IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No. S-148 of 2024
Criminal Appeal No.S-149 of 2024

Appellant:	Kamran s/o Rasool Parhiyar through Mr.Syed Shafique Ahmed Shah, Advocate.
Respondent:	The State through Mr. Altaf Hussain Khokhar, Deputy Prosecutor General.
Complainant(s):	Zaheer Abass Khatri, [Criminal Appeal No.S-148 of 2024] and SIP Umaid Ali Lakho [Criminal Appeal No.S-149 of 2024].
Date of hearing:	28.04.2025
Date of Decision:	03.06.2025.

J U DG M E N T

Riazat Ali Sahar, J. Both the above-captioned Criminal Jail Appeals have been filed by appellant Kamran, wherein he has challenged two separate judgments. One pertains to the main offence in the Robbery and attempt to murder case, while the other relates to an offshoot case arising from the main offence. Since both appeals stem from interconnected proceedings, they are being disposed of through this single judgment.

2. Through **Criminal Appeal No. 148 of 2024**, the appellant, being aggrieved and dissatisfied with the judgment dated 12-11-2024 passed by the learned **1st Additional Sessions Judge / Model Criminal Trial Court (MCTC), Tando Allahyar**, in **Criminal Case No. 254 of 2022 (Re: The State vs. Kamran & Another), arising out of Crime No. 103/2022**

registered at Police Station A-Section Tando Allahyar under **Sections 324, 392, and 34 PPC**, prefers the instant appeal. By the impugned judgment, the learned trial Court convicted the appellant and sentenced him to undergo Simple Imprisonment for seven (07) years for the offence punishable under Section 324 read with Section 34 PPC, along with a fine of Rs. 50,000/-, and in default thereof, to suffer Simple Imprisonment for six (06) months. In addition, for the offence under Section 392 PPC, the appellant was sentenced to Rigorous Imprisonment for ten (10) years, together with a fine of Rs. 50,000/-, and in default of payment of fine, to suffer Simple Imprisonment for a further six (06) months. The benefit of Section 382-B Cr.P.C. was extended to the appellant, and all the sentences were ordered to run concurrently. The appellant, being dissatisfied with the findings and sentences awarded, seeks the indulgence of this Honourable Court to call for the record and proceedings of the above-referred criminal case from the learned trial Court.

3. Through **Criminal Appeal No. 149 of 2024**, the appellant, being aggrieved and dissatisfied with the judgment dated 14.11.2024 passed by the learned **1st Additional Sessions Judge / Model Criminal Trial Court (MCTC), Tando Allahyar**, in **Criminal Case No. 249 of 2022 (Re: The State v. Kamran), arising out of Crime No. 104 of 2022 registered at Police Station A-Section Tando Allahyar under Section 23 (i) (a) of the Sindh Arms Act, 2013**, submits the present appeal. By way of the impugned judgment, the learned trial Court

convicted the appellant for the offence punishable under Section 23 (i) (a) of the Sindh Arms Act, 2013, and sentenced him to suffer Rigorous Imprisonment for a period of seven (07) years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of the fine, to undergo Simple Imprisonment for a further period of six (06) months. The benefit of Section 382-B of the Code of Criminal Procedure, 1898, was rightly extended to the appellant. The appellant, being dissatisfied with his conviction and sentence, prefers this Criminal Appeal with the humble prayer that this Honourable Court may graciously be pleased to call for the record and proceedings of the above-mentioned criminal case from the learned trial Court and, after hearing the learned counsel for the parties, be further pleased to set aside the impugned judgment dated 14-11-2024 and extend the relief of acquittal to the appellant, in the interest of justice.

4. Tersely stated, the brief facts of the prosecution case, as set out in Criminal Appeal No. 148 of 2024, are that on 19.05.2022, the complainant, his brother Muhammad Zubair, and their employee Shamsuddin Halepoto were present at their Mini Mart shop, which customarily operates from 11:00 a.m. until 1:00 a.m. At approximately 12:15 a.m. on 20.05.2022, three individuals arrived on a 125 cc motorcycle. Two of the assailants, armed with pistols, dismounted and entered the shop, while the third remained outside with the engine running. The armed assailants, at gunpoint, held the complainant and his associates hostage and forcibly robbed the cash counter, taking approximately Rs.27,000/-

