

**IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA**

**Cr. Appeal No. S-15 of 2015.**

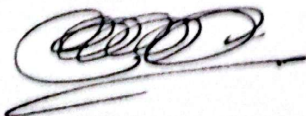
**Appellant:** Barkat Ali Noonari through his Advocate  
Mr. Muhammad Yasin Junejo.  
**Respondent:** The State through Syed Sardar Ali Shah APG.  
**Date of hearing:** 24.04.2017.  
**Date of Decision:** 24.04.2017

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

**KHADIM HUSSAIN TUNIO-J:-**Through captioned appeal, appellant Barkat Ali Noonari has assailed Judgment dated 27.02.2015, passed by learned 1<sup>st</sup> Additional Sessions Judge, Mehar, whereby he (present appellant) was convicted for offence under section 24 of Sindh Arms Act, 2013 and sentenced to suffer RI for three years and to pay the fine of Rs.5000/- in default of fine to suffer SI for six months more.

2. Relevant facts of the prosecution case as per F.I.R lodged by complainant SIP Shahnawaz Khan Malhan are that appellant was arrested in Crime No.30 of 2014 for offence under section 324,353 PPC registered at police station Thariri Muhabat and he was also found in possession of one unlicensed Pistol of 30 bore bearing No.1701 alongwith empty Magazine, as such instant F.I.R was registered under section 25 Sindh Arms Act.

3. After conducting usual investigation challan was submitted against the appellant.



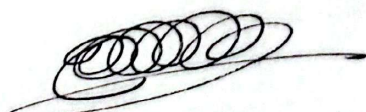
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4. Formal charge was framed against the accused as Ex.2 to which appellant pleaded not guilty and claimed to be tried vide plea at Ex.3.

5. In order to prove its case, prosecution has examined PW/mashir ASI Manzoor Ali Chandio at Ex.5, he produced memo of arrest and recovery at Ex.5-A, complainant Shah Nawaz was examined at Ex.6, who produced F.I.R At Ex.6-A, copy of Daily diary entry No.11 at Ex.6-B. Thereafter prosecution closed its side by statement of DPP at Ex.07.

6. Statement of accused Barkat Ali Noonari under section 342 Cr.PC was recorded at Ex.8 in which appellant denied all the allegations leveled against him he pleaded his innocence. He further submitted that he has been involved by the police; that all the PWs are police officials and no independent witness has been cited. However, neither he examined himself on oath nor produced any witness in his defence in disproof of charge.

7. Learned counsel for the appellant contended that appellant has been falsely implicated by the police; that all the PWs are police officials and no private person has been cited as witness in the case; that during evidence there appears material contradictions in the statements of PWs which creates doubt in the prosecution story; that recovered property was not sealed at spot nor sent to Ballistic expert, therefore, the recovery is doubtful and case of prosecution is full of doubt, therefore, appellant may be acquitted; that the appellant has been acquitted from the main case under section 324,353 PPC by the trial court.



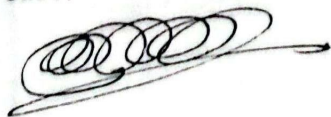


8. On the other hand learned APG has half heartedly supported the impugned judgment.

9. I have given due consideration to the submission made by learned counsel for the appellant as well as APG and gone through the R&Ps minutely.

10. I have heard the parties at length and have perused the documents and evidence on record. It is alleged against the appellant that he was arrested in Crime No.30 of 2014 for offence under section 324, 353 PPC registered at police station Thariri Muhabat and one unlicensed pistol of 30 bore alongwith empty magazine were 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, therefore the same is violation of section 103 Cr.P.C. Even though, record contemplates that roznamcha entry had not been produced by the prosecution to prove that the police, in fact, had proceeded to the venue to recover the alleged weapons from the accused, such lapse on the part of prosecution had cut at the roots of its case rendering the entire episode doubtful and it, by itself, was enough to make the prosecution version unbelievable, as such weapon allegedly recovered from the accused was neither sealed at the spot nor the same was sent to the ballistic expert. Reliance is placed in the case of Abdul Sattar and others vs. the State 2002 P.Cr.L.J 51. In this case complainant is Investigating Officer of the case, hence, his investigation cannot safely be relied upon. I have

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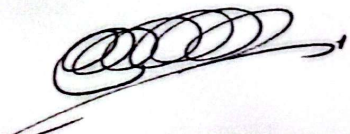


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examined the evidence so brought on record by the complainant SIP Shah Nawaz and Pw/mashir ASI Manzoor Ali Chandio, but their evidence is contradictory on material particulars. More particularly, the complainant has deposed that *"the accused present in court is same while the case property was not produced by the SHO PS Thariri Muhabat, but sent intimation that complainant SIP Shah Nawaz has not deposited the case property in "malkhana" of P.S. Order passed on the said letter of SHO that said letter be sent to SSP Dadu for taking action against the SIP/SHO Shah Nawaz Mallan according to law under intimation to this Court"*.

11. It further appears that at the trial nothing was produced on record by the prosecution to show that the alleged weapons was in working condition and or functional and at the most alleged weapon is required to be treated no more than the piece of iron in absence of any proof about its being functional or working.

12. 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 and while extending benefit of doubt to an accused, it is not necessary that there should be many circumstances which would create doubts. If a single circumstance would create reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to award such benefit, not as a matter of grace and concession, but as a matter of right. Resultantly,



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appeal is allowed. The impugned order is set-aside and the applicant is acquitted from the charge. Appellant is present on bail, his bail bond stands cancelled and surety discharged.



JUDGE

24.4.2017.