

## IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

### Criminal Appeal No.S-32 of 2022

Appellant : Imamuddin S/o Kouro,  
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 criminal appeal is meticulously examined by this Court, having been filed against the judgment dated May 19, 2022 (hereinafter referred to as the “*Impugned Judgment*”), rendered by the learned Additional Sessions Judge-II, Jacobabad (hereinafter referred to as the “*Trial Court*”), in Sessions Case No. 153 of 2018. The appellant, Imamuddin S/o. Kouro Machhi, was convicted under Section 25 of the Sindh Arms Act, 2013, and was sentenced to undergo rigorous imprisonment for a term of five years, coupled with a fine of Rs. 30,000/-. In default of payment of the fine, the appellant was to suffer simple imprisonment for an additional six months. The benefit of Section 382-B of the Code of Criminal Procedure (Cr.P.C.) was extended to the appellant. This appeal seeks to challenge the legality and propriety of the aforementioned conviction and sentence, praying for its setting aside and the consequent acquittal of the appellant.

2. The genesis of the present appeal lies in FIR No. 39 of 2018, lodged on April 1, 2018, at around 1445 hours by Complainant SIP Shabir Ahmed of Police Station Saddar, Jacobabad. According to the prosecution’s narrative, on the very day of the FIR, accused Imamuddin (the appellant herein) and co-accused Abdul Qadir, who were already in police custody in connection with a murder case (FIR No. 31 of 2018), were taken out from the police lock-up for interrogation. This action was duly recorded vide entry No. 15 in the Roznamcha at approximately

1400 hours. During the course of this interrogation, both accused voluntarily expressed their readiness to produce the crime weapons. Consequently, Complainant SIP Shabir Ahmed, accompanied by his subordinate staff, including PC Ghulam Nabi, PC Israr, PC Babal, PC Khuda Bux, and DPC Ghulam Murtaza, departed from the police station in a police mobile at 1415 hours, as documented in Roznamcha entry No. 16. Their destination was the village of the accused. Upon their arrival at approximately 1445 hours, the accused individuals signaled the police mobile to halt. They then led the police party to a heap of paddy straw situated on the southern side of their house. From this location, accused Imamuddin, the appellant, is alleged to have produced an unlicensed SBBL gun of 12 bore, while co-accused Abdul Qadir reportedly took out an unlicensed TT pistol, complete with a magazine containing two live bullets with erased numbers. Both accused explicitly disclosed that these weapons were unlicensed and had been utilized by them in the commission of Crime No. 31 of 2018, registered at Police Station Saddar. Following the recovery, the complainant meticulously sealed the weapons in cloth parcels and prepared a recovery memo on the spot, which was subsequently signed by the mashirs, PC Ghulam Nabi and PC Babal. The accused, along with the secured properties, were then brought back to the police station, where FIRs were duly lodged against them. Following the investigation, the challan was submitted against the Appellant. Copies of the documents and statements were supplied to the Appellant before commencement of trial. A formal charge was framed against the Appellant to which the Appellant did not plead guilty and claimed to be tried.

3. 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 below.

- **PW-01 SIP Shabir Ahmed (Complainant):** As the primary witness, SIP Shabir Ahmed provided a detailed account of the events leading to the recovery. He testified regarding the arrest of the accused, their voluntary offer to produce the weapons, the specific details of the recovery of the 12-bore SBBL gun from Imamuddin and the TT pistol from Abdul Qadir

from the paddy straw heap. He further elaborated on the process of sealing the weapons, the preparation of the recovery memo (Ex.05/A), the lodging of FIR No. 39 of 2018 (Ex.05/B), and the subsequent dispatch of the recovered weapons for ballistic examination. His testimony was further supported by the production of photo stat copies of Roznamcha entries No. 15 and 16 (Ex.05/D), which documented the movement of the accused from the lock-up and the departure of the police party for recovery.

