

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Anti Terr: Cr. Appeal No. D-112 of 2024

Appellants : 1) Fazal Ameen son of Momin Khan Pathan,
2) Muhammad Younis s/o Malik Haji Ghulam
Habib by caste Pathan
3) Israr Ud Din s/o Minhaj Ud Din, Pathan
Through Mr. Shabbir Ali Bozdar, Advocate

The State : *Through Mr. Shafi Muhammad Mahar, DPG*

Date of hearing : 07.10.2025
Date of Short Order : 07.10.2025
Reasons recorded on : 09.10.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.– This Criminal Appeal under Section 25(1) of the Anti-Terrorism Act, 1997 impugns the judgment dated 04.12.2024, whereby the learned trial Court convicted the appellants for offences punishable under Sections 3, 6, 8, 23(i) (a), 23(2), 24 of the Sindh Arms Act, 2013 and Section 7(1)(ff) of the Anti-Terrorism Act, 1997, sentencing them to concurrent rigorous imprisonment ranging from three to fourteen years along with fines. The appellants, residents of Khyber Pakhtunkhwa, challenge their conviction on multiple grounds including lack of credible evidence, material contradictions in prosecution witnesses' testimonies, non-association of independent witnesses, fatal procedural irregularities in evidence handling, and violation of their fundamental rights under Articles 4, 9, 10-A and 14 of the Constitution of the Islamic Republic of Pakistan.

2. The genesis of this prosecution traces back to FIR No.106/2023 registered on 20.09.2023 at Police Station Khanpur Mahar, District Ghotki. According to the FIR, the complainant Inspector Asghar Ali Awan, posted as SHO at PS Khanpur Mahar, along with his staff were allegedly conducting routine patrolling when they received confidential information from an unnamed informant regarding seven culprits present at the house of one Akbar Soomro, resident of Khanpur Mahar, who were allegedly in possession of

modern prohibited weapons and were involved in their sale. Acting upon this tip-off, the complainant purportedly informed his superiors and proceeded to the indicated location. Upon arrival, the prosecution alleged that seven persons were present at the scene who, upon observing the police vehicle, attempted to flee. The complainant identified two of the absconding persons as Akbar Soomro and Muhammad Arif. Simultaneously, Inspector Zulfiqar Ali Mahar of the local police station also reached the spot with his team. The prosecution case is that during this operation, three persons were successfully apprehended at the scene, while Akbar Soomro, Muhammad Arif, and two other unidentified persons managed to escape. The arrested persons were identified as: (1) Fazal Ameen Pathan, (2) Muhammad Younis, and (3) Israr-ud-Din Pathan. The prosecution alleges that CNICs and some cash were recovered from their possession. According to the prosecution narrative, a subsequent search of the premises purportedly led to the discovery of a significant cache of weaponry, including: one Anti-Aircraft Gun, one Rocket Launcher, seven Kalashnikovs (SMGs), one 9mm pistol, and a large quantity of ammunition including more than fifteen thousand bullets and magazines. The prosecution claims that during interrogation, the arrested accused allegedly disclosed that they had come to sell these weapons and ammunition to the absconding accused Akbar Soomro and Muhammad Arif Mahar. The police allegedly secured and sealed the arms and ammunition, brought the arrested accused and the confiscated property to the police station, where FIR No.106/2023 was registered on behalf of the State.

3. Following the usual investigation, a challan was submitted before the learned Anti-Terrorism Court, Ghotki. The learned predecessor Judge administered oath under Section 16 of the Anti-Terrorism Act, 1997 (marked as Ex.01). Police papers were supplied to the accused under receipts (Ex.02). Proceedings against the absconding accused were initiated and maintained (Ex.03 to Ex.06), wherein they were declared proclaimed offenders.

4. Formal charge was framed against the present appellants at Ex.07, to which they did not plead guilty and claimed trial, with their pleas recorded at Ex.07/A to 07/C respectively. Mr. Shabbir Ali Bozdar, Advocate, filed his vakalatnama on behalf of the appellants (Ex.09).

