

**IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.**

**Cr. Appeal No.S-72 of 2016**

**Appellant:** Nawab son of Makhan Khan Chakrani.  
Appellant is present on bail.

**Respondent :** The State through Syed Meeral Shah  
A.P.G.

**Date of Hearing :** 09.02.2018

**Date of Judgment :** 09.02.2018

**JUDGMENT**

**ABDUL MAALIK GADDI, J** – Through this appeal the appellant has assailed the legality and propriety of the judgment dated 06.04.2016, passed by the learned Illrd Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.428 of 2014 (re-The State Versus Nawab) arising out of crime No.39/2014 registered under sections 23 A Sindh Arms Act, 2013 at P.S Taluka Nawabshah, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment, which reads as under:-

**POINT NO.2.**

Since it is proved that accused was found armed with unlicensed 30-bore pistol and bullets without any valid license when he was arrested. Hence he has committed an offence punishable U/s 23 A Sindh Arms Act 2013, therefore, he is convicted and sentenced to suffer R.I for (3) Years and fine of Rs.50,000/- in case of failure to pay fine he has to undergo SI for six months more imprisonment.

2. The brief facts of the prosecution case are that complainant SHO Gul Muhammad Dahri of P.S. Taluka SBA lodged FIR stating therein that on 11.4.2014 at about 1420 hours at Nawabshah Sakrand link road near Dad Wah Taluka Nawabshah above named accused was arrested and recovered one unlicensed pistol of 30-bore and eight live bullets of 30-bore from his possession and then accused and recovered property were brought at police station where such FIR as lodged on behalf of State.

3. In compliance of section 265-C, Cr.P.C necessary copies were supplied to accused and such receipt was obtained as Ex.1. A formal charge against the accused was framed at Ex.2 and plea of

guilty of accused was recorded at Ex.3 to which he pleaded not guilty and claimed to be tried.

4. In order to establish its case prosecution examined (PW-1) SIP Gul Muhammad at Ex.4 He produced FIR, mashirnama of arrest and recovery, Ballistic Expert report at Ex.4/A to C. PW ASI Muhammad Ali mashir at Ex.5. Thereafter, learned ADPP has filed statement at Ex.6 and closed the side on behalf of prosecution for the purpose of evidence. Since lady constable Asifa has been shown as witness in the challan sheet and she was present at the time of event / incident but she has not been examined in the case.

5. Then statement of accused u/s 342 Cr.P.C was recorded at Exh.7, accused denied allegations leveled against him, he declined to be examine on oath as required u/s 340(ii) Cr.P.C nor led any evidence in his defence.

6. Trial Court after hearing the learned counsel for the parties, by impugned judgment, convicted and sentenced the appellant under section 23 A Sindh Arms Act, 2013, as stated in Para-1 above.

7. Appellant present in person submits that he is innocent and has been falsely implicated due to enmity; that complainant lodged five cases against him on the basis of same mashirnama; that no private person was associated as mashir; that lady constable is not posted at PS Airport and her entry of arrival and departure was not produced; that case property sent to ballistic expert after four days and such delay has not been plausibly explained by prosecution; that pistol has been foisted upon him; that PWs contradicted to each other, therefore, he prayed for his acquittal as prosecution has failed to prove its case against accused.

8. On the other hand, Syed Meeral Shah, learned Additional Prosecutor General Sindh for the State while rebutting arguments has contended that the accused was arrested in presence of mashirs and unlicensed pistol and bullets were recovered from him hence, he was arrested and challaned. He further contended that there is no any major contradiction in the evidence of prosecution witnesses. All the witnesses including mashir also supported the version of prosecution. Finally he prayed for dismissal of this appeal.

9. I have carefully heard the appellant in person and the learned Additional Prosecutor General Sindh and scanned the entire evidence with the assistance of learned A.P.G.

10. After perusal of record as well as documents, I have come to the conclusion that the prosecution has failed to establish its case against the appellant for the reasons that as per mashirnama dated 11.04.2014 the appellant was arrested by the complainant alongwith co-accused Jamshed and Mst. Rashi Anjum Soomro from Nawabshah-Sakrand Link Raod near Dad Wah in presence of mashirs ASI Muhammad Ali and Lady Constable Aasifa and from the possession of appellant one 32 bore pistol with magazine containing 8 live bullets, 1500 grams of charas were recovered. I have noted that the incident took place on 11.04.2014, whereas, pistol allegedly recovered from the possession of appellant was sent to ballistic expert for examination and report on 14.04.2014 after a delay of three days for which no plausible explanation has been furnished by the prosecution and even no entry of malkhana has been produced that the property was lying in the malkahan. Even neither WHC, in whose possession it is claimed that the pistol was lying, nor the person who delivered the case property / pistol to the office of Ballistic Expert has been examined by the prosecution. It is surprising to note that the police party had advance spy information about the availability of present appellant on the pointed place despite of that the complainant who is also I.O. of the case has not bothered to associate any independent person either from the place of spy information or from the place of incident, which was admittedly a thickly populated area / busy road and all the time traffic and the people remain available there. The complainant did not make any effort to collect any private person from the locality to witness the recovery proceedings as no any notice given to the private person to act as mashir has been produced in evidence. No doubt the evidence of police official is as good as that of any other witness but when the whole prosecution case rests upon the police officials and hinges upon their evidence and when the private witnesses were available at the place of information or at the place of incident then non-association of private witness in the recovery proceedings create some doubt in the prosecution case. It is settled principle that the judicial approach has to be conscious in dealing with the cases in which testimony hinges upon the evidence of police officials alone. I am conscious of the fact that when the alleged recovery was made from the busy road in this case,

omission to secure the independent mashirs, particularly, in the case of patrolling cannot be brushed aside lightly by the court. Prime object of Section 103 Cr.P.C. is to ensure the transparency and fairness on the part of the police during course of recovery, curbs false implication and minimize scope of foisting of fake recoveries upon accused. I have also noted number of contradictions in the evidence of the prosecution witnesses on material particulars of the case and when those contradictions confronted to the learned A.P.G, he could not reply satisfactorily.

11. From the record it appears that at the time of incident alongwith present appellant, co-accused Jamshed and Mst. Rashi Anjum Soomro were also arrested and from the possession co-accused Jamshed one 32 bore pistol with magazine containing 7 live bullets and 1500 grams of charas and from Mst. Rashi Anjum Soomro 1000 grams of charas were recovered under the common mashirnama available on record at Ex.4/B, which was prepared in presence of mashirs ASI Muhammad Ali and Lady Constable Aasifa on 11.04.2014 at 1420 hours, and on the basis of such common mashirnama separate cases were registered against co-accused. It has been brought on record that on the basis of said common mashirnama, F.I.R. under section 9(b) Control of Narcotics Substances Act, 1997 was registered against co-accused Mst. Rashi Anjum Soomro wherein she has been acquitted by the learned Special Judge (Narcotic) Shaheed Benazirabad vide judgment dated 27.10.2016 passed in Special Case No.408/2014 in Crime No.38/2014, A certified true copy of the judgment has also been produced by the appellant. Regarding co-accused Jamshed, who was also booked in other crimes on the basis of same common mashirnama, it has been pointed out by the appellant that he (Jamshed) has died due to natural death.

12. It is an admitted fact that a joint mashirnama of arrest and recovery dated 11.04.2014 was prepared in presence of mashirs ASI Muhammad Ali and Lady Constable Mst. Asifa and under such joint mashirnama co-accused Mst. Rashi Anjum Soomro was tried for offence under section 9(b), CNS, 1997 and she has been acquitted by the trial court, as stated above. It is stated by the appellant that he has also been acquitted in a narcotic case and this fact has not been controverted by the learned A.P.G, therefore, no reliance could be placed on the said mashirnama regarding recovery of pistol from the possession of appellant for maintaining

his conviction and sentence in this case. I have also noted number of contradictions in between evidence of the prosecution witnesses and infirmities / lacunas in the case of the prosecution, therefore, under the aforementioned facts and circumstances no conviction could be maintained in this case.

13. In my considered view, prosecution has failed to prove the recovery of pistol beyond any shadow of doubt. There are also several circumstances which create doubt in the prosecution case. Under the law if a single doubt is created in the prosecution case, it is sufficient for recording acquittal. In the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*, the Honourable Supreme Court has observed as follows:-

***“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”***

14. While relying upon the aforesaid authorities and keeping in view the material discrepancies in the prosecution case, I have no hesitation to hold that the prosecution has failed to prove its case against the accused. Resultantly, the impugned judgment dated.06.04.2016 passed by learned IIIrd Additional Sessions Judge, Shaheed Benazirabad is set aside. The appeal is allowed. Appellant is acquitted of the charge by extending him benefit of doubt. Appellant is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE