

Judgment sheet.  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
Cr. Appeal No.S-127 of 2017.

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
Appellant:	Through M/s Amjad Ali Sahito & Waqar Ahmed Memon, Advocates.
The State	Through Mr. Shahid Ahmed Shaikh, D.P.G.
Date of hearing:	17 .08.2017.
Date of decision:	17.08.2017

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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 27.04.2017, passed by learned Sessions Judge, Tando Allahyar, in Sessions Case No.77 of 2016, Re: State vs. Zubair, U/s 23(1)(a) of Sindh Arms Act in Crime No.90 of 2016, P.S A-Section Tando Allahyar, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant R.I. for seven years and to pay fine of Rs.20,000/=; in default of the same he shall suffer R.I for four 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.3799 of 2017 under section 426 Cr.P.C, but parties advocate are ready to argue the main appeal, therefore they have been heard.

3. Concise facts of the case as per police report under section 173 Cr.P.C is that on 18.8.2016 ASI Nek Mohammad Khoso, I/C ADRC, Tando Allah was on patrolling duty alongwith ASI Ghulam Abbas Chandio, ASI Gulzar Ahmed Laghari, PC Mohammad Bux, PC Mohammad Hussain, PC Raza Hussain, PC Waqar Ahmed and DPC Ghulam Rasool under DD entry No.11 at 1615 hours and during the course of patrolling, he had received secret information from an informer that accused Anwar is selling charas in street infront of his house, situated in Makrani Mohallah, Tando Allahyar. On receipt of such information, police party reached at the pointed place and identified that accused Lala Anwar s/o Pir Bux Makrani was standing there, he was having white colour shopper in his right hand. Police party parked police mobile, in the meantime Zubrai s/o Rasool Bux Makrani, Shoaib s/o Ishaque Makrani, Asif s/o Murad Bux Makrani, Tariqu alias Kaloo s/o Ghafoor Makrani and Arif alias Current s/o Deen Mohammad, who all were armed with pistols, thereafter accused Lala Anwar took out pistol from the fold of his shalwar and he alongwith co-accused has fired upon police party with intention to commit their murder, police also retaliated upon the accused persons through an encounter and also conveyed such message to their high-ups for calling extra force and then incharge of 15 namely ASI Zulfiqar Ali Mangrio also reached at the spot alongwith staff, thereafter police party encircled the culprits through an encounter,

which continued for about half an hour, then firing from accused side stopped, subsequently police arrested two accused persons namely Lala Anwar from whom pistol and charas was secured and accused Zubair alongwith pistol. Rest of accused persons namely Shoaib, Asif, Tariqu alias Kaloo and Arif alias Current made their escape good towards narrow streets of Makrani Mohallah, then police party secured pistol from accused Lala Anwar which was checked and found that the same is of 38 bore and containing five live bullets in its magazine. It is also stated that thereafter police party also secured the charas and on checking found consisting on four pieces of charas having written 'SHER-E-SINDH' on them, then pistol of accused Zubair was checked and found loaded with three live bullets in its magazine, same was got unloaded and weight of charas was also made and found 2010 grams. On enquiry regarding recovered pistols and charas, arrested accused persons could not reply satisfactorily as they were arrested u/s 324, 353, 147, 148, 149 PPC, 23(1)(a) of Sindh Arms Act as well as 9(c) of Control of Narcotics Substance Act 1997. It is also stated that both arrested accused persons were also required in case Cr.No.63/2016 u/s 324, 386, 504 PPC, 6/7 of ATA of PS B-Section, Tando Allahyar, as such they were also arrested in said crimes. On personal search of accused, four denominations of Rs.100/-each were secured from the front pocket of shirt of accused Lala Anwar. Recovered property was separately sealed on the spot in presence of

official mashirs namely ASI Gulzar Ali Leghari and ASI Ghulam Abbas Chandio, subsequently police party approached at PS A-Section, Tando Allahyar, where ASI Nek Mohammad Khoso got registered FIR against the accused persons in the manner stated above.

4. A formal charge against present accused u/s 23(1)(a) of Sindh Act, 2013 was framed at Exh.2, to which he pleaded not guilty and claimed to be tried, vide his plea at Exh.3/A.

5. At trial, prosecution examined ASI Gulzar Ali Leghari at Exh.03, who is mashir of arrest of accused Lala Anwar and Zubair and mashir of recovery. He has produced photocopy of mashirnama of arrest and recovery at Exh.4. Next witness was SIP Naeem Ashraf, who is the author of FIR as well as had conducted the investigation of instant case. He was examined as PW-2 at Exh.6, he has produced ballistic expert report at Exh.7 and photocopy of mashirnama of place of occurrence at Exh.8. The last witness was ASI Nek Mohammad, he was examined being PW-3 at Exh.9, who produced attested copy of DD entry No.11 at Exh.10, attested carbon copy of arrival entry at Exh.11 and FIR at Exh.12. No other witness was examined by prosecution and learned DPP closed his side vide statement at Exh.13.

6. Statement of accused was recorded under section 342, Cr.P.C at Ex.14, wherein he denied the allegations leveled by the prosecution and claimed himself to be innocent. However,

he has also showed his willingness to examine himself on oath but he did not desire to lead defence evidence. Thereafter, statement of present accused was recorded on oath u/s 340(2) Cr.P.C at Exh.15.

7. 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.

8. It is stated by the 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 also submitted that the allegation of using unlicensed pistol in crime No.88/2016 of P.S A-Section Tando Allahyar is false, managed and concocted one and is result of strengthen the main case. 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 acquittal of the accused.

9. 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 both witnesses have fully supported the versions of prosecution and the learned trial judge has rightly convicted the appellant; he therefore supported the impugned judgment.

10. I have heard the learned counsel for 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.88 of 2016, for offence under Section 324, 353, 147, 148, 149 PPC and this case is offshoot of the main case, whereas in main case the appellant / accused has been acquitted by this Court and detail reasons has also been given in the said judgment. A part from this, it is alleged against the appellant that one unlicensed TT pistol of 30 bore with live bullets was recovered from him. It has been brought in evidence that incident took place in thickly populated area and the police party had already advanced information, but despite of this fact, the complainant did not bother to take with him any independent person either from the place of information or from the place of incident, 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, Also, it is an admitted position that this incident took place on 18.8.2016 and recovered pistol was sent to the Ballistic Expert for opinion which were received on 01.9.2016, after the delay of thirteen 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.

11. I have gone through the evidence of SIP Naeem Ashraf who conducted investigation and PWs ASI Gulzar Ali Leghari, who is mashir of arrest of accused and recovery and ASI Nek Mohammad, but their evidence has been found contradictory on material particulars. Besides this as I have observed above that the place of arrest and recovery is highly doubtful, therefore, the evidence of these witnesses cannot be safely relied upon.

12. I have gone through the case of **Tariq Perves 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.**

13. 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.

14. 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 in jail, therefore, jail authorities are directed to release him forthwith, if they he is not required in any other case.

15. Since, the appeal is allowed, therefore, the listed application under section 426 Cr.P.C is also disposed of having become infructuous.

**JUDGE**