The prosecution examined seven witnesses in total:

- **PW-01** Inspector Asghar Ali Awan (Ex.10) - Complainant/SHO, who produced entry No.12, mashirnama of arrest and recovery, FIR, and roznamcha entries.
- **PW-02** Inspector Zulfiqar Ali (Ex.11) - Supporting witness who produced carbon copy of entry No.10.
- **PW-03** DSP Rabnawaz Rajpar (Ex.14) - First Investigating Officer, who produced investigation-related documents.
- **PW-04** PC Arbab Ali (Ex.15) - Mashir of inspection of place of wardat.
- **PW-05** Inspector Ghulam Mustafa Mirani (Ex.16) - Subsequent Investigating Officer who produced forensic reports.
- **PW-06** ASI Bashir Ahmed (Ex.20) - Deposited case property with FSL.
- **PW-07** HC Yar Muhammad (Ex.21) - Malkhana in-charge.

5. The learned Additional Prosecutor General gave up several other witnesses enumerated in the challan, including ASI Raza Muhammad Bullo, PC Shaukat Ali, PC Allah Diwayo, ASI Liaqat Ali Mahar, PC Baqir Hussain Pitafi, DHC Abdul Ghaffar, DPC Muhammad Abbas, PC Ayaz Ahmed, PC Muhammad Luqman, PC Imdad Hussain Korai, ASI Zahid Husain Malik, PC Ghulam Ali Mahar, PC Noor Hassan, PC Muhammad Ishaq, DPC Ahmed Ali, and PC Tanveer Ahmed (Ex.12, 13, 17, 19), and closed the prosecution side (Ex.22). The appellants were examined under Section 342 Cr.P.C. (Ex.23 to Ex.25), wherein they denied all allegations, claimed innocence, and prayed for mercy. Appellant Fazal Ameen specifically recorded that he and his co-accused had been falsely implicated by the police, that police had taken away his Vigo vehicle along with cash amounting to Rs. Fifteen Lacs, and crucially, that the SSP held a press conference at the SP Office where all the weapons were shown de-sealed and were flashed on social media as well as print media. He produced

photographs depicting this press conference at Ex.23/A to 23/J. Appellant Israr-ud-Din recorded that he is retired Army personnel who was arrested from the Motorway, and that the case property was foisted upon him. He produced a photocopy of his service certificate at Ex.25/A.

None of the appellants examined themselves on oath under Section 340(2) Cr.P.C, nor did they examine any witness in their defence. The learned trial Court, after appraisal of the evidence, convicted the appellants vide the impugned judgment dated 04.12.2024, sentencing them as follows:

- i. Under Section 24 of Sindh Arms Act, 2013: R.I. for seven years with fine of Rs.20,000/-.*
- ii. Under Section 3 punishable under Section 23(i)(a) of SAA, 2013: R.I. for ten years with fine of Rs.25,000/-.*
- iii. Under Section 6 punishable under Section 28 of SAA, 2013: R.I. for three years with fine of Rs.30,000/-.*
- iv. Under Section 8 punishable under Section 23(2) of SAA, 2013: R.I. for three years with fine of Rs.20,000/-.*
- v. Under Section 6(2)(ee) punishable under Section 7(1)(ff) of ATA, 1997: R.I. for fourteen years.*

6. All sentences were ordered to run concurrently, with benefit of Section 382-B Cr.P.C. extended for the period already undergone as under-trial prisoners. The record and proceedings were transmitted to this Court as mandated under Section 25(2) of the Anti-Terrorism Act, 1997.

7. Learned counsel for the appellants have advanced the comprehensive arguments challenging the impugned judgment. The learned counsel vehemently contended that the appellants are innocent persons who have been falsely implicated in a concocted case by the police. He submitted that there exists no credible evidence connecting the appellants to the alleged offences, and the entire prosecution case is built upon a foundation of suspicion, conjecture, and fabrication rather than solid proof beyond reasonable doubt. It was strenuously argued that all prosecution witnesses are police officials who are inter-se interested with each other, creating an inherent bias in their testimonies. Despite the alleged place of occurrence being in a densely populated residential area, not a single independent private witness was