to Rs.28,000/- in mixed denominations. They further robbed Rs.5,000/- in cash from the complainant's pocket. From Muhammad Zubair, they snatched an Oppo touchscreen mobile phone and a black wallet, while from Shamsuddin, they seized an Itel keypad mobile phone. When resistance was offered, the assailants, with the intention of committing murder, opened fire upon the complainant and his companions. The complainant, in lawful self-defence, used his licensed pistol to fire upon the robbers. As a result, two of the assailants were injured, while the third fled the scene on foot. The complainant and his companions then approached the injured assailants, who were found to be in a semi-conscious state. The police were promptly informed and arrived at the scene within a few minutes. Upon police arrival, the injured assailants were disarmed, and initial inquiries revealed their identities: one of the injured, Kamran s/o Rasool Bux Parhyarri, disclosed his name, while he identified the other unconscious accused as Hyder s/o Aijaz Shaikh. Kamran further stated that the third, absconding accused, was an associate of Hyder Shaikh. A subsequent search of Kamran resulted in the recovery of a black wallet belonging to Muhammad Zubair, containing Rs.1,100/-, photocopies of CNIC, visiting cards, and a photograph of Muhammad Zubair. Additionally, an Itel keypad mobile phone belonging to Shamsuddin, a Samsung mobile phone, and another white-coloured keypad mobile phone were recovered. From the unconscious Hyder Shaikh, an Oppo touch screen mobile phone and a Vivo mobile phone, robbed from Muhammad Zubair,

were recovered. The motorcycle used by the assailants was inspected and found without registration number, with engine No. R-737112 and chassis No. EB-419352. Upon inquiry, Kamran admitted that the pistols were unlicensed and that the motorcycle was undocumented. From the crime scene, 10 spent casings of 9mm and 12 spent casings of 30-bore pistols were collected and sealed as evidence. The 30-bore TT pistol recovered from Kamran was found loaded with two bullets, while the 9mm pistol from Hyder Shaikh was loaded with one bullet. The injured accused were transported to Civil Hospital Tando Allahyar, where the medical officer confirmed that Hyder Shaikh had expired. Kamran, however, received first aid and was transferred under police custody to Hyderabad for further medical treatment. Necessary proceedings concerning the deceased accused were carried out at the hospital. Thereafter, the complainant proceeded to the police station and lodged the present FIR, narrating the facts as stated above. The investigation was accordingly commenced.

5. Tersely, in Criminal Appeal No. 149 of 2024, the brief facts of the prosecution case, as disclosed in the FIR, are that on 20.05.2022 at approximately 0015 hours, the accused Kamran son of Rasool Bux, by caste Parihyar, resident of Meer Paro, Tando Jam, was arrested in connection with Crime No. 103/2022 under Sections 392, 324, and 34 of the Pakistan Penal Code. At the time of his arrest, a T.T. pistol of 30 bore calibre, along with a magazine and two live rounds, was recovered from his possession. Upon inquiry, the accused failed to produce any valid licence or lawful authority for

possessing the said weapon. Consequently, a mashirnama of arrest and recovery was prepared on the spot in the presence of private witnesses (mashirs). Thereafter, SIP Umaid Ali Lakho, the complainant, lodged a separate FIR against the accused, for having committed an offence punishable under Section 23 (1) (a) of the Sindh Arms Act, 2013, on behalf of the State.

6. After completing all the requisite formalities, the charge was framed separately against the accused in both cases. During the trial of the main (Crime No.254/2022), the prosecution examined following witnesses:

> **PW-1 Complainant Zaheer Abbas Khatri** was examined at Ex. 04. He produced the FIR at Ex.4/A
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> **PW-2 Medical Officer Dr. Bhuroo Khan** was examined at Ex. 05. He produced police letter of injured Kamran dated 20-05.2022. Provisional Medical Certificate of injured accused Kamran, Police letter for conducting the post mortem of dead accused Haider, Lash Chakas Form, Final Post Mortem Certificate, receipt of handing over the dead body to SIP Umaid All Lakho and refer letter at Ex5/A to Ex.5/G.
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> **PW-3 Muhammad Zubair (mashir)** was examined at Ex.06. He produced memo of arrest and recovery of accused Kamran and Haider, Danishtnana, memo of inspection of dead body of dead accused Haider, memo of injuries of accused Kamran, clothes of dead accused and memo of arrest of accused Irfan al Ex.6/A to Ex.6/F respectively
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> **PW -4 Muhammad Faheem (mashir)** was examined at Ex.07. He produced the memo of place of wardat at Ex.7 / A
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> **PW-5 SIP Umaid All Lakho (First 1.0)** was examined al Ex.08 He produced entry No.31, entry No.37, entry No. 15 and 20 on one page, Entry No.45, entry No. 9. Letter for FSL of motorcycle of accused, report of FSL dated 25.05.2022 and FL report of motorcycle dated 07.06.2022 at Ex.8/A to Ex.8/H;
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> **PW-6 Samiullah** was examined at Ex.09.
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> **PW -7 Rizwan Ali** was examined at Ex. 10.

