

THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Criminal Appeal No.S-98 of 2022

Appellant: Ali Asghar through Mr. Muhammad
Yousuf, Advocate.

Respondent: The State through Mr. Shawak Rathore,
D.P.G. Sindh.

Date of hearing: **26.05.2025**

Date of Judgment: **26.05.2025**

J U D G M E N T

RIAZAT ALI SAHAR, J. The appellant namely, Ali Asghar has assailed the legality and propriety of the judgment dated 15.07.2022, passed by the learned Additional Sessions Judge, Shahdadpur in Sessions Case No.90 of 2022, arising out of Crime No.04 of 2022, registered at Police Station Lundo, for the offence punishable under section 23 (i) A of Sindh Arms Act 2013, whereby, the learned trial Court after full-fledged trial, convicted and sentenced the appellant to undergo R.I. for five years and to pay fine of Rs.50,000/- and in case of default whereof, to suffer S.I. for one month more. However, the appellant was extended benefit of section 382-B Cr.P.C.

2. The prosecution case, as set forth in the FIR lodged by complainant ASI Abdul Majeed lodged under section 23(i)(a) of the Sindh Arms Act, 2013 at Police Station Shahdadpur are that, on 06.02.2022, he along with his subordinate staff was on routine patrol when they reached Baka Dahri stop, it was about 1720

hours, the appellant was apprehended from the eastern side of Lundo–Shahdadpur road, near Baqa Dahri stop, Deh Kundi, Taluka Shahdadpur. Upon conducting a personal search, one unlicensed 30 bore pistol along with a magazine containing four live bullets was recovered from the left fold of the shalwar of the appellant. The complainant sealed the recovered weapon on the spot and prepared the mashirnama of arrest and recovery in presence of PC Subhan and PC Rahib Ali as mashirs. Subsequently, the accused and recovered weapon were brought to the police station and the FIR was registered against him.

3. After completing the investigation, the report under section 173 CrPC (Challan) was submitted before the competent Court of law where after the case was entrusted to the learned Court for trial.

4. Before the learned trial Court, charge against the appellant was framed and then in order to prove its case, the prosecution examined three witnesses, PW-1 ASI Abdul Majeed (Complainant) at Exh.04, who produced attested copy of departure and arrival entry No.14 and 21 at Exh.04/A, mashirnama of arrest and recovery as Exh.4/B and FIR at Exh.4/C; PW-2 PC Subhan Ali(mashir) at Exh.5, who produced mashirnama of place of incident at Exh.5/A and PW-3 ASI Natho Khan (Investigating Officer of the case) was examined at Exh.6, who produced entries No.31, 34 on one page duly attested at Exh.6/A, produced letter sending the property to FSL at Exh.6/B, produced FSL Report at Exh.6/C.

Thereafter learned ADPP for the State closed the side of prosecution vide his statement at Exh.7.

5. Thereafter, the statement of the accused under Section 342 Cr.P.C. was recorded at Exh.8, wherein he denied all the allegations levelled against him. He claimed false implication at the hands of police officials, asserting that he had no connection with the alleged recovery. However, the accused neither examined himself on oath under Section 340(2) Cr.P.C. nor produced any witness in his defence.

6. After hearing the learned counsel for the parties and examination of the case file, learned trial Court convicted and sentenced the appellant in the manner as stated above.

7. Learned counsel for the appellant contended that the appellant has been falsely implicated in this case by the police. He contended that no such incident, as alleged by the complainant, had taken place and that the weapon was foisted upon the appellant in order to fabricate a case to show efficiency on the part of the police officials. He further contended that there are material contradictions and discrepancies in the depositions of the prosecution witnesses, which rendered the case highly doubtful but the learned trial Court failed to appreciate the same. Learned counsel further contended that the impugned judgment is not in accordance with law as if the entire record could have perused properly and the contradictory evidence could have taken into

consideration, the appellant ought to have been acquitted, hence, the impugned judgment is liable to be set aside and the appellant may be acquitted of the charge by extending the benefit of doubt.

8. On the other hand, learned Deputy Prosecutor General Sindh, supported the prosecution case on the ground that the appellant was caught red-handed with an unlicensed firearm and the prosecution had successfully proved its case through the evidence of official witnesses. He prayed for dismissal of instant appeal.

9. Heard and perused the record very carefully.

10. On reassessment of the prosecution evidence, I found that in their examinations-in-chiefs the prosecution witnesses stated that the incident had taken place on 06.02.2022 and an unlicensed 30 bore pistol along with a magazine containing four live bullets was recovered from the possession of the appellant when he was apprehended from the eastern side of Lundo–Shahdadpur road, near Baqa Dahri stop, Deh Kundi, Taluka Shahdadpur. Nevertheless, after proper scrutiny, I found that the PW-01 ASI Abdul Majeed, in his examination-in-chief, deposed that on 06.02.2022, while posted at P.S. Lundo, he along with his subordinate staff left the police station for patrol at 1600 hours and during the course of patrolling, at around 1700 hours, he saw a suspicious person (later identified as the appellant) at Baqa Dahri stop. He claimed that upon personal search, he recovered a 30 bore

