

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.S- 91 of 2018**

Appellant: Eidhan Bhatti son of Ghulam Mustafa,
Through Mr. Muhammad Amir Qureshi,
Advocate

State: Ms. Safa Hisbani, A.P.G for the State.

Date of hearing: 02.12.2019

Date of decision: 02.12.2019

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of prosecution that the police party of PS Phuleli led by Inspector Rana Pervaiz Akhtar while on patrolling, came to know through spy information that few persons with narcotics are going on their motorcycle. On such information, he and his police personals started checking at Dargha of Jurial Shah. There were found coming four persons on two motorcycles, they were signaled to stop, on that they fired at the police party with intention to commit their murder. The culprits were also fired at, resultantly appellant and co-accused Haq Nawaz fell down on the ground after sustaining fire shot injuries, on such from co-accused Haq Nawaz was secured pistol of 9 mm bore and 1250 grams of heroin powder. On search from the appellant, was secured pistol of 30 bore and 1210 grams of heroin powder. Such recovery was sealed. The rest of the two culprits it is said made their escape good. The appellant and

co-accused were booked accordingly for the above said offence individually.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant Inspector Rana Pervaiz Akhtar and his witnesses and then closed the side.

3. The Appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, but did not examine himself on oath or anyone in his defence to disprove the prosecution allegation against him.

4. On conclusion of the trial, learned trial Court found the appellant guilty for the offence punishable u/s 23(1)(a) of Sindh Arms Act, 2013, and then convicted and sentenced him to undergo Rigorous Imprisonment for five years and to pay fine of Rs.20,000/=and in case of his failure, to make payment of fine to undergo Simple Imprisonment for one month with benefit of section 382-B Cr.P.C vide judgment dated 19.03.2018, which is impugned by the appellant before this Court by way of instant appeal.

5. We have heard learned counsel for the parties and perused the record.

6. There is no independent witness to the incident, though the police party was having advance information of the incident. Co-accused Haq Nawaz it is said has died of un-natural death on account of injuries sustained by him at the hands of the police personals. The appellant has already been acquitted in police encounter case by the

Court having jurisdiction and by this Court in case relating to possession of narcotics substance. 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.

7. 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.”

8. 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 in custody, he shall be released forthwith in present case.

9. The instant appeals are disposed of accordingly.

J U D G E