associated with the recovery proceedings. The learned counsel emphasized that this deliberate omission to associate neutral, disinterested witnesses raises serious doubts about the transparency and genuineness of the entire recovery operation. The learned counsel highlighted a fundamental flaw in the prosecution case that the weapons were allegedly recovered from the house of absconding accused Akbar Soomro, not from the exclusive or physical possession of the present appellants. He submitted that the appellants were neither found in actual physical custody of the weapons nor did they lead the police to the recovery through pointing. The prosecution has conspicuously failed to establish any direct link between the appellants and the alleged cache of weapons. Learned counsel meticulously pointed out numerous material contradictions in the testimonies of prosecution witnesses during cross-examination. Notably, witnesses admitted that during the SSP's press conference, only one name of an accused person was mentioned, and critically, the weapons were displayed in an unsealed, opened condition. This admission directly contradicts the claim of proper sealing and secure custody of the alleged case property, casting serious aspersions on the integrity of the chain of custody. It was forcefully contended that the complainant himself admitted during cross-examination that he did not witness any of the appellants physically handling, possessing, or selling the weapons to Akbar Soomro or any other person. The entire case rests on assumptions and inferences rather than direct, cogent evidence of criminal activity. The learned counsel emphasized that the complainant/SHO failed to involve any private witnesses in the recovery of weapons, despite the alleged recovery taking place in broad daylight in a populated area. This deliberate non-compliance with established procedural norms, as envisaged under Section 103 Cr.P.C. (though not strictly mandatory in certain cases), raises serious concerns about the transparency and bona fides of the recovery procedure. The absence of independent witnesses provides

fertile ground for manipulation and fabrication. A significant legal argument advanced by learned counsel pertains to the jurisdiction and applicability of the Sindh Arms Act, 2013 to the appellants who are residents of Khyber Pakhtunkhwa province. He contended that the appellants are not permanent residents of Sindh, and therefore, the provisions of the Sindh Arms Act should not mechanically apply to them without considering the territorial limitations and domiciliary requirements of provincial legislation. Perhaps the most damning argument presented by learned counsel relates to the photographs produced by appellant Fazal Ameen (Ex.23/A to 23/J), which irrefutably demonstrate that the SSP Ghotki held a press conference wherein the allegedly recovered weapons were displayed in a de-sealed, opened condition before electronic and print media. This public display of case property without maintaining the seal compromises the entire chain of custody, creates serious doubts about the possibility of tampering, substitution, or manipulation of evidence, and violates fundamental principles of criminal evidence law which mandate secure custody and inviolate seals on case property until formal production before the Court. Learned counsel submitted that even if some evidence exists against the appellants, the numerous contradictions, omissions, procedural irregularities, and evidentiary infirmities create more than reasonable doubt about their guilt. He argued that in such circumstances, the benefit of doubt must inure to the appellants as a matter of right, not as a matter of concession or grace. In support of his contentions, learned counsel relied upon the following authoritative case law:

- **2022 YLR Note 91** Principle regarding benefit of doubt.
- **2022 MLD 204 (c)** Recovery without independent witnesses.
- **2022 P.Cr.L.J 774(c)** False implication principles.
- **2024 MLD 1740 (b)** Evaluation of police testimony.
- **2021 P.Cr.L.J Note 1** Chain of custody requirements.
- **2022 SCMR 1494 (b)** Joint recovery inadmissibility.
- **1995 SCMR 1345** Benefit of doubt standard.

8. The learned counsel prayed that this Court may be pleased to allow the appeal, set aside the conviction and sentence awarded to the appellants, and acquit them of all charges while extending them the benefit of doubt.

9. The learned Additional Prosecutor General appearing for the State, vigorously supported the impugned judgment and advanced the arguments in defence of the conviction. The learned APG submitted that the complainant Inspector Asghar Ali Awan and eyewitness Inspector Zulfiqar Ali Mahar have categorically identified the present appellants during their evidence before the trial Court as the same persons who were attempting to abscond from the place of occurrence. He emphasized that both witnesses deposed consistently, stating that acting upon credible spy information, they arrived at the scene where they observed seven persons attempting to flee, successfully apprehending the three present appellants within the premises of absconding accused Akbar Soomro's house. The learned APG stressed that the recovered weaponry included highly dangerous and sophisticated arms, including an Anti-Aircraft Gun and a Rocket Launcher, which pose a serious threat to state security and public safety. He argued that common criminals do not typically possess such a substantial quantity of high-value, prohibited ammunition, and the sheer nature and quantity of the weapons recovered points unequivocally toward organized criminal activity of a serious nature. It was submitted that the defence has failed to produce any evidence indicating animosity, enmity, or ill-will between the police officials and the appellants that might suggest false implication. In the absence of any motive for the police to fabricate such a serious case involving weapons worth millions of rupees, the testimonies of police witnesses should be accepted as truthful. The learned APG highlighted that forensic reports confirm that the large quantity of weapons recovered were in working condition, indicating that the appellants were preparing for potential unlawful activities. The scientific verification of the functionality of these weapons lends