The learned DDPP has given up PWs ASI Abdul Haleem and PC Ghulam Abbas vide statement at Ex.11.

Application U/S 540 Cr.PC submitted by the learned DDPP for the state for calling the witness Inspector Syed Ibrahim Shah at Ex. 12 which was allowed vide order dated 07.10.2024.

PW-8 Inspector Ibrahim Shah (second I.O) was examined at Ex.13 He produced memo of pistol, roznamcha entry No.20 dated 05.01.2023 and Photographs downloaded from the ID of one Irfan Haider Shaikh at Ex. 13/A to Ex. 13/C respectively.

7. After completing all the requisite formalities, the charge was framed separately against the accused in both cases. During the trial of the main (Crime No.249/2022), the prosecution examined following witnesses:

PW-1 Muhammad Zubair (Mashir) was examined at Ex.03 he produced Mashirnama of arrest and recovery at Ex.03/A.

PW -2 SIP Umaid Ali Lakho I.O was examined at Ex.04 he produced entry No.31, entry No.36, FIR, Entry No.08 & 20 on one page, entry No.70 of Malkhana register No. 19, letter to FSL and FSL report at Ex.04/A to Ex.4/G respectively.

PW-3 PC Deen Muhammad was examined at Ex.05.

PW-4 PC Munawar Hussain was examined at Ex.06

8. Trial court recorded statement of accused under section 342, Cr.P.C. wherein he pleaded his innocence and claimed his false implication in this case due to dispute over landed property. However, the appellant neither examine himself on oath nor brought any defence witnesses.

9. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above through impugned judgment. Hence, the appellant has preferred instant Criminal Jail Appeals against the said judgment.

10. The learned counsel for the appellant advanced several arguments assailing the convictions and sentences. In essence, it was contended that the complainant admittedly failed to produce his licensed pistol or its licence during the trial. This omission, counsel argued, undermines the prosecution's version of events – particularly the proportionality of the retaliatory force used by the complainant – and casts doubt on whether the encounter transpired as alleged. Relatedly, the FIR and testimonies lacked certain details (e.g. the exact number of shots fired, positions of the parties, etc.), suggesting that material aspects of the occurrence were not properly documented, which could indicate afterthought or embellishment. It was suggested that the entire incident may have been a fabrication or at least an exaggerated account. The defence theory was that the appellants had a prior enmity or quarrel with the complainant's party and that an altercation (unrelated to robbery) led to the gunfire. In cross-examination a specific suggestion was put to PW-1 (complainant) that the accused had merely come to purchase a bottle of water and a dispute over small change ensued, during which the complainant (allegedly in a drunken state) shot the accused. Although PW-1 denied this, the defence maintained that the appellants were roped in due to a prior dispute (possibly over property), and that the robbery story was concocted as a cover-up for what was essentially the complainant's excessive use of force. In sum, it was argued that the plea of private defence put forth by the complainant was dubious and that the prosecution failed to discharge its evidentiary burden to prove the appellants' aggressive

intent beyond reasonable doubt. The learned counsel also attempted to highlight alleged discrepancies in the recovery memos and forensic evidence. For instance, it was pointed out that the handle of the pistol recovered from the appellant was broken but this was not noted in the recovery memo, and certain markings on the weapon were not recorded. These omissions were urged as indicators of a flawed investigation, possibly casting doubt on the veracity of the recoveries. It was argued that if the Investigating Officer could be negligent or selective in recording such details, the entire recovery of weapons and property might be questionable. Furthermore, since the complainant's own weapon was not produced, the defence implied that some of the spent casings collected from the scene could have emanated from an unknown weapon, thereby muddying the forensic linkage of crime empties to the appellant. Lastly, and in the alternative, the learned counsel pleaded for leniency in sentencing. He submitted that even if the convictions were upheld, the sentences – particularly the seven years' imprisonment under Section 324 PPC– were excessive in the circumstances. Stressing that no fatal injury was caused to the victims and that the appellant himself sustained multiple gunshot wounds in the episode, the counsel prayed that the Court exercise its discretion to reduce the sentences. It was urged that the appellant has already "paid a price" by being injured and that a lesser term (closer to the minimum) would adequately serve the ends of justice, given the "doubtful circumstances" surrounding the incident. In this context, the learned counsel invoked the maxim "in dubio pro reo" (the benefit of doubt

goes to the accused) and cited the well-settled principle that even a single circumstance creating reasonable doubt entitles an accused to such benefit as of right. He argued that while the trial court chose to convict, the presence of material doubts should now be reflected at least in mitigation of the sentence.

11. Conversely, the learned Deputy Prosecutor General, Sindh opposed the appeals and fully supported the impugned judgments. He submitted that the prosecution had proved its case to the hilt through an unbroken chain of credible evidence – from the eyewitness accounts to medical and forensic corroboration – all of which unerringly point to the appellant's guilt. The DPG highlighted that the appellant was caught "red-handed" at the crime scene in injured condition, with the stolen money and goods recovered from his possession on the spot. There was no plausible explanation for these inculpatory circumstances consistent with innocence. No ill-will or ulterior motive was demonstrated that might impel the complainant to falsely implicate the appellant; indeed, the defence's own stance implicitly admitted the appellant's presence at the scene (albeit under a different narrative). In such a scenario, the learned DPG argued, there is "hardly any possibility for false implication without any ulterior motive" and a bald denial or alternative story put forth by the appellant "does not appeal to logic or reason" in the face of the prosecution's overwhelming evidence.

12. The State's counsel further contended that the omission to produce the complainant's licensed pistol in court did not dent the

prosecution case in any material way. The fact of a shootout was never seriously disputed – if anything, the defence version also involves an exchange of fire, though under a different pretext. The complainant and other witnesses were cross-examined at length, but nowhere was it suggested that no encounter took place; rather, the defence claim was that the encounter was initiated by the complainant. In these circumstances, the learned DPG maintained that non-production of the licensed weapon was at best a "negligent investigative lapse" which does not vitiate the direct evidence of the occurrence. The recovery of multiple spent casings of two different calibres at the scene and the seizure of two pistols (one from the appellant and one from the deceased co-accused) immediately after the incident, conclusively establish that a gun battle occurred – corroborating the complainant's version and leaving little room for misidentification or fabrication. It was emphasized that all four eye-witnesses (the complainant, his brother, their employee, and even the apprehending police officer) gave consistent accounts of the robbery and the shootout, and their testimony remained unshaken on material points. Minor inconsistencies or omissions in an FIR are not enough to disbelieve such cogent evidence, especially given that crimes like the present are often marked by confusion and urgency. The DPG reminded that courts must not lose sight of the fact that armed dacoits today are exceedingly desperate and dangerous, as observed by the Honourable Supreme Court in ***Dadullah and another vs. The State (2015 SCMR 856)*** – they do not hesitate to open fire on innocent citizens and thus "courts should not hesitate in

awarding the maximum punishment in cases like the present one, where it has been proved beyond any shadow of doubt that the accused was involved in the offence". On that note, the DPG submitted that the sentences awarded were appropriate to the brutality of the crime and that the appellant "does not deserve any leniency in sentence" given the havoc wreaked by such offences on public safety. He thus prayed for dismissal of both appeals.

13. I have given careful consideration to the rival submissions and have scrutinized the entire trial record with the assistance of learned counsel. This being an appeal against conviction, it is incumbent on this Court to **re-appraise the evidence** and reach an independent conclusion on the merits. The pivotal questions to determine are: (i) whether the prosecution has proved, beyond reasonable doubt, that the appellant (along with accomplices) committed armed robbery and attempted to commit *qatl-i-amd* (murder) upon the complainant party and was found in possession of an unlicensed firearm in the manner alleged; and (ii) if so, whether the sentences awarded are just and proportionate in view of the facts and applicable law. These issues are addressed in turn.

14. The prosecution's narrative rests primarily on the testimony of **PW-1 Zaheer Abbas** (the complainant) – owner of the mini-mart – who was an eye-witness to the entire episode. He gave a vivid and coherent account of the incident, starting from the robbers' arrival and culminating in the exchange of fire and the apprehension

of two assailants. In his deposition, PW-1 stated that around 12:15 a.m., three men arrived on a motorcycle; two of them, armed with pistols, entered the shop and at gunpoint looted cash and valuables (around Rs.32,000/-, two mobile phones and wallets) from the complainant, his brother and their employee. When the victims offered resistance, the robbers *"with intention to commit our murders made firing upon us*", whereupon PW-1 *"took my licensed pistol and made fire upon the accused in our defence"*. He further narrated that the accused persons fled out of the shop while still firing, attempting to mount their motorcycle, and *"I followed them and came out of the shop and made straight fires upon the accused. The fires made by me hit two accused persons and the third accused person… made his escape good"*. As a result, two of the robbers fell injured, while the third escaped. PW-1 and the witnesses then overpowered the injured accused and immediately called the police, who arrived within minutes and took custody of the scene.

15. This eye-witness account is fully corroborated by **PW-3 Muhammad Zubair,** who is the complainant's brother and was present throughout the incident. PW-3 testified that upon the robbers' onslaught, they resisted, at which the robbers opened fire but fortunately missed their targets. He stated: "*My brother Zaheer Abbas took his licensed pistol which was kept at the counter and fired in defence upon the accused, due to which the accused persons left the shop while continuing firing. My brother then came out of the shop and fired upon the accused persons. The shots fired by him hit two of the accused when they were on the motorcycle to make good their*

escape". This resulted in the two assailants collapsing, after which the third fled on foot. PW-3's account of what happened before and after – the robbery, the firing by the robbers, the retaliatory firing by the complainant, and the capture of the culprits – aligns in all material particulars with the testimony of PW-1. Both these witnesses were subjected to extensive cross-examination, but their core assertions could not be shaken. Minor discrepancies were elicited – for example, PW-1 conceded that the FIR does not mention where each person was positioned in the shop during the robbery or how many shots he fired – but such omissions are neither unexpected nor fatal. First Information Reports are not encyclopedic narratives; they are meant to set out the essence of the occurrence. It is well-settled that **immaterial omissions in an FIR or testimony do not render the witness untruthful,** so long as the **substance of the allegation is consistently maintained.** The maxim "***falsus in uno, falsus in omnibus"*** (false in one thing, false in everything) is not to be applied mechanically to discard testimony of a witness for **trivial inconsistencies.** Our courts have repeatedly held that minor contradictions or memory lapses on peripheral details do not erode the credibility of truthful witnesses. In the present case, I find **PW-1** and **PW-3** to be **natural, confidence-inspiring witnesses**; their presence at the crime scene is admitted and their veracity remains unblemished. They had no relationship with the accused prior to this incident, and the defence could not impute any motive for them to falsely implicate the appellant in such a heinous crime. As the Supreme Court observed in ***Salah-ud-Din vs. The State***

(2010 SCMR 1962), when there is no proven enmity between the parties, false implication becomes highly improbable. Here, no enmity whatsoever was demonstrated – the suggestion of a prior dispute was vague and unsubstantiated – hence the eyewitnesses' testimony, corroborated by other evidence, firmly establishes the appellant's culpability.

16. The ocular account is strongly supported by the medical evidence. **PW-2 Dr. Bhuroo Khan**, who examined the injured accused and conducted the post-mortem of the deceased co-accused, found multiple gunshot wounds on both. Significantly, the appellant Kamran sustained 08 firearm wounds (entry/exit) on various parts of his body, and the deceased co-accused Haider sustained 04 firearm wounds. The medico-legal certificates (Ex.5/A–5/G) detail these injuries. Crucially, the doctor noted that **all the wounds were on the posterior side** of the bodies. In other words, the assailants were shot **from behind**. This perfectly dovetails with the prosecution story that the complainant fired at the robbers when they were attempting to flee on their motorcycle, with their backs towards the shop. It also negates any theory that the accused were shot from the front or in a face-to-face confrontation – an important point because it rebuts any insinuation that the complainant might have initiated the shooting. During cross-examination of the doctor, **the defence did not dispute the orientation of the injuries** (no suggestion was made that the wounds were not from the backside). Such medical evidence lends **confirmatory support** to the eye-witnesses,

reinforcing that the events unfolded exactly in the manner they described.

17. Forensic evidence further fortifies the prosecution case. The police recovered **22 spent bullet casings** from the crime scene (of two different calibres) and seized two firearms from the apprehended accused – a **30-bore T.T. pistol** from the appellant Kamran and a **9mm pistol** from the deceased co-accused Haider. These were sent for forensic ballistics analysis. According to the Ballistics Expert's report (Ex.8/G), out of the recovered casings, **13 were fired from the 30-bore pistol** (seized from the appellant) and **5 were fired from the 9mm pistol** (seized from co-accused Haider). The remaining four empties were of 9mm calibre but did not match the co-accused's weapon, which implies they were fired from a **third 9mm pistol** – logically, the complainant's licensed 9mm weapon (since the third robber who escaped was not alleged to have fired, and no other weapon was recovered). This forensic finding powerfully corroborates the firefight: it confirms that **both the appellant and his accomplice used their guns at the scene**, which is consistent with the witnesses' claim that the robbers fired first (empty shells matching the robbers' weapons were found) and that the complainant returned fire (additional 9mm shells not from the co-accused's gun were found, presumably from the complainant's sidearm). Notably, the recovered pistols were examined and found to be in working order, and the appellant 'himself admitted at the spot' that his weapon was unlicensed. The forensic science thus leaves little room for doubt: the appellant's **unlicensed T.T. pistol was**

actively used in the commission of the offence, and he and his accomplices did engage in a shootout with the victims.

