

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
HYDERABAD**

Criminal Appeal No. S-224 of 2021

Appellant: Muhammad Usman son of Muhammad Aachar by caste Khaskheli through Barrister Muhammad Saad Saeed Qureshi, Advocate.

For the State: Ms. Safa Hisbani, Assistant Prosecutor General Sindh.

Date of hearing: 08-08-2025

Date of Judgment: 07-10-2025

JUDGMENT

Jan Ali Junejo, J. --- This appeal calls into question the correctness of the judgment dated 03-11-2021 (hereinafter referred to as the "*Impugned Judgment*") passed by the learned 1st Additional Sessions Judge/MCTC (hereinafter referred to as the "*Trial Court*"), Badin in Sessions Case No. 54 of 2016, whereby the appellant was convicted under Section 25 of the Sindh Arms Act, and sentenced to one year's rigorous imprisonment with a fine of Rs. 10,000/-. Benefit of section 382-B Cr.P.C was also extended to the accused. The central controversy is whether the prosecution proved, beyond reasonable doubt, (a) a lawful and reliable recovery establishing the appellant's conscious and exclusive possession of the alleged unlicensed .222-bore rifle and pistol, and (b) a forensic nexus between the alleged weapon and the crime bullet recovered from the deceased's head in the connected murder case.

2. On June 29, 2016, during the investigation of a murder case (FIR No. 52 of 2016), police arrested the appellant Muhammad Usman son of Achar

Khaskheli. He was interrogated by SIP Muhammad Umar Nohrio. The accused volunteered to produce his .222 bore rifle and his co-accused's 9mm pistol. He led the police to his house in village V-Makan, Deh Salehabad, where he produced the unlicensed weapons from a room. The weapons were sealed under a joint memo in the presence of mashirs, Abdul Jabbar and Muhammad Ramzan. A separate FIR, No. 53 of 2016, was lodged at Police Station Kario Ganhwar under sections 23(1) A and 25 of the Sindh Arms Act.

3. After investigation, the challan was submitted before the Judicial Magistrate, who took cognizance and transmitted the case to the Sessions Court. It was then made over to the Court of the 1st Additional Sessions Judge, Badin. Copies of the documents and statements were supplied to the appellant and charge was framed against him to which Appellant pleaded not guilty and claimed trial through his plea. To prove its case, the prosecution examined the following witnesses:

- P.W.1 Abdul Jabbar: He was one of the two mashirs (witnesses) called by the police. He testified that on June 29, 2016, the accused, Muhammad Usman, led the police party to his house and produced a ".22 bore rifle" from an iron box, which contained three bullets. He also stated that a pistol with two live bullets was recovered from the same location. He confirmed that the weapons were sealed at the scene in his presence under a memo, which he produced as Exh.6/A.
- P.W.2 Inspector Muhammad Umar: He was the complainant, investigating officer, and recovery officer in the case. He repeated the details of the FIR and the recovery memo. He produced the FIR as Exh.7/A and the ballistic examination report as Exh.7/B. He claimed that the accused had voluntarily produced the weapons.

The other potential witnesses were given up by the prosecution. The prosecution closed its side of evidence at Exh.8.

4. The statement of the appellant was recorded under Section 342, Cr.P.C., wherein he consistently pleaded false implication on account of

enmity and asserted that the alleged recoveries were foisted upon him. The appellant, however, did not opt to examine himself on oath under Section 340(2), Cr.P.C., nor did he adduce any evidence in his defence. After hearing the arguments, the trial Court, vide judgment dated 10.09.2018, convicted the appellant Muhammad Usman son of Muhammad Achar Khaskheli under Section 25 of the Sindh Arms Act, 2013, and sentenced him, under Section 265-H(2), Cr.P.C. He was, however, extended the benefit of Section 382-B, Cr.P.C. The appellant, who was produced in custody, was remanded to Central Prison, Hyderabad, to serve the sentence in accordance with law.

5. The appellant thereafter preferred Criminal Appeal No. D-182 of 2019 before this Court. By order dated 14.01.2020, this Court allowed the connected appeal, set aside the judgment of the trial Court, and remanded the matter with directions to rehear the arguments and re-decide the case.

6. The learned counsel for the appellant, argued for acquittal on the basis of several significant flaws in the prosecution's case. He contended that the recovery of the weapons was unreliable, as the mashir, P.W.1 Abdul Jabbar, was an interested witness related to the murder victim. He also highlighted a major contradiction in the evidence, where P.W.1 described the recovered rifle as a .22 bore, while the FIR and recovery memo identified it as a ".222 bore". The counsel further argued that the investigation was procedurally tainted because SIP Muhammad Umar served as both the complainant and the investigating officer, which is a violation of legal principles. He emphasized the lack of evidence proving that the case property was properly deposited in the Malkhana, and the inconclusiveness of the ballistic report, which failed to link the recovered weapon to the crime. Citing these numerous lacunae and

procedural breaches, he prayed that the appellant be acquitted by extending the benefit of the doubt.