credence to the prosecution's case. Addressing the defence's argument regarding contradictions, the learned APG submitted that there are only minor contradictions due to lapse of time, which do not go to the root of the prosecution case and cannot shatter its fundamental truthfulness. He argued that it is humanly impossible for different witnesses to narrate events in identical language, and minor variations are natural and do not affect the core consistency of the prosecution's narrative. The learned APG forcefully contended that by possessing such a massive cache of prohibited weapons including anti-aircraft guns and rocket launchers, the appellants have created terror and panic in the locality, thereby attracting the provisions of the Anti-Terrorism Act, 1997. He submitted that the very nature of the weapons and their intended use for sale to criminal elements justifies the invocation of anti-terrorism provisions. The learned APG prayed for the dismissal of the appeal and confirmation of the conviction recorded by the trial Court.

10. We have meticulously examined the entire record of this case, perused the impugned judgment, carefully considered the arguments advanced by learned counsel for the appellants and learned Additional Prosecutor General for the State, and reviewed the authoritative case law cited by both parties. After thorough deliberation, we find ourselves compelled to interfere with the conviction recorded by the learned trial Court for the following compelling reasons.

11. Before embarking upon a detailed appraisal of evidence, it is imperative to reiterate certain cardinal principles that form the bedrock of criminal jurisprudence in Pakistan. The prosecution bears the unwavering burden to prove the guilt of an accused beyond all reasonable doubt. This is not a mere technical requirement but a substantive constitutional guarantee flowing from Article 10-A of the Constitution, which enshrines the fundamental right to fair trial. An accused person is presumed innocent until proven guilty, and this

presumption is not a hollow formality but a living, breathing protection that accompanies the accused throughout the trial.

12. The Hon'ble Supreme Court of Pakistan in the landmark case of *Muhammad Mansha v. The State* (2018 SCMR 772) held with admirable clarity:

"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, 'it is better that ten guilty persons be acquitted rather than one innocent person be convicted'."

13. More recently, in *Muhammad Hassan and Another v. The State* (2024 SCMR 1427) the Supreme Court reinforced this principle, observing:

"According to these principles, once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."

14. These authoritative pronouncements establish beyond any cavil that even a single reasonable doubt regarding the guilt of an accused person entitles him to acquittal as of right. The benefit of doubt is not a charitable dispensation but a legal entitlement flowing from the constitutional guarantee of fair trial.

15. Upon meticulous scrutiny of the prosecution evidence, we find that all seven witnesses examined by the prosecution are serving police officials. Not a single independent, disinterested witness from the general public was associated with the recovery proceedings, despite the prosecution's own case being that the alleged recovery took place at the house of Akbar Soomro in Khanpur Mahar, which is admittedly a populated residential area. While it is well-settled that police officials are competent witnesses and their testimony cannot be discarded merely on account of their official status, it is equally well-established that when recovery is effected in a populated area during daylight

hours, the investigating officer has a solemn duty to associate independent witnesses from the locality to ensure transparency, minimize the possibility of false implication, and inspire public confidence in the administration of justice.

16. Article 10-A of the Constitution speaks about the fair trial of the accused, therefore, the prosecution must demonstrate that case property allegedly recovered was safely kept and transmitted without tampering. The exclusive reliance on interested police witnesses, without any independent corroboration, seriously undermines the credibility of the recovery. In *Muhammad Azam v. The State* (PLD 1996 SC 67) [5], the Supreme Court held:

“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.”

