

Judgment sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-04 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant:	Through Muhammad Saffar Khokhar, Advocate.
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The State	Through Syed Meeral Shah DPG State.
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Date of hearing:	14 .09.2017.
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Date of decision:	14.09.2017
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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 26.12.2016 passed by 2nd Additional Sessions Judge, Tando Muhammad Khan, in Sessions Case No.36 of 2016 (Re: State vs. Imran alias Sikandar), U/s 23-I(a) of Sindh Arms Act, 2013, in Crime No.203 of 2016, P.S Tando Muhammad Khan, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant in point No.02 (Para-25) of the impugned judgment which reads as under:-

“25. As a result of my finding on point No.1 accused Imran alias Sikander Buriro is convicted under section 265-H(2) Cr.P.C for the offence under section 23(1)(a) the Sindh Arms Act, 2013 and sentenced to suffer R.I for Three (3) years and to pay fine of Rs.50,000/=and in default whereof to further undergo S.I for one month more. Accused Imran alias Sikandar is present in custody and remanded back to jail authority to serve the sentence. The benefit of section 382-B Cr.P.C is allowed to the convict and the period for which he has already remained in custody after having arrested 13.07.2016 shall be computed towards conviction.”

2. The allegation against appellant is that on 13.7.2016 at about 1815 hours, at Nazar pur road beside graveyard of Mirs, situated in

Deh Thari Jagir, he was apprehended by police party of PS Tando Muhammad Khan headed by SIP Qamar Zaman Khoso being wanted in Crime Nos. 178 of 2016 and 201/2016, of PS Tando Muhammad Khan and police recovered one 30 bore pistol, which was unloaded with a magazine containing five live bullets of 30 bore, from left side fold of his shalwar, for which he had not valid permit, hence this FIR.

3. At trial, complainant SIP Qamar Zaman Khoso was examined as Exh.04, he produced FIR, attested photocopy of memo of arrest and recovery and attested photocopy of entry No.28, 29 & 30 and FSL report at Exh.4/A to Exh.4/D respectively. PW-2 PC mashir Shoukat Ali examined at Exh.05. Thereafter, the side of prosecution was closed vide statement at Exh.06.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.07, wherein he denied the allegations leveled against him.

5. 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.

6. 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 whole case of the prosecution is based upon contradictory evidence of the complainant and Pw PC Shoukat Ali, therefore no reliance can be placed; that appellant has been

acquitted by the learned trial court in the main case under crime No.178 of 2016, U/Ss.395, 120-B PPC, and this case is off-shot of that case, therefore according to him this appeal may be allowed and the appellant may be acquitted from the charge.

7. Learned A.P.G supported the impugned judgment by arguing that the impugned judgment passed after perusing the documents and evidence of complainant and Pw PC Shoukat Ali.

8. 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 also been arrested in main case under crime No. 178 of 2016, U/Ss.395, 120-B PPC and in the said case he has been acquitted by the learned Sessions Judge, Tando Muhammad Khan vide judgment dated 04.08.2017. A part from this, it is alleged against the appellant that one unlicensed TT pistol of 30 bore with five live bullets was recovered from him. It has been brought in evidence that incident took place in a 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 13.7.2016 and recovered pistol was sent to the Ballistic Expert for opinion which was received on 22.7.2016, after the delay of nine days, for which no explanation has been furnished, therefore, during this intervening period there is possibility of tempering or

replacing the weapon, hence false implication of the appellant in this case cannot be ruled out and non-sending the recovered 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 except that the record indicates only Crime No.201/2016 and 178/2016, however in said cases he has been acquitted from the charges.

9. 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. It is pertinent to mention here that the appellant though granted bail in the sum of Rs.50,000/= by this Court vide order dated 12.06.2017, but he could not submit required surety, therefore still he is in jail in this case, hence the concerned jail authorities is directed to release him forthwith, if he is no more required in any other case.

JUDGE.