

Judgment sheet.  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD.**  
Cr. Appeal No.S-71 of 2017.

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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Appellant:                      Through Muhammad Akram, Advocate.

The State                      Through Mr. Shahid Ahmed Shaikh, A.P.G.

Date of hearing:              22 .05.2017.

Date of decision:            22.05.2017

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

**ABDUL MAALIK GADDI, J-** Through instant appeal, the appellant has challenged the judgment dated 15.03.2017 passed by learned Additional Sessions Judge-I, Tando Adam, in Sessions Case No.251 of 2014, Re: State vs. Muhammad Jan, U/s 23-(1)(a) of Sindh Arms Act in Crime No.39 of 2014, P.S B-Section Tando Adam, whereby the learned trial court after full-dress trial convicted and sentenced the appellant R.I. for five years and to pay fine of Rs.50,000/=; in default of the same he shall suffer S.I for six months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. It may be mentioned here that today the case is fixed for hearing of M.A.No.2445 of 2017 under section 426 Cr.P.C, but parties advocate are ready to argue the main appeal, therefore they have been heard.

3. Brief facts of the prosecution case as stated in FIR are that the appellant at the time of arrest under Crime No.38 of 2014, for offence under Section 324, 353, 412, 427, 34 PPC of P.S. B-Section Tando Adam, was found in possession of 30 bore pistol loaded with three live bullets for which he had no license to keep the same. Such mashirnama was prepared in presence of mashirs PC Abdul Wahid and PC Noor Nabi.

4. At trial, Mashir PC Abdul Wahid was examined as PW-1 (Exh.4); he has produced memo of recovery and arrest at Exh.4/A. Investigating Officer ASIP Muhammad Sharif examined as PW-2 (Exh.-5); he has produced memo of place of incident and Forensic report of weapon at Exh.5/A and B, respectively. Complainant SIP Muhammad Amin Junejo was examined as PW-3 (Exh.6); he has produced the FIR at exh.6/A. Thereafter the prosecution side was closed vide statement at Exh.7.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.08, wherein he denied the allegations leveled against him.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

7. It is stated by the learned counsel for applicant that the case against appellant is false and has been registered due to enmity;

that appellant was arrested from the thickly populated area, but infact no independent witness has been cited as a witness of the incident; that learned trial Court did not consider the fact on record that appellant/accused was arrested during encounter with the police in Crime No.38 of 2014 and above case is offshoot of the same, whereas in main case the appellant / accused was acquitted in same evidence and same mashirnama of arrest and recovery; that whole case of the prosecution is based upon contradictory evidence of the complainant and prosecution witnesses, therefore according to him this appeal may be allowed and the appellant may be acquitted from the charge.

8. Learned A.P.G supported the impugned judgment by arguing that the impugned judgment passed after perusing the documents and evidence as available on record.

9. I have heard the parties at length and have perused the documents and evidence on record. It is an admitted fact that this appellant has been arrested in main case under Crime No.38 of 2014, for offence under Section 324, 353, 412, 427, 34 PPC and above case is offshoot of the same, whereas in main case the appellant / accused has been acquitted on the basis of same evidence and same mashirnama of arrest and recovery by the trial Court dated 23.2.2017. Further, it has been brought in evidence

that incident took place in thickly populated area, but infact no independent witness has been cited as a witness of the incident, therefore, false implication of appellant in this case cannot be ruled out. It appears that during the alleged police encounter, nobody from either side has received bullet injury, even police mobile also did not hit any bullet or scratch, hence this aspect of the case creates doubt in the prosecution case. I have examined the evidence so brought on record by the complainant and prosecution witnesses, which is not necessary to reiterate here for the sake of brevity, but their evidence is contradictory on material particulars.

10. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and the learned trial court did not appreciate the evidence properly. It is settled position of law that if there is slight apprehension regarding prosecution case being untrue, its benefit extends to the accused, resultantly appeal is allowed. The impugned order is set-aside and the appellant is acquitted from the charge. He is in jail, be released forthwith, if not required in any other case.

**JUDGE.**

