IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.224 of 2024

Appellant	:	Nasir Khan son of Rahim Dad *Through* Mr. Muhammad Riaz Abbasi, Advocate.
Respondent	:	The State *Through* Mr. Zahoor Shah, Additional P.G. Sindh.
Date of hearing	:	05.11.2026
Date of judgment	:	12.11.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. **-** Appellant Nasir Khan challenges the judgment dated 28.02.2024, whereby the learned Vth Additional Sessions Judge, Malir, Karachi, convicted him under section 23(1)(a) of the Sindh Arms Act, 2013, in Sessions Case No.2983 of 2023, arising out of FIR No.332 of 2023, Police Station Sharafi Goth, and sentenced him to rigorous imprisonment for two years and a fine of Rs.25,000/-, with simple imprisonment for three months in default thereof, extending him the benefit of section 382-B, Cr.P.C.

2. The prosecution alleged that, during patrol shortly after midnight on 03.11.2023, ASI Abbas Jadoon and his accompanying personnel received information that the public had apprehended and beaten a suspected robber near Gul Dad Thalla, Mansehra Colony, Landhi, Karachi. Upon reaching there, they were informed that he had escaped, leaving his motorcycle behind. The police pursued and apprehended the appellant at about 0015 hours and allegedly recovered an unlicensed .22-bore revolver, without ammunition, and Rs.200/- from his person. The weapon was sealed, the motorcycle was seized under section 550, Cr.P.C., and the appellant, who was injured, was subsequently taken to JPMC. Following investigation, he was sent up for trial. The prosecution examined complainant ASI Abbas Jadoon, recovery witness PC Muhammad Faizan and investigating officer ASI Muhammad Shafiq. The appellant denied the accusation in his statement under section 342, Cr.P.C., alleging that the weapon had been foisted upon him. He neither testified on oath nor produced defence evidence.

3. Heard and examined the record. The decisive question is whether the alleged recovery was proved beyond reasonable doubt. Police officials are

competent witnesses, and their testimony requires neither rejection nor acceptance merely because of their official status. The principle relied upon by the trial Court in 2023 P.Cr.L.J. Note 9[1], that trustworthy police evidence may sustain a conviction, is unexceptionable; its application nevertheless depends upon the intrinsic reliability of the evidence in the particular case. The discrepancies emerging here required examination on their own merits.

4. The complainant's sworn account of the personal search does not accord with the recovery memo. PW-1 stated that *"…one 22 bore Revolver without any bullet was recovered from the right fold of accused's shalwar."* Conversely, the translated recovery memo, Exh.3/B, describes the weapon as *"…tucked into left side fold of his wearing shalwar."* The translated FIR exhibited at trial likewise mentions the left side, whereas the earlier translation accompanying the appeal mentions the right. The latter variation warrants caution in relying upon the translations; nonetheless, the complainant's deposition and the exhibited recovery memo do not present a consistent account. PW-2 merely attributed the recovery to the appellant's possession without specifying the side. Such a discrepancy may ordinarily be minor, but its significance increases where the personal search is the foundation of the charge and the remaining circumstances also impair confidence in the recovery.

5. The witnesses further differed regarding preparation of the memo. PW-1 stated that *"I had prepared memo of arrest and recovery by sitting inside the police mobile van under the light of hand torch…"* PW-2 attributed its preparation to the light of the mobile's roof bulb. PW-1 admitted that the circumstance stated by him was absent from the memo; PW-2 acknowledged that his police statement did not mention his signing the sealing cloth parcel. These differences do not, in isolation, establish fabrication, but they concern the witnesses' observation of the same recovery proceedings and could not properly be disposed of through a sweeping finding that their testimony remained unshaken.

6. The occurrence, according to the prosecution itself, involved a crowd whose members supplied the information, apprehended and beat the appellant, and witnessed the events preceding police intervention. Yet none was identified or examined. PW-1 admitted that *"I had not disclosed the names of persons who disclosed me about the apprehension of accused by the public…"* He also acknowledged that the locality was

[1] *Noorullah v. The State*

thickly populated. Although PW-2 claimed that five or six persons declined to become mashirs, their names were recorded neither in the memo nor in his police statement. The investigating officer similarly referred to two or three persons refusing participation during inspection without recording that circumstance in the inspection memo. Neither the absence of a private witness nor the omission to issue notices under section 160, Cr.P.C., automatically invalidates a recovery. Here, however, the failure to identify any available inhabitant deprives the disputed police account of corroboration naturally available on its own showing. The unidentified persons' description of the appellant as a "dacoit" was, moreover, no proof of robbery and could not reinforce the separate charge of unlawful possession.

7. The medical record and forensic opinion establish matters of limited relevance. Exhs.3/E and 3/F support the appellant's injured condition and treatment at JPMC; they do not prove recovery of a firearm. The forensic report, Exh.5/G, records receipt on 04.11.2023 of a parcel bearing three intact seals and confirms that the revolver was of .22 bore, adding that *"It is in working order at the time of examination."* Its firing system was described as "*One by One*." The Malkhana extract and diary entries provide documentary support for custody and transmission to the laboratory. Further, the identifier KML10/RV/7066/23 creates no discrepancy, the report expressly recording its engraving by the forensic office. These features support the examination and identity of the article submitted; they cannot independently establish its antecedent recovery from the appellant. Even accepting the report at its full technical value, the central doubt concerning possession remains unresolved.

8. The trial Court also relied upon the appellant's failure to testify on oath or produce defence witnesses and observed that he had advanced no plea of false implication. The latter observation is contradicted by his statement under section 342, Cr.P.C., wherein he expressly stated that *"No madam, it is false and pistol has been foisted upon me."* He reiterated his denial in his concluding answer. His explanation was therefore required to be considered, though its rejection could not itself prove the prosecution case. Equally, his election not to enter the witness box supplied no missing link in the prosecution evidence. The rule against drawing an adverse inference from that election is recognized in PLD 1991 SC 787[2] and PLD 1993 SC 251[3]. The burden of proving the charge remained upon

[2] *Mst. Ameer Khatun v. Faiz Ahmad and others*
[3] *Munawar Ali alias Munawar Hussain v. The State*

the prosecution throughout. The forensic opinion and custody evidence were also not separately put to the appellant during his examination; in any event, neither circumstance cures the deficiencies in proof of recovery.

9. The cumulative effect of these circumstances is material. The inconsistent account of the personal search, differing descriptions of preparation of the recovery memo, absence of any identified inhabitant from an occurrence admittedly involving public participation, and the trial Court's reliance upon the appellant's failure to adduce defence evidence render the conviction unsafe. General observations concerning the prevalence of armed crime cannot substitute proof of the particular accusation. As reiterated in 2018 SCMR 772[4], even one circumstance creating reasonable doubt in a prudent mind entitles an accused to its benefit as a matter of right. The doubt here arises from the prosecution record itself.

10. Consequently, the appeal is allowed. The conviction and sentence recorded through judgment dated 28.02.2024 are set aside, and appellant Nasir Khan son of Rahim Dad is acquitted of the charge by extending him the benefit of doubt. Being on bail, his bail bond stands cancelled and his surety is discharged. The fine, if paid, shall be refunded. The case property shall be dealt with in accordance with law.

J U D G E

[4] *Muhammad Mansha v. The State*