In the present case, the prosecution has offered no plausible explanation for this deliberate omission. The complainant and other witnesses have failed to explain why not even a single neutral person from the locality was made a witness to the recovery of such a massive cache of weapons. This glaring omission creates a serious dent in the prosecution's case and gives rise to reasonable suspicion regarding the genuineness of the recovery.”

17. A cardinal principle in cases involving recovery of contraband or prohibited articles is that the prosecution must establish exclusive possession by the accused. The mere presence of an accused in the vicinity of contraband does not, without more, establish his guilt. In the instant case, the prosecution's own narrative reveals a fundamental and fatal weakness; the weapons were allegedly recovered from the house belonging to absconding accused Akbar Soomro, not from the actual physical possession or exclusive custody of the

present appellants. The complainant himself admitted during cross-examination that he did not witness any of the appellants physically handling, possessing, or selling the weapons. The appellants were allegedly apprehended while they were "attempting to flee" from the premises. However, the prosecution has failed to establish:

- *That the appellants were found in exclusive possession of any weapon;*
- *That the appellants led the police to the recovery through pointing;*
- *That any weapon was recovered from the person or immediate control of any appellant;*
- *That the appellants made any disclosure statement leading to recovery admissible under Article 40 of the Qanun-e- Shahadat Order, 1984.*

18. The recovery was made from a house belonging to a third person (absconding accused Akbar Soomro). In such circumstances, without any direct evidence connecting the appellants to the weapons found in that house, the conviction cannot be sustained on the basis of mere suspicion or proximity. The Hon'ble Supreme Court held that recovery from exclusive possession of an accused is sufficient to prove guilt, but conversely, absence of exclusive possession creates serious doubt about culpability.'

19. During the course of cross-examination, several material contradictions emerged in the testimonies of prosecution witnesses, which have not been satisfactorily explained. These contradictions are not of a minor or trivial nature but go to the very root of the prosecution case. The most damaging contradiction emerges from the admissions made by prosecution witnesses during cross-examination. PW-01 Inspector Asghar Ali Awan and other witnesses admitted that the SSP Ghotki held a press conference wherein only one name of an accused person was mentioned, and critically, the allegedly

recovered weapons were displayed in an unsealed, de-sealed, or opened condition before electronic and print media.

20. This admission is corroborated by the photographs produced by appellant Fazal Ameen at Ex.23/A to 23/J, which irrefutably demonstrate that the case property was publicly exhibited without maintaining the seals that were allegedly affixed at the time of recovery. This is not a minor procedural lapse but a fundamental breach of evidentiary principles that completely destroys the chain of custody. The Hon'ble Supreme Court in *Roshan v. The State* (PLD 1977 SC 557) held that delay in sending crime empties to ballistic expert until after recovery of weapon casts serious doubt on prosecution's case. Similarly, in *Daniel Boyd etc. v. The State* (1992 SCMR 196) [2], where crime empties and weapons had been kept together in police custody for over two months before being sent for forensic analysis, the Supreme Court observed that the ballistic report did not advance the prosecution case at all.

21. In the present case, the situation is even more egregious. The weapons were not merely kept in police custody with intact seals, but were deliberately de-sealed and publicly exhibited before media in a press conference. This conduct demonstrates a casual and cavalier approach toward vital evidence and creates irrefutable grounds for suspicion that the weapons may have been tampered with, substituted, or manipulated.

22. In *Ishtiaq Ahmed Mirza v. Federation of Pakistan* (PLD 2019 SC 675), the Supreme Court held that with the advancement of science and technology, it is possible to edit, doctor, superimpose, or manipulate evidence, and therefore, without proper forensic safeguards and maintaining chain of custody, it is becoming unsafe to rely upon evidence. The Court emphasized that evidence must be maintained in sealed condition with proper documentation of custody.

23. The de-sealing of weapons for media display before their formal production in Court, coupled with the absence of any explanation for this serious breach, creates a fatal doubt regarding the integrity of the alleged recovery. This single circumstance is sufficient to entitle the appellants to benefit of doubt.