18. Moreover, the prompt recovery of the robbed cash and articles from the appellant provides res ipsa loquitur-like proof of his involvement. The record shows that within minutes of the shootout, as the injured appellant lay at the scene, the complainant and PW-3 (Zubair) searched him under supervision of the police and recovered, inter alia, a black wallet belonging to PW-3 containing Rs.1,100/- and his identification documents, an Itel mobile phone snatched from their employee (PW Shamsuddin), another Samsung mobile phone and a wallet containing cash. Likewise, from the deceased co-accused Haider, an Oppo touch screen phone and Vivo phone (robbed from PW-3 Zubair) were recovered. These recoveries were witnessed by PW-3 and one Shamsuddin (who acted as mashirs), and duly recorded in a mashirnama (Ex.6/A) on the spot. The appellant did not seriously dispute these recoveries; in fact, his belated defence was that the entire case was cooked up after he was shot in an **unrelated incident**, but he offered no explanation as to why the complainant's cash and belongings were found in his pocket. Finding a victim's property in the possession of an accused immediately after a robbery is damning "circumstantial evidence" that our courts consistently rely upon. Here, it provides a direct nexus between the appellant and the crime, and completely belies the suggestion that he was an innocent bystander. It is also worth noting that the motorcycle used by the culprits (a 125cc bike with no number plate) was left at the scene and seized by the police. Subsequent

investigation revealed that the chassis/engine number of this motorcycle was traced to another crime (a prior snatching reported at PS Husri) – further evidence of the criminal pedigree of the venture. In short, the recoveries in this case, both of weapons and of stolen property, form an unbroken chain linking the appellant to the offences beyond doubt.

19. Against this formidable prosecution evidence, the appellant's defence appears implausible and self-contradictory. In his statement under Section 342 Cr.P.C., the appellant vaguely claimed that he was implicated due to a "dispute over landed property" – an assertion that finds no support in the record. He named no adversary, and indeed the complainant party has no known relation or prior acquaintance with the appellant. Tellingly, when given the opportunity, the appellant neither opted to testify on oath (under Section 340(2) Cr.P.C.) nor produced any defence witness or documentary proof of this alleged property dispute. The plea therefore stands as a bare assertion. During trial, the defence floated a different theory through suggestions to PWs – that the encounter sprang from a sudden quarrel over purchasing a water bottle. This theory is at odds with the appellant's own statement and was rightly disbelieved by the trial court. It is not uncommon for accused persons to introduce multiple, mutually inconsistent defences in the hope that one might raise a doubt. However, such a strategy often does more harm than good to their case. Here, the shift from a property dispute in the statement under section 342 Cr.P.C. to a scuffle at the shop in cross-examination underscores the lack of credibility in the

defence. Viewing the record holistically, the Court is satisfied that the **residual doubts** the defence has tried to sow (regarding the genesis of the occurrence) are not supported by any tangible evidence. On the contrary, the appellant's presence at the scene, his injury from the complainant's gunfire, and his possession of the loot, are all admitted or irrefutably proven facts. His participation in the armed robbery and the attempted firing on the victims is established **beyond reasonable doubt**. There is, thus, no substance in the plea that he was a victim of mistaken identity or malice. The *onus* that lay on the prosecution – ***"Ei incumbit probatio qui dicit, non qui negat"*** (he who asserts must prove, not he who denies) – has been fully discharged through coherent and convincing evidence.

20. Before parting with the question of guilt, it is pertinent to address the argument about the non-production of the complainant's weapon. It is undeniable that the complainant's licensed pistol, with which he shot the robbers, was **not produced as an exhibit** before the trial court. The complainant (PW-1) forthrightly conceded in cross-examination that he did not hand over his pistol or its licence to the police during the initial investigation, nor was the licence number mentioned in the FIR. This was indeed a lapse in investigation. The proper procedure would have been for the police to seize the complainant's weapon used in the incident, verify its licence, and have it forensically examined (especially to match all spent casings). In the present case, while 22 casings were recovered, the forensic report matched only 18 of them to the two pistols seized from the accused, leaving 4 casings presumably fired by the

complainant's pistol. Ideally, the complainant's pistol should have been tested to conclusively account for those four casings. The failure to do so could be attributed to oversight or the fact that the complainant was a licensed owner acting in self-defence (and perhaps the investigators did not treat his weapon as "case property"). It is noteworthy that during a re-investigation ordered in this case, **Inspector Muhammad Ibrahim Shah (PW-8)** recorded that the complainant later produced his pistol along with its licence, which the Inspector took into custody and documented. However, this production occurred at a later stage and that pistol was **not formally exhibited** in evidence before the trial court. Thus, from a trial evidence standpoint, there remained a gap: the complainant's pistol was not physically before the court.

