

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Jail Appeal No.S-27 of 2020**

<b>Appellant</b>	Ali Sher son of Hadi Bux Mahtam <b>through</b> Mr. Amanullah Bugti advocate.
<b>The State</b>	Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State.
<b>Date of hearing</b>	<b>15-11-2023</b>
<b>Date of decision</b>	<b>15-11-2023.</b>

**JUDGMENT**

**IRSHAD ALI SHAH, J-** It is alleged that on arrest, the appellant led to recovery of an unlicensed pistol of 30 bore with magazine containing two live bullets which he allegedly used for committing murder of Hayat Khan for that he was booked and reported upon by the police. At trial the appellant denied the charge and prosecution to prove the same examined complainant ASI Aijaz Ali and his witnesses and then closed its side. On conclusion of trial the appellant was convicted u/s 25 of Sindh Arms Act, 2013 and sentenced to undergo R.I for 10 years and to pay fine of Rs. 100,000/- and in default whereof to undergo simple imprisonment for 03 months with benefit of section 382(b) Cr.P.C by learned Vth Additional Sessions Judge, Sukkur vide judgment dated 07-03-2020, which he has impugned before this Court by preferring the instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police and has been convicted by learned trial Court on the basis of misappraisal of evidence; in collusion of the remission, the appellant has already undergone the sentence and he is pressing the disposal of his appeal on merits only to remove stigma. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt; which is opposed by learned DPG for the State by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. The recovery of alleged pistol has been made from the appellant on 4<sup>th</sup> day of his arrest; the place of recovery was not found to be in exclusive possession of the appellant, it was hilly area. The description of the pistol disclosed in memo of recovery and report of ballistic expert differs, which suggests of manipulation. The report of ballistic expert has not been confronted to the appellant during course of his examination u/s 342 Cr.P.C, such omission could not be overlooked. 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 and to such benefit he is found entitled.

6. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

*"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".*

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court; the appellant shall be released forthwith if not required to be detained in any other custody case.

8. Above are the reasons of the short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE