

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 77 of 2025

Appellant : Hamidullah son of Amanullah,  
Through Mr. Rehman Ghani Khattak, Advocate

Respondent : The State  
Through Mr. Siraj Ali Chandio, Addl. P.G  
Sindh.

Date of hearing : 29.04.2025.

Date of order : 09.05.2025.

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – The appellant Hamidullah was convicted in a case bearing crime No.441/2023, offence u/s 24 Sindh Arms Act, 2013 of P.S. Saudabad, Karachi by the Court of learned IVth Additional Sessions Judge Karachi East, and sentenced to suffer R.I. for seven years and pay fine of Rs.20,000/-. In default of payment of fine to suffer S.I. for one month more with benefit of Section 382-B Cr.P.C. vide judgment dated 31.12.2024.

2. It is case of prosecution that on 20.12.2023, at about 0250 hours, the appellant was arrested in a case bearing crime No.443/2023, offence u/s 324 PPC of P.S. Saudabad. Allegedly, an unlicensed pistol was recovered from him. Consequent upon; case was registered inter-alia on above facts.

3. During the investigation of the main case, Inspector Muhammad Tariq, leading the investigation, reported that on 22.12.2023, the appellant, while in police custody, pointed out the location from which a 30-bore unlicensed pistol along with three live bullets was recovered under the seat of a police mobile at the Police Headquarters. The recovery was made in the presence of the witnesses. As a result instant case was registered. On 04.01.2024, after the formal investigation of both cases, the Investigation Officer (I.O.) of the main case, PI Muhammad Tariq, submitted the report under Section 173 Cr.P.C. against the accused.

4. At trial, appellant pleaded not guilty. To substantiate its case, prosecution examined four witnesses including ASIP Muhammad Aijaz (Maalkhana Incharge), Insp. Muhammad Tairq (Complainant), PC

Muhammad Tariq (Mashir) and ASI Rafiq Ahmed (I.O.). In the statement, the appellant denied recovery of alleged unlicensed weapon and all wrong doings.

5. The learned counsel for the appellant raised several significant contradictions and inconsistencies within the prosecution's case, which undermine the credibility of the prosecution witnesses and the veracity of the recovery of the alleged weapon. He further argued that the prosecution's case regarding the recovery of the 30-bore unlicensed pistol is riddled with contradictions. He argued that Inspector Muhammad Tariq (PW-2) deposed that the weapon was recovered from beneath the seat of a government mobile, allegedly on the pointation of the appellant. However, in his statement, he failed to mention crucial details, such as the condition or color of the weapon, or the description of the government mobile from where the weapon was recovered. These omissions raise serious doubts about the authenticity of the recovery and the reliability of the recovery memo. He further argued that the recovery allegedly took place at the Police Headquarter East, where security systems, including guards and cameras, were present. It is highly suspicious that no independent witnesses were called to witness the recovery, despite the location being within a secure police facility. This failure to follow proper procedure casts doubt on the veracity of the recovery. He further argued that it is critical to note that during the recovery of the weapon, the prosecution did not produce any independent witnesses, either from the Police Headquarter or the police station. This is a clear violation of the standard protocol for the recovery of evidence, especially in a case involving an unlicensed weapon. He further argued that the lack of independent witnesses to substantiate the recovery of the pistol from the government mobile further raises questions about the credibility of the prosecution's case. He argued that PC Muhammad Tariq (PW-3) deposed that the accused, during his interrogation, stated that he could lead to the recovery of the weapon. However, this statement contradicts the testimony of Inspector Muhammad Tariq, who failed to mention that the accused was in any way involved in pointing out the location of the weapon. This inconsistency in the statements of key witnesses casts serious doubts on the prosecution's version of events. He further argued that the witness failed to mention that the location of the weapon recovery was within a government mobile or specify the exact details about the vehicle from which it was allegedly retrieved. Such contradictions are material and go to the heart of the prosecution's case. He argued that it is also notable that the prosecution failed to provide details on the condition of the weapon at

the time of its recovery. The testimony of the prosecution witnesses lacks sufficient clarity regarding whether the weapon was operable, whether it had been used in the commission of any crime, or whether it had any identifying marks or features that would tie it to the appellant. He argued that it was never established whether the weapon was recovered from the same location from which the alleged crime (i.e., the shooting of Naseer-ud-Din) occurred. The absence of clear, consistent details about the weapon further erodes the prosecution's case. He argued that the recovery memo, prepared at the time of the alleged recovery of the weapon, is deficient in several key respects. The description of the weapon, including its color, make, and condition, was not recorded in the memo, raising doubts as to whether the recovery was made at all. The failure to include such details is a serious procedural flaw that undermines the reliability of the recovery process. Even if the recovery of the weapon is accepted, there is no evidence to suggest that the weapon was the same one used in the commission of the alleged crime. No forensic evidence was presented to link the recovered weapon to the injury sustained by the complainant, Naseer-ud-Din. The prosecution has failed to establish a clear nexus between the weapon recovered and the alleged crime, which is a fatal flaw in their case. He argued that the appellant was acquitted in the main case (FIR No. 434/2023, under Section 324 PPC) by the learned trial court on 29.07.2024, where the complainant and the appellant reached a compromise under Section 345 Cr.P.C. The acquittal in the main case, coupled with the flaws and contradictions in the prosecution's evidence in the arm case, further supports the appellant's case that he has been falsely implicated. He argued that the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt. The contradictions in the testimonies of the prosecution witnesses, the absence of independent corroborative evidence, the deficiencies in the recovery memo, and the lack of forensic evidence linking the weapon to the crime all point to the conclusion that the appellant's conviction is unjustified. He argued that based on the above contradictions and flaws in the prosecution's case, the appellant may be acquitted.

6. Conversely, the learned APG submits that the prosecution has established a strong and consistent case against the appellant, supported by the testimonies of reliable witnesses and the recovery of the weapon. The appellant's involvement in the crime is evident from the recovery of a 30-bore unlicensed pistol, which was pointed out by the appellant himself during the police operation. The weapon was recovered from beneath the seat of a government mobile, and the recovery process was witnessed

and duly documented by the police officers, including Inspector Muhammad Tariq (PW-2) and PC Muhammad Tariq (PW-3), whose testimonies are consistent and credible. Despite the defense's attempts to cast doubt on the absence of independent civilian witnesses, the learned APG emphasizes that the presence of police officers during the recovery process suffices to authenticate the event. The recovery memo, which was prepared in accordance with the law, provides clear details of the weapon and the circumstances of its discovery, leaving no room for suspicion or contradiction. Moreover, the appellant has not raised any objections or challenges to the recovery memo, further bolstering the prosecution's position. The learned APG further points out that the appellant's failure to offer any plausible explanation regarding the possession of the weapon strengthens the presumption of guilt. Under Section 103 of the Evidence Act, the appellant's ability to point out the weapon directly implicates him in the crime, shifting the burden of proof to the appellant, which he has failed to satisfactorily discharge. The weapon recovered was of the same type that could have been used in the shooting incident leading to the filing of FIR No. 434/2023, establishing a clear link between the appellant and the commission of the crime. Based on the consistent, corroborated evidence provided by the prosecution, the learned APG prays for dismissal of the appeal.

7. After meticulous scrutiny of the evidence available on record, it appears that the prosecution's case is marred with fundamental inconsistencies, procedural lapses, and glaring omissions which go to the root of the matter. The prosecution primarily relied on the testimony of three witnesses: the Head Mohrar, the Investigating Officer (PI Muhammad Tariq), and a police constable (PW-3 Muhammad Rafiq). The Head Mohrar, who was the custodian of case property, surprisingly stated during his examination that he received the case property on 20.12.2023 from PI Muhammad Tariq. This statement is factually irreconcilable with the admitted position that the FIR itself was registered later, on 22.12.2023. Such a contradiction casts serious doubt not only on the chain of custody but also on the authenticity and timing of the alleged recovery, which forms the fulcrum of the prosecution's case. The learned trial court entirely failed to appreciate this discrepancy, and no explanation was sought or provided to resolve it.