- **PW-02 PC Ghulam Nabi (Recovery Witness/Mashir):** PC Ghulam Nabi, who was present during the recovery operation, corroborated the complainant's version in all material particulars. His testimony affirmed the recovery of the weapons from both accused at the designated spot and the preparation of the mashirnama (Ex.05/A), lending credence to the prosecution's narrative of the recovery.

4. In response to the charges and the evidence presented by the prosecution, the accused Imamuddin unequivocally denied the allegations leveled against him, asserting his innocence. He exercised his right to examine himself on oath under Section 340(2) of the Code of Criminal Procedure. However, it is pertinent to note that the appellant did not opt to adduce any evidence in his defense, nor did he present any defense witnesses to counter the prosecution's claims. The learned trial Court, after a thorough examination of the evidence presented by both sides, found the prosecution's evidence to be consistent and adequately supported by the forensic findings. It concluded that any minor contradictions were inconsequential and did not undermine the veracity of the prosecution's case. Furthermore, the defense's attempts to establish mala fide or to shake the prosecution's stance were deemed unsuccessful, leading to the conviction of the appellant.

5. The learned counsel representing the appellant, vehemently assailed the impugned judgment, presenting a multi-faceted argument aimed at demonstrating the infirmities in the prosecution's case and the erroneous

conclusions drawn by the learned trial court. Firstly, the learned counsel emphasized the inherent weakness of the prosecution's reliance solely on police officials as witnesses. He argued that all prosecution witnesses, namely PW-01 SIP Shabir Ahmed and PW-02 PC Ghulam Nabi, are members of the police force and are, therefore, interested parties. He highlighted the absence of any independent witness from the general public, despite the alleged recovery taking place in a populated area. This omission, according to the learned counsel, casts serious doubt on the impartiality and credibility of the recovery proceedings, suggesting a deliberate avoidance of independent corroboration. Secondly, a significant point of contention raised by the learned counsel was the legality and evidentiary value of the joint mashirnama. He contended that the preparation of a single mashirnama for the alleged recoveries from two distinct accused individuals (Imamuddin and Abdul Qadir) is a fundamental flaw, rendering the entire recovery proceeding a nullity in the eyes of the law. Such a joint document, he argued, undermines the individual responsibility and specific acts attributed to each accused, making it impossible to ascertain the precise circumstances of each recovery. Thirdly, the learned counsel meticulously pointed out several material contradictions and improvements in the testimonies of the prosecution witnesses. He highlighted discrepancies regarding the identity of the police mobile driver, with PW-01 SIP Shabir Ahmed mentioning DPC Ghulam Murtaza, while PW-02 PC Ghulam Nabi named PC Ali Hassan. Furthermore, he drew attention to the varying accounts of the number of live bullets recovered from the TT pistol, with the mashirnama and complainant indicating two bullets, while PW-02 PC Ghulam Nabi deposed three. A crucial contradiction was also noted concerning the authorship of the recovery memo; the complainant stated he dictated it to PC Israr, whereas PC Ghulam Nabi suggested the complainant wrote it himself. These inconsistencies, the learned counsel argued, are not minor discrepancies but rather material contradictions that expose the fabricated nature of the prosecution's narrative and render the ocular testimony unworthy of credit.

