IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.S-31 of 2022

Appellant	:	Abdul Qadir S/o Muhammad Ismail, Through Mr. Asif Ali Abdul Razzak Soomro, Advocate.
The Respondent/State:		Through Mr. Nazeer Ahmed Bhangwar, D.P.G Sindh.
Date of hearing:		30-05-2025
Date of Judgment:		16-07-2025

JUDGMENT

Jan Ali Junejo, J.— This appeal, filed under Section 410 Cr.P.C., challenges the judgment dated 19.05.2022 (hereinafter referred to as the *"Impugned Judgment"*) passed by the learned Additional Sessions Judge-II, Jacobabad (hereinafter referred to as the *"Trial Court"*), in Sessions Case No. 154/2018. The appellant, Abdul Qadir, was convicted under Section 25, of the Sindh Arms Act, 2013 ("SAA-2013") and sentenced to five years' rigorous imprisonment with a fine of Rs.30,000/- (defaulting six months' simple imprisonment). The conviction stems from the recovery of an unlicensed TT pistol used in a murder (Crime No. 31/2018). The benefit of section 382-B of the Criminal Procedure Code (Cr.P.C.) was extended to the appellant.

2. The prosecution's case, as narrated in FIR No. 38/2018 P.S. Saddar, Jacobabad, lodged by Complainant SIP Shabir Ahmed (PW-1) on April 1, 2018, states that accused Abdul Qadir and Imamdin, already in police custody for murder in Crime No.31/2018, were taken out from the police lock-up for interrogation. During interrogation, both accused expressed their willingness to produce the crime weapons. Subsequently, SIP Shabir Ahmed, along with his subordinate staff, proceeded with the accused to the village of Abdul Qadir. There, Abdul Qadir led the police party to a paddy straw heap located on the southern side of his house, from where he voluntarily produced an unlicensed TT

pistol along with a magazine containing two live bullets with an erased number. Concurrently, accused Imamdin recovered an unlicensed SBBL gun of 12 bore from the same paddy straw heap. Both accused disclosed that these weapons were unlicensed and had been used by them in Crime No. 31/2018 of Saddar Police Station. The weapons were sealed on the spot, and a memo was prepared. Subsequently, FIRs were lodged against both accused.

3. Following the necessary investigation, a challan was submitted against the accused. The case was then transferred to the Court of Additional Sessions Judge-II, Jacobabad, for trial. A formal charge for the offence under Sections 23(1)(a) and 25 of the Sindh Arms Act, 2013 (SAA-2013), was framed against the accused on October 8, 2018, to which he pleaded not guilty and claimed trial. To establish its case, the prosecution examined the following key witnesses and produced documentary evidence before the learned Trial Court. The details of the witnesses, their respective testimonies, and the exhibits produced are outlined below:

(i) PW-1 (SIP Shabir Ahmed): The complainant, who testified at Ex. 05. He produced the carbon copy of the recovery memo at Ex. 05/A, FIR No. 38-2018 of Saddar Police Station at Ex. 05/B, the ballistic expert report at Ex. 05/C, and a photostat copy of Roznamcha entries Nos.15 & 16 (one sheet) at Ex. 05/D. He deposed that on March 26, 2018, accused Abdul Qadir and Imamdin were arrested, but nothing was recovered from them at that time. On April 1, 2018, they were taken out from the police lock-up for recovery of crime weapons. Both accused voluntarily agreed to produce the weapons. He, along with other police staff including PC Ghulam Nabi, PC Israr, PC Babal, PC Khuda Bux, and DPC Ghulam Murtaza, proceeded to the village where Abdul Qadir produced the pistol and Imamdin produced the SBBL gun. He sealed the weapons and prepared the memo (Ex. 05/A), which was signed by mashirs PC Badal and PC Ghulam Nabi. He then lodged FIR No. 38/2018. He also produced the ballistic expert report (Ex. 05/C) and Roznamcha entries (Ex.05/D).

(ii) PW-2 (PC Ghulam Nabi): A mashir witness, who testified at Ex. 06. He corroborated the recovery, stating that on April 1, 2018, accused Imamdin and Abdul Qadir were taken out from the lock-up and interrogated by SIP Shabir Ahmed. Both accused expressed readiness to produce crime weapons. He, along with other police staff, accompanied SIP Shabir Ahmed and the accused to the village. He deposed that Imamdin took out an SBBL gun and Abdul Qadir took out a 30 bore TT pistol with an erased number, loaded

with three live bullets. Both accused disclosed that the weapons were unlicensed and used in the murder case. SIP Shabir Ahmed sealed the weapons and prepared the mashirnama (Ex. 05/A).

(iii) Ballistic Expert Report (Ex. 05/C).