8. PI Muhammad Tariq, the second witness, deposed that he received the investigation of the main crime under Section 324 PPC on 20.12.2023. He stated that he arrested the accused on the same day and, based on

the accused's pointation, recovered a 30-bore pistol along with three live rounds and one empty shell from a junkyard located in a blind corner within the Police Headquarters. However, during his cross-examination, he admitted that the place of recovery was isolated and within a government premises, a location under police control, raising serious concerns about the veracity of the recovery story. It defies logic that if the accused was arrested at the spot on 20.12.2023 while allegedly armed, the recovery of the same weapon from a junkyard within the Headquarter after two days would be necessary. This fact alone renders the prosecution's version highly implausible and indicative of an afterthought aimed at strengthening a weak case.

9. Furthermore, PW-3 Muhammad Rafiq, who is a crucial eyewitness, stated that he was present at the PHQ East on 20.12.2023, and on that day both the injured PC Naseeruddin and the appellant were resting when the incident occurred. He categorically deposed that he heard the sound of firing and saw the injured receive a bullet injury, and the appellant was seen holding a pistol. According to him, the public gathered at the spot from the adjacent mosque, an ambulance was called, and the accused was confined by the in-charge of the Headquarter. This version, coming from a police constable who was present at the scene, further negates the prosecution's claim that the weapon was recovered subsequently on pointation. It makes it evident that the appellant was arrested on the spot with the weapon, which should have been seized then and there if the investigation had been honest and efficient. Additionally, PW-3 admitted that the incident was an act of mistake, and there was no prior animosity between the accused and the injured, which undermines the motive aspect of the prosecution's case.

10. More critically, the record reflects that the alleged firearm and ammunition were never de-sealed at the time of examination of PI Muhammad Tariq, nor was the Forensic Science Laboratory (FSL) report produced or exhibited in evidence. Considering that the charge under Section 25 of the Sindh Arms Act and Section 324 PPC pivots entirely on the use and recovery of a firearm, the absence of the FSL report is a fatal omission. It effectively removes the forensic linkage between the crime and the recovered weapon. Not only did the prosecution fail to adduce this core piece of documentary evidence, but the learned trial court also failed to notice or discuss this glaring lapse in its findings. Such oversight is not merely an error in appreciation of evidence, it renders the entire trial suspect and the resulting conviction unsafe. Furthermore, the investigation

officer conceded that he neither made departure or arrival entries nor associated any officers of the PHQ as witnesses during the site inspection. He also did not inform any higher authorities about the purported recovery of an unlicensed weapon from a government mobile van parked within police premises, facts that collectively point to a serious dereliction of duty.

11. In light of the above, it is evident that the findings of the learned trial court were not only blind but against the settled principles of criminal jurisprudence. The trial court appeared to have passed the judgment mechanically, without due appreciation of the contradictions, procedural irregularities, and evidentiary gaps that went to the heart of the prosecution's case. Moreover, it was brought to this Court's attention that the main case bearing Crime No. 434/2023, registered under Section 324 PPC, arising out of the same transaction, was disposed of under Section 345 Cr.P.C, suggesting that the parties may have privately resolved the matter. The certified copy of the charge sheet therein shows that the accused was arrested at the spot while armed with a pistol, making the belated recovery implausible and contradictory to the prosecution's claim in the present case. Lastly, though the appellant took the plea of being in lawful possession of a licensed weapon and produced a copy of the license, this aspect was neither investigated nor confronted at trial, and therefore, does not require judicial comment in the absence of a formal record. In view of the numerous contradictions, material omissions, prosecutorial failures, and non-application of judicial mind by the learned trial court, the appeal is allowed. The impugned judgment is set aside, and the appellant is acquitted of the charge. He shall be set at liberty forthwith, unless otherwise required in any other case.

**J U D G E**