24. The FIR alleges that seven persons were present at the scene, yet during the press conference, the SSP mentioned only one name of an accused person. This material contradiction has not been explained. Furthermore, the prosecution has failed to explain the identities of the two unnamed persons who allegedly fled along with Akbar Soomro and Muhammad Arif. This vagueness and lack of specificity create doubt about the veracity of the prosecution's version.

25. PW-03 DSP Rabnawaz Rajpar, the first Investigating Officer, admitted during cross-examination that he did not record statements of nearby residents, did not collect call data records (CDR) of the complainant and witnesses, and failed to associate private witnesses despite attempting to do so. While the learned trial Court brushed aside these omissions as non-fatal, we are of the considered view that these procedural lapses, when viewed cumulatively with other infirmities, seriously undermine the credibility of the prosecution case. The Hon'ble Supreme Court in *Muhammad Riaz v. The State* (2024 SCMR 1839) held that joint recovery is inadmissible in evidence, and furthermore, where crime empties and weapons were jointly sent to forensic laboratory after unreasonable delay without safe custody documentation, such recovery cannot be relied upon to sustain conviction. The Court observed:

"As the police took both appellants together in the same vehicle for the recovery and recovered the weapons from the same place and at the same date and time, it was to be considered a Joint recovery for all purposes, irrespective of the fact that the investigating

officer prepared two separate recovery memos. Joint recovery was of no evidentiary value and is inadmissible in evidence."

26. While the present case does not involve joint recovery in the technical sense, the principle underlying this judgment that procedural irregularities in recovery proceedings create doubt about the genuineness of recovery applies with full force. The invocation of Section 7 of the Anti-Terrorism Act, 1997 requires the prosecution to establish that the accused committed an act "in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people." Section 6 of the Anti-Terrorism Act, 1997 defines terrorist act and requires specific intent or effect to strike terror or create fear. In the present case, the prosecution has failed to lead any evidence demonstrating that the appellants committed any overt act that created terror or panic in the locality. The mere possession of weapons, without any evidence of their use or threatened use to create terror, does not automatically attract the provisions of the Anti-Terrorism Act.

27. The prosecution witnesses have not testified that any act was committed by the appellants that actually created terror, fear, or insecurity among the residents of Khanpur Mahar. There is no evidence of any threat, intimidation, or display of weapons in public that would constitute a terrorist act as defined in the statute. The Hon'ble Supreme Court has consistently held that anti-terrorism provisions cannot be mechanically invoked merely because prohibited weapons are recovered. There must be cogent evidence of terrorist intent or effect. In the absence of such evidence, the conviction under Section 7 of ATA, 1997 cannot be sustained.

28. The prosecution has invoked Sections 3, 6, 8, 23, and 24 of the Sindh Arms Act, 2013. These provisions regulate the acquisition, possession, carrying, and transfer of arms and ammunition. However, Section 3 read with

Section 23(i)(a) creates offences for persons who "acquire, have in possession, carry or control" firearms in contravention of licensing requirements. The learned trial Court did not adequately address the question whether non-residents of Sindh can be held liable under provisions that may implicitly or explicitly require domicile or residence in Sindh for purposes of licensing. This legal question required deeper analysis, particularly when the appellants are residents of another province where different arms legislation (Khyber Pakhtunkhwa Arms Act, 2013) applies.

29. While this Court does not conclusively decide this jurisdictional question in the present case (as the appeal succeeds on other grounds), we observe that trial Courts must carefully examine territorial and personal jurisdiction issues, particularly in cases involving provincial legislation, to ensure that convictions are legally sound and do not violate principles of federal structure and provincial autonomy. The appellants, being residents of Khyber Pakhtunkhwa, have not been shown to have any legitimate reason to be present in Khanpur Mahar, Ghotki District, Sindh. The prosecution relies upon this fact to strengthen its case, arguing that the appellants' unexplained presence supports the inference that they were engaged in illegal arms trade.

30. However, the burden always remains on the prosecution to prove guilt beyond reasonable doubt. The appellants are not required to prove their innocence or explain their presence. In the absence of direct evidence connecting them to the weapons, their mere presence in Sindh, even if unexplained, cannot be the sole or primary basis for conviction. The Hon'ble Supreme Court in *Abdul Jabbar v. The State* (2019 SCMR 129) held:

"Once a single loophole was observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eyewitness being doubtful, the benefit of

such loophole/lacuna in the prosecution case automatically went in favor of an accused."