4. During his statement recorded under Section 342, Cr.P.C., the Appellant denied the allegations (Ex. 08) but did not lead any evidence in his defense though he examined himself on oath under Section 340(2), Cr.P.C. The Trial Court, through its Impugned Judgment, convicted the appellant under Section 25, SAA-2013.

5. Learned counsel for the appellant vehemently argued for the acquittal of the appellant, contending that the conviction recorded by the Trial Court is based on a misappreciation of facts and law. The learned counsel highlighted several points to support the prayer for setting aside the impugned judgment and acquitting the appellant. It was contended that all the prosecution witnesses, namely PW-1 (SIP Shabir Ahmed) and PW-2 (PC Ghulam Nabi), are police officials. The learned counsel characterized them as "interested, hostile, and partisan" witnesses, whose testimonies should not be relied upon without independent corroboration. It was argued that their official positions inherently create a bias, and their evidence alone is insufficient to secure a conviction. A crucial argument advanced was the complete absence of independent public witnesses to the alleged recovery. The learned counsel asserted that this omission violates the mandatory provisions of Section 103 of the Cr.P.C., which requires the presence of respectable inhabitants of the locality during a search or recovery. The failure to associate independent witnesses, despite the availability of the general public at the scene of recovery, casts serious doubts on the veracity of the prosecution's claim. The learned counsel further argued that the joint recovery memo prepared for two accused (Abdul Qadir and Imamdin) is a *"nullity in law"*. It was submitted that separate recoveries should have been documented

individually to maintain the sanctity of the evidence and avoid any commingling of facts related to different accused persons. The defense pointed out significant contradictions in the testimonies of the prosecution witnesses. Specifically, it was highlighted that PW-2 stated the pistol recovered from Abdul Qadir had three bullets, whereas the recovery memo (Ex. 05/A) and the testimony of PW-1 mentioned only two bullets. Furthermore, there was a discrepancy regarding the name of the police mobile driver: PW-1 identified him as PC Ghulam Murtaza, while PW-2 named him as PC Ali Hassan. These inconsistencies, according to the defense, are not minor discrepancies but material contradictions that undermine the credibility of the prosecution's case. It was strongly argued that the recovery of the weapon was *"foisted"* against the accused merely to strengthen the main murder case (Crime No. 31/2018). The defense contended that the police fabricated the recovery to bolster their case in the murder investigation, rather than it being a genuine discovery. The learned counsel asserted that the ballistic report, which linked the recovered pistol to the murder case, was rendered "inconsequential" because the empties from the murder scene were sent along with the recovered weapons for ballistic examination. It was argued that this procedure compromises the integrity of the evidence and, according to "latest Apex Court Judgments", invalidates the recovery. Finally, it was submitted that the Trial Court failed to extend the benefit of doubt to the appellant despite the "manifestly unsatisfactory evidence" presented by the prosecution. The defense argued that given the numerous flaws and inconsistencies in the prosecution's case, the appellant was entitled to an acquittal.

6. In response to the arguments put forth by the learned counsel for the appellant, the learned Deputy Prosecutor General (DPG) vehemently supported the conviction recorded by the Trial Court and prayed for the dismissal of the appeal. The learned DPG contended that the voluntary disclosure made by the appellant while in police custody, which led to the recovery of the crime weapon,

is admissible under Article 40 of the Qanun-e-Shahadat Order, 1984. Reliance was placed on the precedent set in Fazal Akbar v. State (2013 P.Cr.L.J 369), which affirms the evidentiary value of such disclosures when they lead to the discovery of facts. The fact that the appellant led the police to a specific location and produced the weapon, a fact previously unknown to the police, strongly corroborates the prosecution's narrative. Addressing the defense's contention regarding the absence of independent private witnesses, the learned DPG argued that such an omission is excusable due to the prevailing public apathy and fear of criminals. It was submitted that in many instances, members of the general public are reluctant to come forward and act as witnesses in criminal cases, particularly those involving serious offenses, due to concerns for their safety and potential reprisals. The learned DPG countered the defense's claims of material contradictions by asserting that any discrepancies in the testimonies of the prosecution witnesses were minor and inconsequential to the core facts of the case. It was argued that slight variations in details, such as the exact number of bullets or the name of a driver, are natural occurrences in human testimony, especially after the passage of time, and do not undermine the overall credibility of the witnesses or the prosecution's case. The fundamental aspects of the recovery, including the voluntary disclosure and the production of the weapon by the accused, remained consistent across the testimonies. The learned DPG asserted that there is no legal bar on preparing a joint recovery memo when recoveries from co-accused occur at the same time and place, and are contemporaneously recorded. It was argued that such a procedure is permissible, especially when the accused persons act in concert or are involved in the same criminal enterprise, and does not render the recovery memo a "nullity in law".