7. Ms. Safa Hisbani, the learned Assistant Prosecutor General, countered the appellant's arguments and sought the dismissal of the appeal. She defended the trial court's judgment, likely arguing that it was well-reasoned. She may have contended that any discrepancies, such as the witness's description of the rifle's caliber, were minor in nature and did not undermine the core of the prosecution's case. She may have also argued that the mashir's relationship to the victim did not automatically render his testimony unreliable, especially since the trial court had already considered and dismissed this point. She could have maintained that the prosecution had presented sufficient evidence to establish the appellant's guilt, and that the conviction should, therefore, be upheld.

8. I have considered the arguments advanced by learned counsel for the Appellant, the learned A.P.G. for the State. I have also carefully perused the entire evidence available on record with the able assistance of learned counsel for the parties. The cornerstone of the prosecution's case—namely, the alleged recovery of weapons—is gravely compromised by several material factors. The mashir of recovery, PW.1-Abdul Jabbar, cannot be regarded as an independent or impartial witness, as he is closely related to the deceased in connected murder case. This relationship casts a serious doubt on his neutrality and creates a presumption of bias. It is a settled principle of law, consistently reiterated by the superior courts, that recoveries attested solely by interested or related witnesses, without association of independent/respectable persons of the locality, must be approached with utmost caution. The failure to comply with the salutary provisions of Section 103, Cr.P.C.—which enjoins the police to associate respectable inhabitants of the locality at the time of

search and recovery—renders the proceedings doubtful. Where the place to be searched is already known and situated in an inhabited locality, it becomes mandatory for the investigating officer to ensure the presence of neutral witnesses from the vicinity, so as to eliminate any possibility of fabrication or mala fides. In this context, reference may usefully be made to the dictum of the Honourable Supreme Court of Pakistan in *Muhammad Azam v. The State (PLD 1996 SC 67)*, wherein it was categorically held that: “*In other words if the place to be searched is already known and is situated in a locality which is inhabited, then it becomes mandatory for the police officer to join witnesses from' the locality in the investigation and make search and recovery in their presence*”.

9. The FSL examination report bearing No.FSL/FD/OR/F.A./769/2016, Hyderabad, dated 11-07-2016, regarding the crime bullet sent by the Senior Medical Officer, records two critical observations:

(i) No definite opinion can be expressed regarding one damaged condition crime bullet now marked as “D” due to the damaged condition of the bullet.

(ii) No definite opinion can be expressed regarding the bore of the bullet.

The report is conspicuously silent as to whether the crime bullet was fired from a rifle or a pistol, leaving the most material issue unresolved. In a case where two individuals were specifically attributed with firing at the deceased's head, the appellant Muhammad Usman allegedly with a rifle and the co-accused Muhammad Hassan with a pistol, the inability of the ballistic expert to determine even the bore of the bullet fatally undermines the prosecution case. The scientific evidence, rather than corroborating the ocular account, leaves it shrouded in uncertainty. It is, therefore, impossible to hold with any degree of certainty whether the fatal shot emanated from the weapon allegedly recovered from the appellant or from the pistol of the acquitted co-accused. In criminal law, where two reasonable possibilities arise, one

consistent with guilt and the other with innocence, the benefit must go to the accused. Accordingly, in the absence of definite forensic linkage, the attribution of the fatal shot to the present appellant remains highly doubtful.

10. The prosecution placed reliance upon the recovery of a .222 rifle and a pistol from the appellant's residence. However, the said premises were not in the exclusive possession of the appellant, as they were jointly occupied by him along with his family members. In this regard, guidance may be drawn from the case of *Hashim Raza alias Taaro v. The State (2020 P. Cr. L. J Note 22)*, wherein this Court held as follows: *"There is also nothing on record that said house was in exclusive possession of accused. According to prosecution evidence, house of appellant was situated in narrow streets but no efforts were made by the police to associate some independent persons of the locality. Safe custody of pistol and hand grenades at police station and safe transit to experts have also not been established. Head muharir of police station has also not been examined by the prosecution"*. The credibility of the recovery is further weakened by the fact that the mashir (P.W. Abdul Jabbar) was admittedly a close relative of the complainant, while no independent witness from the locality was associated with the proceedings, despite the statutory requirement and availability of such persons. In the case of *Muhammad Azam* (supra), the Honourable Supreme Court of Pakistan was further pleased to observe that: *"In the instant case after evaluation of evidence in the light of case-law on the subject of search and recovery as contemplated under section 103, Cr.P.C. and mentioned above, we are of the considered view that in this case prosecution has failed to prove the case against appellant beyond doubt. In the instant case appellant was already in custody and disclosed unlicensed possession of Klashnikov in his shop and gave key to the police, during investigation at night. There is no satisfactory explanation as to why raid was made in the middle of the night in the absence of witnesses from the locality.*

Evidence of two police officers is conflicting on the point whether door of the house of Amin was knocked or not. Claim of the prosecution that appellant informed them that Klashnikov was in the shop which was in his possession as tenant and the owner of the shop was Amin stands falsified by the defence witnesses”.

