

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.S- 57 of 2016**

**Appellant:** Shabbir Ahmed son of Muhammad Khan  
(in person).

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

**Date of hearing:** 13.12.2019

**Date of decision:** 13.12.2019

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

**IRSHAD ALI SHAH, J.** The facts in brief necessary for disposal of instant appeal are that the appellant while in custody in FIR crime No.13 of 2015 u/s 457, 380 and 34 PPC of PS Khahi District Sanghar led the police party to recovery of unlicensed pistol of 30 bore with magazine containing three live bullets allegedly used by him while committing the above said incident for that he was booked and reported upon.

2. At trial the appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant ASI Muhammad Juman at (Ex.05), he produced copy of Roznamcha entries, memo of arrest and recovery and FIR of the present case; PW-2 Mashir Shahid Ali at (Ex.06), he produced memo of place of incident; PW-3 SIO / ASI Muhammad Uris at (Ex.07), he produced Roznamcha entries and report of Forensic Expert 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; he did not examine anyone in his defence or himself on oath.

4. On conclusion of the trial, learned trial Court found the appellant guilty for the above said offence and then convicted and sentenced the appellant to undergo Rigorous Imprisonment for three years with fine of Rs.20000/-and in case of his failure to make payment of fine to undergo Simple Imprisonment for six months vide its judgment dated 19.04.2016, which is impugned by the appellant before this Court by way of instant appeal.

5. It is contended by the appellant that he being innocent has been involved in this case falsely by the police at the instance of complainant party of theft case, in which he has already been acquitted by learned Assistant Sessions Judge, Khipro vide judgment dated 04.08.2016. By stating so, he sought for his acquittal.

6. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

7. I have considered the above arguments and perused the record.

8. No person from the locality is cited as a mashir to the recovery. The mashirnama of recovery as per complainant ASI Muhammad Juman was wrote by PC Sarfaraz at his dictation. Complainant is belied in that respect by PW / Mashir Shahid Ali by stating that such mashirnama was prepared by the complainant himself. Surprisingly, PW/Mashir Shahid Ali was not able to disclose the distance between PS Khahi and place of recovery, which goes to suggest that the

recovery proceeding is doubtful. The person who taken the pistol to Forensic Expert has not been examined by the prosecution. The appellant has already been acquitted in main case relating to theft. 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 and he is entitled to such benefit.

9. In case of ***Tariq Pervaiz vs the State (1995 SCMR 1345)***. It has been held by the Hon'ble apex court that:-

*“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”*

10. 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 present in Court on bail, his bail bond is cancelled and surety is discharged.

11. The instant appeal is disposed of accordingly.

**J U D G E**