

19. The .....  
dismissed.

20. Murder reference is answered in the negative.

Sentence reduced.

N.H.Q./M-793/L

1999 P Cr. L J 222

[Karachi]

*Before Sabihuddin Ahmed  
and Muhammad Roshan Essani, JJ*

MUKHTAR AHMED alias  
MUHAMMAD MUKHTAR---Appellant

versus

THE STATE---Respondent

Criminal Appeal No.269 of 1996, heard on 13th May, 1998.

**West Pakistan Arms Ordinance (XX of 1965)---**

-----S. 13-E---Criminal Procedure Code (V of 1898), S.103---Appreciation of evidence---Alleged recovery of pistol was made during broad daytime at about 4-00 p.m. from house situated in a colony which was a thickly populated area, but Police neither picked any private person to witness alleged recovery nor inmate or occupant of house, from where pistol was alleged to be recovered, was associated with search and recovery---Mashirs of alleged recovery were two Policemen and no reasons were given for not procuring any private person, when recovery was made in a residential area where respectables of locality were supposed to be present who ought to have been associated with such recovery--- Recovery of crime weapon/pistol, in circumstances, was made in violation of mandatory provisions of S.103, Cr.P.C.---Pistol allegedly recovered at instance of accused was neither sealed at the spot nor it was sent to Ballistic Expert for examination and ammunition so recovered were not even exhibited in evidence---Mashirama of recovery and F.I.R. did not show that pistol recovered from accused was automatic or semi-automatic---

MUHAMMAD ROSHAN ESSANI, J.---The appellant was tried for offence under section 13-E of the Arms Ordinance, by the Special Judge Court No. II Suppression of Terrorist Activities Hyderabad and by judgment, dated 2-10-1996 he was convicted and sentenced to suffer rigorous imprisonment for four years and fine Rs.5,000. In default of payment of fine he was ordered to suffer rigorous imprisonment for six months more.

2. The facts in brief are that on 5-8-1996, S.I.P. Muhammad Mushtaque of Police Station, Mirpurkhas interrogated the appellant/accused in Crime No.42 of 1996 when appellant volunteered to produce the robbed property and crime weapon i.e. pistol, concealed by him in the house of his maternal uncle Muhammad Yousif. The appellant led the police party headed by S.I.P. Muhammad Mushtaque and produced golden ornaments and pistol alongwith magazine containing two live bullets from a bag lying in the room of the house of his maternal uncle. Appellant failed to produce any licence for the said pistol which was secured under mashimama and appellant was brought at Police Station, Mirpurkhas, where S.I.P. Muhammad Mushtaque lodged F.I.R. under section 13-E of the Arms Ordinance and after usual investigation on 13-8-1996 the appellant was sent up to stand trial.

3. On 25-8-1996 charge under section 13-E of the Arms Ordinance was framed against the appellant to which he pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case examined P.W.1 Muhammad Mushtaque S.-I.P. Town Police Station, Mirpurkhas and P.W.II Bashir Ahmed police constable of Police Station Mirpurkhas and closed their side vide statement Exh.6. Statement of appellant was recorded under section 342, Cr.P.C. as Exh.7 wherein, he has denied the prosecution allegations. He stated that he had come to Mirpurkhas Town for the treatment of his foot and thereafter, he went back to his house. There was a quarrel between him and his cousin, whereupon his father got him confined in police lock-up at Dokri, where from he was brought by Town Police Mirpurkhas and implicated in this case.

5. Mr. Basharat Ahmed Jatt, learned counsel for appellant has contended that neither any independent witness was examined in this case nor any independent person was procured to witness the search or recovery. The

automatic. He, therefore, submitted that Suppression of Evidence Act, 1947. Court had taken cognizance illegally.

7. We have heard the learned counsel for the parties and also gone through the evidence and impugned judgment.

8. It is the case of the prosecution that during the course of interrogation in Crime No.42 of 1996 appellant led the police party to the house of his maternal-uncle where from he produced the alleged pistol and ammunition. This clearly shows that complainant S-1.P. Muhammad Mushtaque knew about the recovery of pistol before proceeding to the place of recovery. Surprisingly enough he did not pick any private person to witness the recovery. The alleged recovery was made during broad daytime at about 4-00 p.m. from the house of Muhammad Yousif situated in Ahmedani Colony Mirpurkhas which is a thickly populated area. The house was jointly occupied. No inmate or occupant of the house was associated with the said search and recovery nor any private respectable inhabitant of the locality was picked up to witness the said recovery. Even no effort was made in this regard as is evident from the evidence of both the Police Officers i.e. P.W.I, S-1.P. Muhammad Mushtaque and P.W.II, P.C. Bashir Ahmed. The nashis of recovery are two policemen viz. P.C. Bashir Ahmed and P.C. Muanwar Hussain. No reasons are given for not procuring any private persons, when recovery is made from a house in a residential area where the respectables of the locality are supposed to be present and they should have been associated with such recovery. Thus, the recovery of crime weapon in case in hand is in violation of mandatory provision of section 103, Cr.P.C. The crime weapon allegedly recovered at the instance of appellant/accused was neither sealed at the spot nor it was sent to Ballistic Expert for examination. P.W. pistol and ammunition so recovered were not even exhibited in evidence. P.W. S-1.P. Mthammad Mushtaque and P.W.II P.C. Bashir Ahmed both have stated in their recorded evidence as under:---

"The accused present in Court and the property lying in Court are same."

On comparison of the depositions of both the witnesses it transpired that there is no change in language, comma or full stop in the para. reproduced hereinabove. The pistol and ammunition allegedly recovered from the appellant was in

by our short order dated 6-5-1997 we allowed the appeal of appellant and acquitted him. These are the detailed reasons for the said short order.

H.B.T./M-302/K

Appeal allowed.

1999 P Cr. L J 225

[Peshawar]

*Before Mian Muhammad Aimat, J*

AKHTAR HUSSAIN SHAH---Petitioner

versus

THE STATE---Respondent

Criminal Miscellaneous No.215 of 1998, decided on 6th July, 1998.

Criminal Procedure Code (V of 1898)---

----S. 497---Prohibition (Enforcement of Hadd) Order (4 of 1979),  
Art.3/4/26(2)---Control of Narcotic Substances Act (XXV of 1997), S.9(c)---  
Bail, grant of---Co-accused who had allegedly handed over the narcotics to  
accused for sale had already been allowed bail by Sessions Court and rule of  
consistency demanded the release of accused also on bail---Accused having been  
charged under two different laws providing different punishments for the same  
offence, law prescribing lesser punishment would be taken into account for the  
purpose of bail---Complainant Police Officer had acted as Investigating Officer  
as well as a recovery witness in the case which was not permissible under any  
norm of justice---Chemical Examiner's Report, despite the lapse of over two  
months period, had not been received---Accused was admitted to bail in  
circumstances. [p. 226] A & B

Saeed Akhtar for Petitioner.

Farzand Ali Shah for the State.

Date of hearing: 6th July, 1998.