pistol with a magazine containing four live bullets from the left fold of the appellant's shalwar. However, PW-02 PC Subhan Ali, the mashir, in his examination-in-chief, gave a different version and stated that the suspicious person was seen at 1720 hours, which contradicts the timing stated by PW-01 and creates doubt about the exact time of occurrence. Furthermore, PW-02, during his cross-examination, deposed that before reaching Baqa Dahri stop, the police party had stopped at Lundo Mor for half an hour and then stayed for another 30 minutes at Ranjho Talpur stop before heading towards the place of incident. He stated that the distance between Ranjho Talpur and Baqa Dahri stop was about three kilometers, which they covered in 20 minutes. These details, absent in the deposition of PW-01, create material doubt about the route, timeline and continuity of patrol, thereby shaking the credibility of the prosecution version. Similarly, there is a contradiction regarding the duration of stay at the place of recovery. PW-02 PC Subhan Ali deposed that they remained at the scene for about one hour to prepare the mashirnama and seal the case property. However, the overall time between their departure and return, as per entries, does not appear to support this lengthy duration, casting further doubt on the veracity of the arrest and recovery procedure. Moreover, PW-02 stated that on 07.02.2022, he again visited the place of incident in a private vehicle driven by ASI Abdul Majeed, but strangely, he did not know the owner of the vehicle. Such vague and evasive answers in sensitive matters like investigation weaken the prosecution's case and suggest lack of transparency in official

conduct. PW-03 ASI Natho Khan, the Investigating Officer, in his examination-in-chief, stated that he took over the investigation and visited the place of incident on 07.02.2022 at around 0640 hours and prepared the mashirnama of the place of incident on the pointation of the complainant, in the presence of official mashirs. However, in his cross-examination, he admitted that he had not produced any written order from the SHO assigning him investigation duties, which raises a serious question regarding the legality of the investigation itself.

11. A major legal infirmity in the prosecution case is the deliberate non-association of private mashirs, despite the fact that the place of incident was a populated and public road. PW-01 complainant ASI Abdul Majeed, in his cross-examination, frankly admitted that “no private person was made mashir” in this case. PW-02 mashir P.C. Subhan Ali also admitted that the place of incident was situated in a populated area, yet no effort was made to involve any independent person from the locality. PW-03 (I.O.) further confirmed in his cross-examination that the place of incident was a busy road and although he claimed to have attempted to secure private witnesses, he failed to name any such persons or explain why no record of refusal or action was maintained. The casual and blanket excuse offered by the I.O. is not only unsatisfactory but also contrary to the statutory requirements under Section 103 Cr.P.C., which exists precisely to prevent fabricated or one-sided recoveries in cases where public presence is

possible. The complete reliance on police officials as mashirs fails the credibility of the recovery proceedings.

12. The I.O. himself admitted that he had no written order or documentation from the SHO assigning him the investigation. This irregularity taints the investigation with legal infirmity and procedural impropriety. The visit to the scene of occurrence was carried out on the following day, i.e., 07.02.2022, without any compelling explanation for the delay and even then, no effort was made to involve local witnesses or gather additional evidence.

13. The entire case of the prosecution hinges upon the testimony of interested police officials—namely the complainant, the mashir and the Investigating Officer—with no independent corroboration whatsoever. It is a settled principle that while the evidence of police officials is not to be discarded merely for being official, in cases involving recovery of unlicensed arms, such evidence must be scrutinized with greater caution, especially where no neutral or independent witness has been associated. In the present case, there is no CCTV footage, no public witness and no documentary proof beyond self-serving police documents to establish the presence of the accused at the scene or the actual recovery of any weapon. No doubt, it has often been observed that private persons are generally reluctant to act as mashirs due to fear of enmity with criminal elements. However, in today's technologically advanced society, where almost every individual—including police officials—has access to cellular phones with camera

recording capabilities, the expectation of preserving real-time evidence of a significant arrest and recovery cannot be ignored. The police party allegedly left the police station for patrolling was fully capable of recording the arrest and recovery proceedings to remove any cloud over the authenticity of such recovery. The failure to use such readily available means or to associate even a single independent witness, raises serious doubt about the credibility of the prosecution case and this omission materially dents the reliability of the alleged recovery.

14. Furthermore, the prosecution has failed to establish that the accused was in conscious possession of the weapon allegedly recovered. The claim that the weapon was recovered from the “left fold of the shalwar” is vague and inherently doubtful, particularly when no forensic evidence, such as fingerprints or other scientific indicators, has been brought on record to substantiate the allegation of actual possession. In my humble opinion, the entire documentation appears to have been prepared by the police officials themselves, who assert that the unlicensed weapon was recovered from the appellant. However, in order to prove such a serious allegation, the prosecution case must not rest solely upon police testimony and internal documentation; it ought to be corroborated by independent mashirs, or by some other convincing and objective evidence—such as video recording—to demonstrate that the recovery was genuinely effected from the possession of the appellant. Regrettably, in the present case, no such credible and

impartial evidence has been produced, thereby rendering the prosecution version highly doubtful.

15. For the reasons discussed above, I have reached the conclusion that the prosecution has utterly failed to establish its case against the appellant/accused beyond reasonable doubt. It is a well-settled proposition of law that in order to extend the benefit of doubt to an accused, it is not necessary for multiple circumstances to exist that create uncertainty. Rather, if a single circumstance gives rise to a reasonable doubt regarding the guilt of the accused, then such doubt must be resolved in favour of the accused, entitling him to the benefit thereof. In this respect, reliance can be placed upon case of Muhammad Hassan and Another v. The State [2024 SCMR 1427, wherein the Honourable Supreme Court has held that:

“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.”¹

16. In view of the foregoing discussion and in reliance upon the established judicial precedents, the instant appeal was **allowed** through my short order dated 25.05.2025. Consequently, the

¹ See also; MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- "4. 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 be 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". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."

impugned judgment dated 15.07.2022, passed by the learned Additional Sessions Judge, Shahdadpur, was set aside, and the appellant was acquitted of the charge. As the appellant was incarcerated at the time, he was ordered to be released forthwith, provided he was not required in any other case. **The foregoing constitutes the detailed reasons for the short order dated 25.05.2025.**

J U D G E

Abdullahchanna/PS