

Hyderabad lodged FIR, stating therein that he arrested accused in crime No.33/2014 under section 23/A Sindh Arms Act 2013, PS A.Section Latifabad, Hyderabad and recovered one unlicensed TT pistol 30-bore and four live bullets.

3. A formal charge was framed against accused at Exh.02, to which he pleaded not guilty and claimed for trial.

4. At trial, prosecution examined PW-1 complainant SIP Rao Muhammad Javed at Exh.4, who produced mashirnama of arrest and recovery at Exh.4/A, daily diary entry at Exh.4/B. PW-2 PC Waseem Ahmed at Exh.5, PW-3 SIP Muhammad Saleem at Exh.6, who produced report of ballistic expert at Exh.6/A.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.08, whereby he denied the allegations of the prosecution and claimed to be tried.

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 learned counsel for appellant that he is innocent and has been falsely implicated by the police with malafide intention and ulterior motives. He further submitted that there are material contradictions and glaring discrepancies in the depositions of the prosecution witnesses.

He further submitted that the alleged recovered property has been foisted upon the accused by the police and that all the PWs are police officials, interested, set up, inimical and hostile towards the accused. He further submitted that the case of the prosecution is full of doubts and it is settled law that if any single doubt arises and such benefit must be extended in favour of the accused and prayed for his acquittal.

08. On the other hand learned D.P.G for the state contended that the prosecution examined three witnesses who have fully supported the prosecution case. He submitted that the police witnesses are good as private person and their evidence cannot be discarded on the point that they are police officials. There is no contradiction in the evidence of examined witnesses and the witnesses have fully supported the versions of prosecution and the learned trial judge has rightly convicted the appellant; he therefore supported the impugned judgment.

09. I have heard the learned counsel for the parties at length and have perused the documents and evidence on record. Perusal of contents of FIR shows that on 24.02.2014 at about 2300 hours, near Bachal Bukhari Dargah, Unit No.7, Latifabad Hyderabad, SIP Rao Muhammad Javed, arrested the present appellant and recovered one unlicensed TT pistol of 30 bore alongwith four live bullets in presence of mashirs (police officials), but surprisingly despite of the fact that the place of recovery was situated at near Bachal Bukhari Dargah, Unit

No.7, Latifabad Hyderabad, where round O'clock people of vicinity at shops etc. as well vehicles ply on the road, hence the same is thickly populated area, but despite of the fact the record shows that the complainant did not take any effort to make any private person to act as mashir of arrest / recovery, such lapse on the part of prosecution had cut at the roots of its case rendering the entire episode doubtful and it, by itself, was enough to make the prosecution version unbelievable. Furthermore, it is an admitted position that this incident took place on 24.02.2014 and recovered pistol was sent to the Ballistic Expert for opinion which was received on 03.03.2014, after the delay of about 11 days, for which no explanation has been furnished, therefore, false implication of the appellant in this case cannot be ruled out and non-sending the recovery property to the ballistic expert for forensic report in time, is fatal to the prosecution case. Record further shows that the prosecution has miserably failed to produce any criminal history / record against the appellant to show that he is habitual offender.

10. I have gone through the evidence of all the prosecution witnesses, but their evidence has been found contradictory on material particulars. Besides this as I have observed above that the place of recovery is highly doubtful, therefore, the evidence of these witnesses cannot be safely relied upon.

11. I have gone through the case of **Tariq Pervez v. The State** reported as **1995 SCMR 1345**, wherein it has been held that if a single circumstance creates reasonable doubt in the prudent mind about the guilt of the accused then he will be entitled to such benefit not as a matter of grace, but as a matter of right. Similar view has also been taken in the case of **Muhammad Akram v. The State** reported as **2009 SCMR 230**.

12. I have also perused the evidence and documents on record and has also considered the version of both the parties put forward by them through evidence and found that the version of the appellant seems more plausible and convincing, while the version of the prosecution is totally doubtful.

13. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and learned trial court did not appreciate the evidence and documents on record properly. Consequently, the instant appeal is allowed. The impugned judgment passed by the trial Court is set-aside. Resultantly, the appellant is acquitted from the charge. He is present on bail, his bail bonds stand cancelled and surety is discharged.

JUDGE