21. Does this gap cast a serious doubt on the prosecution case? The answer is two-fold. On the **issue of guilt, no**, it does not. The core of the case – that the appellant was one of the robbers who fired at the victims and was shot while fleeing – does not hinge on the complainant's pistol being exhibited. The fact of the complainant firing in self-defence is acknowledged by both sides. The appellant's own plea implicitly concedes he was shot (he claimed by the complainant, albeit for a different reason). The recovery of extra 9mm casings which did not match the co-accused's gun corroborates that a third weapon (the complainant's) was used. Most importantly, the **appellant was apprehended alive at the scene**, so the case against him does not depend on any bullet from the complainant's pistol being recovered from a body or matched – he was caught with

the loot in hand. In such circumstances, the complainant's failure to produce his weapon is a technical lapse that does not create reasonable doubt about the appellant's involvement in the robbery or his having fired at the victims. Our superior courts have held in numerous cases that an incomplete investigation or negligence of the IO cannot be a ground to acquit an accused when the overall evidence credibly establishes his guilt (for example, non-recovery of a crime weapon or an object is not fatal if other direct evidence is available). I am fortified in this view by the principle that **the prosecution's case cannot be dismissed merely because some investigative steps were imperfect**, so long as the evidentiary standard of proof beyond reasonable doubt is met by what is on record. Here, the eyewitness testimony, medical reports, recoveries, and ballistics in concert leave virtually no room for doubt as to the appellant's guilt.

22. However, the non-production of the complainant's pistol is not entirely without significance. On the question of **sentencing and the manner of the occurrence,** this omission does raise a point worthy of consideration. It goes to the **proportionality of the force used** in retaliation by the complainant and his companions. The evidence shows that the robbers were **retreating** (albeit firing while retreating) and that they were shot from behind. The complainant chased them out of the shop and continued firing until two of them were incapacitated. While legally justified under Section 100 of the Pakistan Penal Code (which allows causing death in defence against robbery), the situation does present a nuance: the

assailants had momentarily turned from aggressors into fleeing targets. The law of **private defence** in Pakistan, as in other jurisdictions, certainly does not require a person whose life is at stake to weigh the force used ***"in golden scales"*** or to pause and calculate the niceties of proportional response – one cannot expect perfect symmetry in the heat of an armed confrontation. As the maxim goes, ***necessitas inducit privilegium quo jura privata*** (necessity induces a privilege in private law); here the complainant's necessity to protect life and property privileged him to use lethal force. That said, the overarching requirement is that the right of private defence extends only so far as to **prevent the harm** and is not a licence for retribution or punitive vengeance. In this case, the complainant's action resulted in the death of one robber and serious injuries to another. The failure to produce the complainant's weapon for scrutiny leaves a lingering question whether the quantum of force used, and the number of shots fired by the complainant, were entirely warranted by the situation (particularly once the robbers were in retreat). Had the weapon been produced, it would have revealed how many bullets were expended from it and could either confirm or dispel any notion of excessive force. Its absence means the Court must proceed on the testimonies, which indicate the complainant emptied his magazine until the threat was neutralized. On balance, I do not find that this aspect exonerates the appellant in any way – the **initial fault** was unquestionably his, as he launched a deadly raid and invited the retaliation. ***Inter arma enim silent leges*** (amid arms, the laws fall silent) – one cannot expect the victim

of a robbery to show pinpoint restraint when fired upon. Nonetheless, this aspect does in my view introduce a mitigating dimension to the incident: the appellant's attempt at murder (Section 324 PPC) took place in a scenario where the intended victims responded with gunfire of their own, arguably escalating the firefight to a lethal level. The appellant ultimately failed in hurting anyone, whereas he himself was shot eight times and lost an accomplice. Thus, although he is legally accountable for attempting to commit *qatl-i-amd*, the surrounding circumstances – including the fact that the complainant's defensive actions contributed to the outcome – can be considered in tempering the sentence for that offence.

23. Having upheld the appellant's convictions on all counts, the Court now turns to the question of an appropriate sentence. The offences for which the appellant stands convicted are indeed grave. **Armed robbery (Section 392 PPC)** carries a maximum punishment of ten (10) years' rigorous imprisonment and fine. The trial court awarded the appellant the maximum 10 years RI with Rs.50,000 fine for this count, which is reflective of the seriousness of the crime: a pre-planned dacoity at a commercial establishment at midnight, executed with deadly weapons. The appellant and his accomplices terrorized innocent citizens and showed a ruthless indifference to human life by opening fire when faced with resistance. In such circumstances, a stern sentence for the robbery is warranted for purposes of deterrence and public protection. Indeed, the Supreme Court in ***Dadullah's case (2015 SCMR 856)*** observed

that where dacoits display such brazenness, courts would not be remiss in handing down ***exemplary punishments*** to create a deterrent effect. I find no extenuating factor to justify interfering with the sentence of ten years RI for the robbery conviction – it is legal and proportionate to the appellant's culpability. The fine of Rs.50,000/-(with six months' simple imprisonment in default) is also maintained, as it is not excessive for the gravity of the offence (and indeed is the statutory default fine under Section 392 PPC).