Fourthly, it was strenuously argued that the entire recovery was a staged event, orchestrated by the police to strengthen the main murder case (Crime No. 31 of 2018) against the appellant. The learned counsel posited that the alleged recovery of the weapon was not a genuine discovery but rather a pre-planned act designed to create incriminating evidence where none existed. He submitted that the timing and circumstances of the recovery, particularly the fact that the accused were already in police custody, lend credence to the assertion that the weapon was foisted upon the appellant. Fifthly, the learned counsel criticized the learned trial court's approach to the evidence. He contended that the trial court failed to properly assess and evaluate the evidence, particularly during the cross-examination of the witnesses. He argued that the significant contradictions and inconsistencies brought out during cross-examination were not given due weight, and the defense version was brushed aside without a rational and objective assessment. This, he submitted, led to a miscarriage of justice, as the trial court's conclusions were based on a misreading of the evidence. Finally, the learned counsel for the appellant asserted that the prosecution had miserably failed to establish the guilt of the appellant beyond a reasonable doubt. He emphasized that the cumulative effect of the lack of independent corroboration, the illegal joint mashirnama, the material contradictions in testimonies, and the suspicious circumstances surrounding the recovery collectively create a significant doubt in the prosecution's case. Therefore, he prayed that this Honourable Court may graciously be pleased to set aside the impugned judgment, acquit the appellant of the charges, and order his release.

6. Conversely, the learned Deputy Prosecutor General (DPG) for the State, robustly defended the impugned judgment and urged this Honourable Court to dismiss the appeal, asserting that the prosecution had successfully proven its case beyond all reasonable doubt. Firstly, the learned DPG contended that the testimonies of both prosecution witnesses, PW-01 SIP Shabir Ahmed and PW-02

PC Ghulam Nabi, were consistent on all material particulars. He conceded that minor discrepancies might exist, but he argued that such minor contradictions are excusable and do not cause a dent in the prosecution case. He emphasized that no material was produced by the defense to indicate any ill-will or enmity against the police witnesses, which would suggest false implication of the accused. Secondly, addressing the appellant's argument regarding the absence of independent witnesses, the learned DPG submitted that the non-association of private individuals during the recovery proceedings is not fatal to the prosecution's case. He highlighted that it is a common phenomenon, judicially recognized by Superior Courts, that members of the general public are often hesitant to come forward and become witnesses in police cases due to fear of reprisals and the deteriorating law and order situation in the country. It is argued that the Superior Courts noted the reluctance of the general public to become witnesses in such cases and affirmed that police officials are good witnesses if their testimony remains unshattered and no mala fide is attributed to them. Thirdly, the learned DPG asserted that police witnesses are as good as any other citizen, and their depositions cannot be discarded merely because they are police officials, unless mala fide is established against them. He argued that the defense failed to establish any mala fide, ill-will, or personal grudge against the investigating officer or the recovery witnesses. Fourthly, a crucial aspect of the prosecution's case, as highlighted by the learned DPG, was the ballistic expert report (Ex.05/C). The learned D.P.G contended that the recovery of the weapon was voluntary and admissible under Article 40 of the Qanun-e-Shahadat Order, 1984. He emphasized that the recovery was effected at the instance of the accused, which makes the discovery admissible, even if the information leading to it amounts to a confession. Finally, the learned DPG submitted that the defense failed to produce any material to suggest that the alleged weapon was foisted against the accused to strengthen the main murder case. He concluded that the learned trial court's judgment was based on sound legal principles and a proper

appreciation of the evidence, and therefore, the appeal should be dismissed as being without merit.

7. This Court has meticulously perused the entire record of the case, including the evidence adduced by the prosecution, the cross-examination of witnesses, the exhibits presented, and the detailed arguments advanced by both the learned counsel for the appellant and the learned Deputy Prosecutor General for the State. The cornerstone of the prosecution's case rests on the recovery of an unlicensed 12-bore SBBL gun at the instance of the appellant, Imamuddin, purportedly used in the principal murder case (Crime No.31/2018). The prosecution contends that the weapon was recovered from the appellant's possession following his voluntary disclosure and willingness to produce it. This recovery, though attested solely by police officials, forms the crux of the prosecution's narrative. 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 Klashnikov 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 Klashnikov 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 incriminating articles 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-F.I.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 Appellant is acquitted of the charges. The Impugned Judgment is hereby set aside, and the Appellant is acquitted on the benefit of doubt. Consequently, the Appellant shall be released forthwith if not required to be detained in any other case.

**JUDGE**