

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
Cr. Appeal No.S-67 of 2016

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA-6840/19

**26.08.2019.**

Mr. Faisal Ali Raza Bhatti, advocate for appellant.

Mr. Shahid Ahmed Shaikh, D.P.G.

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Urgency granted.

The appellant by way of captioned appeal has impugned judgment dated 28.03.2016, whereby he by learned 6<sup>th</sup> Additional Sessions Judge, Hyderabad has been convicted and sentenced to undergo imprisonment for **five years** and to pay fine of Rs.50,000/- and in case of his failure to make payment of fine to undergo Simple Imprisonment for **three months**, for being in possession of unlicensed T.T pistol containing three live bullets in its magazine, allegedly recovered by police party of PS Husri led by ASI Allah Bux.

At trial, the appellant and rest of the culprits did not plead guilty to the charge and prosecution to prove it examined complainant ASI Allah Bux and his witnesses and then closed the side.

The appellant in his statement recorded u/s 342 Cr.P.C, denied the prosecution allegations by pleading innocence, he did not examine anyone in his defence or himself on oath in disproof of the prosecution's allegation.

It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police without any lawful justification by making foistation of unlicensed pistol upon him; there is no independent witness to the incident; the appellant and co-accused Naseer have already been acquitted by this court in main case relating to police encounter. By contending so, he sought for acquittal of the appellant.

Learned D.P.G for the State has recorded no objection to acquittal of the appellant.

I have considered the above arguments and perused the record.

The police party admittedly went at the place of incident on advanced information yet it failed to associate with them any independent person to witness the incident. The appellant it is said was apprehended by the police after encounter but none from the side of police on account of such encounter sustained any fire shot injury which appears to be significant. The pistol allegedly secured from the appellant has been subjected to forensic tests with delay of 11 days to its recovery, such delay could not be lost sight of. Admittedly, the appellant, co-accused Naseer, Hashim Shah and Shoukat Ali have already been acquitted by this Court one after other in main case relating to police encounter. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

In case of *Tariq Pervaiz vs the State (1995 SCMR page 1345)*.

It has been held by the Hon'ble Supreme Court that:-

*“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”*

In view of above, the captioned appeal is accepted, the impugned judgment is set aside; consequently, the appellant is also acquitted of the offence for which he was charged, tried and convicted by learned trial court, he is present in court on bail, his bail bond is cancelled and surety discharged.

Captioned appeal is disposed of in above terms.

Judge