

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD  
Criminal Appeal No.S- 109 of 2016**

**Appellant:** Hameed-uz-Zaman son of Muhammad Usman,  
Through Mr. Aijaz Shaikh, Advocate

**State:** Ms. Rameshan Oad, A.P.G

**Date of hearing:** **01.11.2019**

**Date of decision:** **01.11.2019**

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The appellant by way of instant appeal has impugned judgment dated 24.06.2016, passed by learned IInd Additional Sessions Judge, Mirpurkhas, whereby the appellant for an offence punishable U/S 23-(a)(i) of Sindh Arms Act, 2013 has been convicted and sentenced to undergo Rigorous Imprisonment for seven years with fine of Rs.10,000/- and in case of his failure to make payment of fine to undergo Simple Imprisonment for six months, with benefit of section 382-B Cr.P.C.

2. It is the case of the prosecution that the police party of PS Tando Jan Muhammad led by SIP Ali Nawaz while conducting investigation of FIR crime No.6 of 2015 u/s 302, 324, 34 PPC of PS Tando Jan Muhammad apprehended the appellant and secured from him unlicensed pistol of 9 mm bore with magazine containing of four live bullets of same bore for that the appellant was booked and reported accordingly.

3. At trial, the appellant did not plead guilty to the charge and prosecution to prove it, examined complainant SIP Ali Nawaz, PW

Mashir PC Muhammad Hassan and SIO ASI Ahmed Shah and then closed the side.

4. The appellant in his statement recorded U/S 342 Cr.P.C denied the prosecution allegations by pleading innocence; he examined himself on oath and DW Kirar in his defence and then closed the side.

5. On evaluation of evidence so produced by the prosecution, learned trial court convicted and sentenced the appellant as is detailed above.

6. I have heard learned counsel for the parties and perused the record.

7. The police party admittedly went at the place of incident on information but failed to associate any independent person to witness the possible arrest and recovery. None from the place of incident was asked to witness the arrest of the appellant and recovery of pistol from him. The pistol allegedly secured from the appellant has been subjected to its examination with un-plausible delay of about eight days. The appellant has already been acquitted by learned trial Court in main murder case by way of compromise. In these in these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

8. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that;

*“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not*

*as a matter of grace and concession but as a matter of right.”*

9. Based upon above discussion, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The appellant is on bail, his bail bond is cancelled and surety is discharged.

10. The instant appeal is disposed of in above terms.

**J U D G E**

Ahmed/Pa