11. In addition, the prosecution failed to satisfactorily establish the Malkhana record, or to prove the safe custody and dispatch of the sealed parcels. Of critical importance is the delay: although the alleged recovery of the .222 rifle was effected on 29.06.2016, the weapon was dispatched to the Forensic Science Laboratory only on 04.07.2016, reflecting an inordinate and unexplained lapse of five days. The prosecution offered no plausible explanation for this omission, which gravely undermines the integrity of the chain of custody. Equally significant is the inconsistency between the medical and ballistic evidence. The bullet secured by the Senior Medical Officer from the cranial injury of the deceased during the post-mortem did not match the weapon allegedly recovered from the appellant's residence. More importantly, the ballistic expert's report did not conclusively link the recovered rifle with the fatal projectile, expressly recording that no definite opinion could be furnished due to the damaged condition of the bullet. In these circumstances, the alleged recovery constitutes, at best, a weak corroborative piece of evidence, wholly insufficient to independently sustain a conviction. It is a settled principle that the probative value of a ballistic report is inherently contingent upon the credibility of the recovery itself; once the recovery is tainted with doubt, the expert opinion loses its evidentiary force in the eyes of law. In analogous circumstances, the Honourable Supreme Court of Pakistan, in *Yaquub Shah v. The State (1995 SCMR 1293)*, was pleased to hold that: “*The crime empties allegedly recovered from the spot on 12-5-1985 were sent to the Forensic Science Laboratory on 22-5-1985 i.e. two days after the arrest of the accused persons.*”

*The fire-arms (including gun P.13) were allegedly recovered on 31-5-1985 and were sent to Forensic Science Laboratory on 13-6-1985. The date of depositing the weapons in the Malkhana was found missing in the statement of S-FI.O. and concerned Head Constable. The report of the Fire-Arm Expert was, therefore, of no avail to the prosecution". In another similar case, **Iftikhar Hussain and others v. The State (2004 SCMR 1185)**, the Honourable Supreme Court of Pakistan was pleased to observe, with reference to the delay in dispatching the weapon to the FSL, that: "Similarly the prosecution took a considerable time in dispatching crime empties and the weapon to the Forensic Science Laboratory for which no plausible explanation has been offered therefore, the evidence of recovery of incriminating articles cannot be used as a corroborate evidence to believe the statements of ocular witnesses".*

12. In addition, the Forensic Science Laboratory (FSL) report further weakens the prosecution's case. It records that the .222 rifle bore a rubbed number, clearly indicating tampering, and that while the weapon had been fired at some point, no definite opinion could be given as to when it was last used. This finding is of material importance, as the decisive question was whether the weapon was employed in the present offence. In the absence of such a nexus, the report fails to support the prosecution's claim. Rather than lending credibility, the obliterated serial number and inconclusive opinion materially undermine the recovery. It is well settled that when forensic evidence does not conclusively connect a weapon to the crime, the recovery constitutes only a weak type of corroborative evidence, insufficient by itself to warrant conviction.

13. The cumulative effect of the discrepancies, contradictions, and inherent weaknesses in the prosecution's case leads this Court to the considered conclusion that the charge against the appellant Muhammad Usman has not

been proved beyond reasonable doubt. The forensic report is inconclusive and does not establish the authorship of the fatal injury. The alleged recoveries are equally doubtful, having been attested only by related witnesses and lacking any reliable forensic linkage. These factors, both individually and collectively, cast a serious shadow over the prosecution's narrative. It is a settled principle of law that the benefit of doubt is a right of the accused, not a concession, and must be extended whenever even a single material circumstance creates reasonable uncertainty about guilt. In the present case, several material circumstances converge to generate such doubt. Accordingly, the conviction and sentence of the appellant cannot be sustained in law.

14. For the reasons recorded above, this Criminal Appeal is allowed. The Impugned Judgment dated 03.11.2021, passed by the learned Model Criminal Trial Court/1st Additional District & Sessions Judge, Badin in Sessions Case No.54 of 2016, whereby the appellant Muhammad Usman son of Muhammad Achar was convicted under Section 25 of the Sindh Arms Act, 2013 and sentenced to suffer R.I for one year imprisonment with fine of Rs.10,000/=, is hereby set aside. Consequently, the appellant Muhammad Usman is acquitted of the charge by extending him the benefit of doubt and shall be released forthwith, if not required in any other custody case. The case property shall be disposed of in accordance with law after expiry of the statutory period of appeal or revision, unless required in any other proceedings.

JUDGE