

**Judgment sheet.**  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.  
Cr. Appeal No.S-124 of 2017.

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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Appellant: Through Mr. Imran Ali, Advocate.

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

Date of hearing: 21 .08.2017.

Date of decision: 21.08.2017

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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 24.04.2017, passed by learned Sessions Judge, Tando Allahyar, in Sessions Case No.80 of 2016, Re: State vs. Asif, U/s 23(1)(a) of Sindh Arms Act in Crime No.102 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.3795 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 of the Cr.P.C is that ASI Nek Mohammad Khoso, I/C ADRC, Tando Allahyar was on patrolling duty alongwith ASI Gulzar Ai Leghari, ASI Ghulam Abbas Chandio, PC Khamiso Khan, PC Abdul Jabbar, PC Fazal Hussain, PC Mumtaz Ali, PC Mohammad Bux, PC Ghulam Mustafa, PC Manzoor Ali and DPC Mohammad Ibrahim under DD entry No.13 at 0600 hours and during the course of patrolling, he had received secret information from an informer that accused Asif, who is wanted in number of cases of PS A-Section, Tando Allahyar is selling charas in a cabin lying infront of his house. On receipt of such information, police party reached at the pointed place and identified that accused Asif s/o Murad Makrani, Iqbal alias Gama s/o Murad Makrani, Arif alias Current s/o Deen Mohammad Makrani, Zahid s/o Deen Mohammad Makrani and Tarique alias Kaloo s/o Ghafoor Makrani were standing there, who on seeing the police party, took out pistols from respective folds of their shalwars and made straight fires upon police party with intention to commit their murder, police also retaliated upon the accused persons through an encounter, which continued for about half an hour, then all culprits made their escape good towards houses, then police party approached at the cabin and found that a huge quantity of charas was lying there, 54 rods of charas duly wrapped with plastic were lying in blue color box, which were weighed and found 18 kilograms, one black shopper having rod type charas measuring 2 kilograms was lying and one plastic KATA in which total 112 pieces of charas in small and big size were lying, which were weighed and found 35 kilograms. It is the further case of prosecution that police party left one ASI Ghulam Abbas

Chandio at the recovered charas and in order to arrest the escape accused, encircled the Makrani Houses, during which accused Asif was arrested in injured condition from Alimirah, lying in his house, he was having one TT pistol in his hand, thereafter, they brought the arrested accused Asif at cabin, where police party checked the pistol and found loaded with five live bullets in its magazine. Police party also secured eight denominations of Rs.100/-total Rs.800/- from the side pocket of his shirt. On enquiry regarding valid license and charas, he disclosed that pistol is without license and he alongwith his companions has kept the charas for selling, as such he was arrested in the instant offence as well as under Arms Act and Narcotics Substance Act 1997. He was also arrested in case Cr.No.02/2016 u/s 9-C, Cr.No.10/2016 u/s 324, 353, 147, 148, 149 PPC of PS A-Section, Tando Allahyar. Thereafter, recovered pistol and charas was separately sealed under a mashirnama prepared in presence of officials 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.2/A.

5. At trial, prosecution examined ASI Gulzar Ali Leghari at Exh.03, who is mashir of arrest of accused Asif and mashir of recovery. He has produced photocopy of DD entry No.13 at Exh.4, carb copy of DD entry No.9 at Exh.5, carbon copy of mashirnama

of arrest and recovery at Exh.6. Next witness was ASI Nek Mohammad Khoso, who was examined at Exh.7, who produced a FIR at Exh.8. The last witness was SIP Naeem Ashraf, who is the author of FIR as well as had conducted the investigation of instant case. He was examined at Exh.9, he has produced Ballistic expert report at Exh.10. No other witness was examined by the prosecution and learned DPP closed his side vide statement at Exh.11.

6. Statement of accused was recorded under section 342, Cr.P.C at Ex.12, 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 opt to lead defence evidence as well in the shape of Hafiz Mohammad Sufyan. Thereafter statement of present accused was recorded on oath u/s 340(2) Cr.P.C at Exh.1 and DW Mohammad Sufyan at Exh.14 and subsequently, learned defence counsel through statement dated 11.4.2017 at Exh.15, closed the defence side.

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.101/2016 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 DPG 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.101 of 2016, for offence under Section 324, 353, 427, 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 on 21.8.2017 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. Furthermore, perusal of contents of FIR it reveals that at the time of incident there was cross firing for about half an hour with the sophisticated weapons, although five accused had allegedly fired at the police party, yet neither any member of the police party had been injured, nor any bullet had hit the police vehicle and the consistent plea of the accused to have been injured during exchange of firing between two parties was never investigated, so also non-production of medical evidence with regard to the injury of the accused Asif was a serious infirmity in the prosecution case. Also, it is an admitted position that there is delay in sending the recovered pistol to the Ballistic Expert for opinion, for which no explanation has been furnished, therefore, false implication of the appellants 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 ASI Gulzar Leghari, ASI Nek Mohammad Khoso and SIP Naeem Ashraf, 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 surrounded by so many houses, but no private witness called to confirm the recovery and arrest of the appellant, therefore, the evidence of witnesses cannot be safely relied upon.

12. During course of arguments it is stated by the learned D.P.G that the appellant has involved in many criminal cases, but in this respect no list of cases has been provided that the appellant is involved in criminal cases. Even otherwise, merely pendency of the criminal cases does not advance the case of the prosecution unless it has ended into conviction up to the level of the superior courts.

13. 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**.

14. 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.

15. 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.

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

**JUDGE**

Ahmed/Pa