

Judgment sheet.  
**IN THE HIGH COURT OF SINDH,**  
**CIRCUIT COURT, HYDERABAD.**  
Cr. Appeal No.S-243 of 2016.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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Date of hearing: 08 .05.2017.

Date of decision: 08.05.2017

Appellant: Through Sher Muhammad Laghari, Advocate.

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

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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 07.12.2016 passed by learned Vith-Additional Sessions Judge, Hyderabad, in Sessions Case No.971 of 2015 of P.S. Hussainabad, Re: State vs. Liaquat Ali, whereby the learned trial court after full-dressed the trial convicted and sentenced the appellant in point No.II (Para-16) of the judgment which reads as under:-

“16. In view of aforementioned evaluation of evidence, I am of the humble view that prosecution has been successful to bring home the charge against the accused beyond any shadow of reasonable doubt, as such, accused Liaquat Ali is found guilty, hence is convicted under section 265-H(2) Cr.PC and is sentenced to suffer simple imprisonment for ten years under section 23 (1) (a) Sindh Arms Act, 2013 along with fine of 10,000/ rupees. In default in payment of fine the accused shall suffer imprisonment for three months more. The accused is on bail, his bail bond stands cancelled and surety is discharged. The accused is taken in to custody and sent to Central Jail, Hyderabad with direction to the superintendent to serve out the sentence on the accused.”

2. Brief facts of the prosecution case as stated in FIR are that complainant SIP Ghulam Muhammad Laghari of PS Hussainabad was on patrolling duty alongwith his subordinate staff HC Shuban Ali, PC Irfan Ali and PC Hazoor Bux in Government vehicle bearing registration No.SP-560-A and after police encounter, the appellant has been arrested and recovered from his possession one unlicensed TT pistol of 30 bore along with two live bullets, hence this FIR.

3. At trial, complainant SIP Ghulam Muhammad Laghari was examined as Exh.04, he produced memorandum of arrest and recovery at Exh.04/A, arrival and departure entries at Exh.04/B, FIR at Exh.4/C, letter for FSL and FSL report at Exh.4/D and 04/E, respectively. PW-2 PC Irfan Ali was examined at Exh.05. Thereafter, learned D.D.P.P. for State closed his side vide statement at Exh.06.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.07 and Exh.09, 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 Irfan, therefore no reliance can be placed; that appellant has been acquitted in the main case under crime No.112 of 2015, U/Ss.324,

353 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 Irfan 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.112 of 2015, U/Ss.324, 353 PPC and in the said case he has been acquitted today 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 two 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. This aspect of the case create doubt in the prosecution case. In this case complainant is Investigating Office of the case, therefore his investigation cannot safely be relied upon. Besides this, during alleged police encounter, nobody from either side has received bullet injury, even police mobile also did not hit any bullet or scratch. I have examined the evidence so brought on record by the complainant SIP Ghulam Muhammad Laghari and PC Irfan Ali, but their evidence is contradictory on material particulars.

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. He is in jail, be released forthwith, if not required in any other case.

JUDGE.