31. The prosecution has relied upon forensic reports confirming that the recovered weapons were in working condition. While forensic evidence is undoubtedly important, its evidentiary value is predicated upon the assumption that the exhibits sent for forensic examination are the same articles that were allegedly recovered from the accused and that the chain of custody has been maintained inviolate. In the present case, as discussed above, the chain of custody has been fatally compromised by the de-sealing of weapons and their public display in the SSP's press conference. Once the seal is broken and the weapon is exposed to multiple persons without proper documentation, the possibility of tampering, substitution, or contamination cannot be ruled out. Therefore, even though the forensic report confirms that certain weapons were in working condition, this Court cannot place reliance on such report when there is serious doubt about whether those weapons are indeed the same ones allegedly recovered from the scene and whether they remained in secure, uncontaminated custody throughout.

32. In *Sharafat Khan v. The State* (PLD 2022 SC 281), the Supreme Court stressed that in criminal prosecutions, particularly involving physical evidence, the prosecution must establish the sanctity of chain of custody beyond doubt. Failure to do so renders the physical evidence unreliable and inadmissible. While examining criminal appeals, appellate Courts must not view each infirmity in isolation but must evaluate the cumulative effect of all defects, contradictions, and lacunae in the prosecution case. The test is not whether each individual defect, standing alone, would be sufficient to acquit, but whether all defects taken together create reasonable doubt about the guilt of the accused.

33. In *Mst. Shazia Parveen v. The State* (2014 SCMR 1197) [1], the Supreme Court held:

"Such related witnesses had failed to receive any independent corroboration inasmuch as there was no independent evidence produced regarding the alleged motive, alleged recovery of rope was legally inconsequential and the medical evidence had gone long away in contradicting the eyewitnesses in many ways."

34. In the present case, the cumulative effect of the following infirmities creates more than reasonable doubt:

- *Non-association of any independent witness despite recovery in populated area;*
- *Recovery not from exclusive possession of appellants;*
- *Admission by complainant that he did not witness appellants handling or selling weapons;*
- *De-sealing of weapons and their public display in press conference, destroying chain of custody;*
- *Failure to explain why only one accused's name was mentioned in press conference when FIR alleges seven persons;*
- *Vagueness regarding identity of two unnamed absconding accused;*
- *Procedural lapses admitted by Investigating Officer;*
- *Absence of evidence of any overt act creating terror or panic;*
- *Questionable applicability of Sindh Arms Act to non-residents;*
- *Photographs produced by appellant (Ex.23/A to 23/J) proving media display of unsealed weapons.*

35. Each of these infirmities, standing alone, may arguably not be fatal. However, when viewed cumulatively and in totality, they create a formidable edifice of doubt that demolishes the prosecution's case beyond repair.

36. It is a well-entrenched principle of criminal jurisprudence that benefit of doubt is not a matter of grace, mercy, or judicial benevolence. It is a substantive legal right flowing from the constitutional guarantee of fair trial under Article 10-A of the Constitution of the Islamic Republic of Pakistan.

37. The Latin maxim "*in dubio pro reo*" (when in doubt, favor the accused) embodies this fundamental principle. Our legal system, rooted in Islamic jurisprudence and natural justice, mandates that it is better for ten guilty persons to escape than for one innocent person to suffer conviction. The Hon'ble Supreme Court in *Tariq Parvez v. The State* (1995 SCMR 1345) held that benefit of doubt is the right of accused, not a matter of concession. This principle has been consistently reaffirmed in numerous judgments including *Ghulam Qadir v. The State* (2008 SCMR 1221), *Mohammad Akram v. The State* (2009 SCMR 230), *Mohammad Zaman v. The State* (2014 SCMR 749), and most recently in *Muhammad Hassan v. The State* (2024 SCMR 1427).

38. In *Abdul Qadeer v. The State* (2024 SCMR 1146) [13], the Supreme Court observed:

"All the above circumstances have created reasonable doubt in the case of the prosecution but benefit of same has not been extended to the petitioner by the courts below. According to settled principle of law even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused he/she shall be entitled to such benefit not as a matter of grace and concession but as of right. According to settled principles of law the prosecution has to stand on its own legs and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down."

