arrest. Perpetual non-bailable warrant of arrest be issued against him through SHO Police Station concerned.

8. The Additional Registrar (Judicial) of this Court is directed to send copy of this judgment to the Director General Prosecution Khyber Pakhtunkhwa, Peshawar, for observing the irresponsible and careless attitude of the Additional Public Prosecutor associated with the prosecution of the instant case, who despite the fact that such like

+.....0 cases alongwith ocular account of the Seizing Officer and marginal witnesses to the recovery memo, are always proved by production and exhibition of the recovered contraband before the learned Trial Court during prosecution evidence, did not bother to exhibit the recovered arms and ammunitions as well as the veils, particularly, in the statement of Abdul Qayas HC (PW.2), marginal witness to the recovery memo Exh.PW.2/1, as the Seizing Officer/complainant was abandoned being dead, which ultimately, resulted in acquittal of the accused. The irresponsible conduct demonstrated by the APP reflects that either he is incompetent or dishonest. Any step taken in the matter, be intimated to this Court.

Announced
26.10.2015

J U D G E

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

