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ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl. Appeal No. S- 47 of 2015.

Date of hearing
22.08.2017.

Order with signature of Judge

For hearing of case.

Appellant present in person.
Mr. Sardar Ali Rizvi, D.P.G.

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Heard appellant in person and learned D.P.G. For reasons to be recorded later on, the appeal is allowed. The conviction and sentence awarded to appellant vide impugned judgment dated 11.08.2015 passed in Sessions case No.249/2014 arising out of Crime No.115/2014 of P.S Buxapur, is set aside. The appellant is present on bail, his bail stands cancelled and surety discharged.



JUDGE

Ansari/\*

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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Cr. Appeal No. S – 47 of 2015**

Appellants: Abdul Aziz @ Gazan  
Respondent: The State  
through Mr. Sardar Ali Rizvi, DPG.

Date of hearing : 22-08-2017

**JUDGMENT**

Omar Sial J. The Appellant has impugned a judgment dated 11-8-2015 passed by the learned Additional Sessions Judge at Kashmore. In terms of the said judgment the Appellant was convicted and sentenced to imprisonment for 5 years as well as a fine of Rs. 10,000 (or another 1 month simple imprisonment in lieu thereof) for an offence u/s 23(1)(a) of the Sindh Arms Act, 2013.

Brief facts of the prosecution case are that a police party led by A.S.I. Muhammad Iqbal was busy conducting investigation in crime number 114 of 2014 when it received information that the nominated accused in that crime (who happened to be the Appellant) was walking from his house to the link road near Suharyani farm. The police party reached the identified location and saw that the Appellant walking holding a gun in his hand. After a brief chase on foot, the Appellant was apprehended and a gun and 3 cartridges of a .12 caliber gun were recovered from him. The Appellant also disclosed that he had committed the murder in crime number 114 of 2014 with this weapon. He was arrested and FIR No. 115 of 2014 registered against him for the possession of the weapon which was unlicensed.

The charge against the Appellant was framed on 19-2-2015 to which the Appellant pleaded not guilty and claimed trial.

In order to prove its case the prosecution examined 2 witnesses. PW-1 P.C. Shehak Jakhrani was the witness to the memo of arrest and recovery. PW-2 A.S.I. Mohammad Iqbal was the complainant and the investigating officer.

The Appellant's statement u/s 342 Cr.P.C. was recorded on 4-8-2015 in which he pleaded his innocence.

I have heard the Appellant in person as well as the learned APG and have also examined the record with their assistance. My observations are as follows. (B)

1. No description of the weapon seized is given in the memo of arrest and recovery.

PW-1 admitted in his testimony that the weapon produced in court had a plastic tape wrapped around the butt, which wrapping was not stated in the memo of arrest and recovery. He also admitted that there were pictures of birds and flowers on the gun but that fact too had not found a mention in the memo. He also admitted that the make of the cartridges seized also was not written in the memo. PW-2 quite categorically admitted that he had not mentioned the description of the weapon in the memo of arrest and recovery.

2. It was the prosecution's case that one gun and 3 cartridges of a .12 caliber gun were recovered from the Appellant. The Ballistics report however shows that the parcel received by the FSL for analysis contained one single barrel gun, 5 cartridges of a .12 gun and 1 extra test cartridge. On the very face of it the FSL report does not support the prosecution case. The weapon and ammunition was sent to the FSL after a delay of 8 days. No explanation has been given as to where and how the weapon was kept during this period and why it took such a long time for the weapon to be sent for examination. In these circumstances tampering of the case property cannot be ruled out.

3. Substantial doubt was present in the prosecution case as to whether the weapon and ammunition was actually recovered from the Appellant in the manner that the prosecution claims it was. The benefit of such doubt should have gone to the Appellant in accordance with well settled principles of law.

4. Above are the reasons for the short order dated 22-8-2017 in terms of which the Appeal was allowed and the Appellant acquitted of the charge. As he was present on bail it was ordered that his bail bond stood cancelled and surety discharged.

  
18/9/17  
JUDGE