7. This Court has meticulously reviewed the record, considered the arguments advanced by the learned counsel for the appellant, and the learned Deputy Prosecutor General for the State. A thorough examination of the record reveals that the prosecution's entire case hinges on the recovery of an unlicensed

TT pistol, which is alleged to have been used in the primary murder case (Crime No.31/2018). The prosecution asserts that this recovery was made from the Appellant's possession, following his admission of guilt and his agreement to produce the weapon, despite the recovery memo being attested by police officials. The recovery of the weapon allegedly took place in broad daylight within a densely populated area. However, the Investigating Officer (I.O.) failed to involve any independent witnesses during this process. Furthermore, the I.O. did not provide a plausible explanation during his testimony regarding the absence of independent witnesses to observe the recovery proceedings. This omission raises significant concerns about the integrity of the recovery process. It is a well-established principle of law, affirmed by superior courts repeatedly, that when the location to be searched is already known and situated in an inhabited area, it becomes imperative for the police officer to involve witnesses from the locality in the investigation. This requirement ensures that searches and recoveries are carried out transparently and in the presence of impartial witnesses. In similar circumstances, the Honourable Supreme Court of Pakistan, in the well-known case of ***Muhammad Azam v. The State (PLD 1996 SC 67)***, held that: *"In other words if the place is 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. If sincere effort .is, made by the police officer to join witnesses from locality in the search but he fails and gives reasonable explanation for taking witnesses not from the locality and the mind of the Court is satisfied that the police officer has not acted dishonestly, then such evidence can be accepted".* Furthermore, the Honourable Supreme Court of Pakistan observed 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 Kalashankov 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 Kalashankov 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".

8. The place of recovery, an open area strewn with paddy straw, was neither secluded nor under the exclusive ownership or control of the appellant. Being readily accessible to the general public, it casts serious doubt on the element of *conscious possession* attributable to the appellant. Consequently, the alleged recovery becomes highly questionable in terms of its evidentiary value. In a comparable context, the Honourable Supreme Court of Pakistan, in the case of ***Sikandar Ali alias Bhola v. The State (2025 SCMR 552)***, held that: *"Insofar as the recovery of a rope on the pointing out of the petitioner is concerned, the same was recovered from an open place i.e., under the trees situated in the naval complex, Islamabad. The said place was accessible to the public and the same was not in exclusive possession of the petitioner".* In similar circumstances, the Honourable Court, in the case of ***Manjhi v. The State (PLD 1996 Karachi 345)***, held that: *"In this case also the appellant/accused was already in police custody in Crime No. 130 of 1988 and according to prosecution he volunteered to produce the incriminating articles from his village, as such the police was aware of the place from where they had to make search, well in time. As such it was incumbent upon the Investigating Agency to join two or more respectable persons to witness the recovery which they have failed and no explanation whatsoever has been given. The prosecution has failed to establish the exclusive possession of the heap of fodder as according to the prosecution, it was lying in front of the house of the appellant/accused Manjhi. While in case of Gulshan alias Gulsho, it is stated that the incriminatings were produced from the hedge of Dilawar's house as such in both the cases exclusive possession is not there".*

9. With regard to the positive report of the ballistic expert, it is pertinent to note that the incident in the main murder case occurred on 26-03-2018, while the alleged recovery of the weapon was made on 01-04-2018. The case property was subsequently dispatched to the Forensic Science Laboratory, Forensic Division, Larkana, on 03.04.2018, after an unexplained delay of two days. This lapse raises questions about the chain of custody and the integrity of the evidence. In such circumstances, the evidentiary value of the ballistic expert's report is inherently dependent on the legitimacy of the recovery itself; if the recovery is found to be unreliable or doubtful, the expert report consequently loses its probative value in the eyes of the law. In analogous circumstances, the Honourable Supreme Court of Pakistan, in the case of ***Yaqub Shah v. The State (1995 SCMR 1293)***, held 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 case, ***Iftikhar Hussain and others v. The State (2004 SCMR 1185)***, the Honourable Supreme Court of Pakistan held 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".* In light of the foregoing circumstances, the impugned judgment rendered by the learned Trial Court is legally unsustainable and warrants interference by this Court.

10. In light of the aforementioned findings and the principle of benefit of doubt, this Court finds that the prosecution has not met the burden of proof required for a conviction. Therefore, the present Criminal Appeal is allowed and

the Impugned Judgment is hereby set-aside and the Appellant is acquitted of the charges on the benefit of doubt. Consequently, the Appellant shall be released forthwith if not required to be detained in any other case.

JUDGE