39. In the present case, we are satisfied that the prosecution has failed to discharge its burden of proving the guilt of the appellants beyond reasonable

doubt. The numerous infirmities, contradictions, and procedural irregularities discussed above have created serious and reasonable doubts about the involvement of the appellants in the alleged offences.

40. The most damaging circumstance against the prosecution is the admitted fact that the allegedly recovered weapons were de-sealed and publicly displayed in a press conference held by SSP Ghotki before electronic and print media. This conduct has completely destroyed the chain of custody and created irrefutable doubt about the integrity of the evidence. The photographs produced by appellant Fazal Ameen (Ex.23/A to 23/J) constitute documentary proof of this fatal breach.

41. Furthermore, the non-association of any independent witness despite recovery in a populated area, the failure to establish exclusive possession by the appellants, the admission by the complainant that he did not witness any appellant handling or selling weapons, and numerous other infirmities discussed in detail above have created reasonable doubt indeed, multiple reasonable doubts about the guilt of the appellants.

42. In the administration of criminal justice, the polestar principle is that an accused is presumed innocent until proven guilty beyond reasonable doubt. This presumption is not a mere procedural formality but a substantive constitutional safeguard enshrined in Article 10-A of the Constitution. When doubt exists, it must be resolved in favor of the accused. The Hon'ble Supreme Court in *Mst. Asia Bibi v. The State* (PLD 2019 SC 64) held that if prosecution evidence creates doubt, benefit thereof must go to accused. Similarly, in *Muhammad Imran v. The State* (2020 SCMR 857), it was held that failure of prosecution to prove case beyond reasonable doubt entitles accused to acquittal.

43. We are conscious that the alleged recovery involves sophisticated weapons including anti-aircraft gun and rocket launcher, which pose potential threat to public safety. However, the ends of justice cannot justify conviction

on doubtful evidence. The fundamental principle that it is better for ten guilty persons to escape than for one innocent person to suffer wrongful conviction must remain sacrosanct.

44. The learned trial Court erred in overlooking the fatal infirmities in the prosecution case and placing excessive reliance on the testimonies of interested police witnesses without independent corroboration. The impugned judgment fails to adequately address the defense's contention regarding de-sealing of weapons and their media display, which alone is sufficient to entitle the appellants to acquittal.

45. After exhaustive examination of the entire record, reappraisal of evidence, consideration of arguments advanced by both sides, and application of well-settled legal principles, we have arrived at the irresistible conclusion that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The impugned judgment of the learned trial Court suffers from serious infirmities, non-reading and misreading of evidence, and failure to properly evaluate the cumulative effect of contradictions and procedural irregularities.

46. For the foregoing reasons, and in light of the detailed discussion and legal principles enumerated above, this Criminal Appeal is allowed. The impugned judgment dated 04.12.2024 passed by the learned Sessions Judge/Judge Anti-Terrorism Court, Ghotki at Mirpur Mathelo in Special Case No.42/2023 is hereby set-aside. The convictions and sentences recorded against the appellants Fazal Ameen Pathan, Muhammad Younis Pathan, and Israr-ud-Din Pathan under Sections 3, 6, 8, 23(i)(a), 23(2), 24 of the Sindh Arms Act, 2013 and Section 7(1)(ff) of the Anti-Terrorism Act, 1997 are hereby set-aside. All three appellants are acquitted of all charges leveled against them and are entitled to benefit of doubt as a matter of right. These are the reasons of short order dated: 07.10.2025 whereby the appellants were acquitted and they were

accordingly released. Let a copy of this judgment also be sent to the learned Sessions Judge/Judge Anti-Terrorism Court, Ghotki at Mirpur Mathelo for information and record.

47. The case against the absconding accused namely Akbar s/o Allah Diwayo by caste Soomro and Muhammad Arif s/o Ali Muhammad by caste Mahar shall continue to remain on the dormant file of the trial Court until their arrest, and the present judgment of acquittal of the appellants shall not affect the proceedings against the absconding accused. Office is directed to send back the original record to the learned trial Court along with a copy of this judgment.

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