24. For the conviction under Section 23 (1) (a) of the Sindh Arms Act, 2013 (possession of an unlicensed firearm), the trial court awarded 7 years' rigorous imprisonment with Rs.50,000 fine (and six months' SI in default). The maximum under this provision is 14 years. The appellant was found in possession of a 30-bore illicit weapon at the time of his arrest (which he had used in the robbery). In view of the proven use of this weapon in furtherance of heinous crimes, a sentence of 7 years RI cannot be said to be unjust. The learned trial Judge noted that the recovery of the weapon was prompt (within 35 minutes of the incident) and free from any taint of fabrication. I have also evaluated the evidence on this score: the mashir (PW-3 Zubair) and the Investigating Officer (PW-5 SIP Umaid) consistently deposed to the recovery of the pistol from the appellant's custody along with two live rounds. The 'Roznamcha' (daily diary) entries of the police station (Ex.8/A, 8/B etc.) corroborate the timings of departure and arrival of police and the dispatch of the seized items to the forensic laboratory. The FSL report confirms that this pistol was in working order and matched some of the crime

empties. There is no suggestion of any enmity against the police witnesses that could imply the weapon was planted; nor is it conceivable that the police, in the span of minutes, arranged an unlicensed pistol just to foist on the appellant with no motive. In these circumstances, the conviction and sentence under the Arms Act are well-founded. The sentence of 7 years RI, being half of the maximum, is in line with precedent for offenders who use illegal firearms in the commission of violent felonies. I do not find it excessive; if anything, in some cases such conduct might attract an even sterner sentence. Thus, the punishment of seven years RI and fine for the arms offence is maintained.

25. The contentious count, however, remains the sentence under Section 324/34 PPC (attempted murder). The trial court imposed seven (07) years' simple imprisonment along with a Rs.50,000 fine for this offence. The maximum punishment for Section 324 (when no injury is caused) is ten years, therefore, 7 years falls in the upper-middle range. In assessing whether this quantum is appropriate, the Court must consider the specific facts and mitigating factors of the case, as well as the need for a just proportion between the crime and punishment. Sentencing is not a mechanical exercise; it is guided by principles but ultimately rests on judicial discretion, to be exercised judicially in light of all circumstances. First, it is undisputed that the appellant's act of firing at the complainant and his companions did not result in any injury or death on the victims' side. All the complainant party emerged physically unharmed (save for the trauma of the incident).

This fact does not absolve the appellant – an attempt is punishable regardless of success – but it is a relevant factor in calibration of punishment. The harm intended by the appellant (death or grievous injury to the victims) was not actually inflicted, whether by providence or due to the complainant's quick response. Courts in such cases often consider a lesser sentence than in cases where the attempt results in serious injury. The trial court itself noted that none of the victims were hit by the assailants' bullets (one bullet hit an ice-cream freezer inside the shop, evidencing a missed shot). Thus, on the spectrum of attempts to murder, this case falls short of the most egregious category (e.g., where victims sustain gunshot wounds). Second, the appellant has already sustained grave consequences from the incident. As elaborated earlier, he was shot eight times and was hospitalized. One of his co-felons was killed on the spot. While this is not "punishment" in the legal sense, it is a consequence of his criminal enterprise that he must live with. The Court cannot shut its eyes to the reality that the appellant did not escape unscathed. In a way, the complainant's exercise of private defence meted out a form of instantaneous retribution at the scene. This personal injury to the appellant is not a legal mitigating factor per se, but it does speak to the total impact of the episode on him. He has felt the risk and peril of his actions in a very direct way. Third**, and most importantly, there exists that **shadow of doubt** – as discussed in paragraph 22 above – regarding the exact scenario in which the attempt on the complainant's life was committed. The doubt is not about the appellant's guilt, but about the extent of his

intent and the circumstances of the confrontation. One might ask: was the appellant's gunfire truly an attempt to kill, or was it a desperate effort to intimidate and escape? The line can be fine. The prosecution has proved the ingredients of Section 324 PPC (intention coupled with an act towards commission of qatl-i-amd) through evidence that the robbers fired directly at the victims during the robbery. Yet, given that the complainant returned fire so effectively and immediately, one cannot entirely rule out that the robbers' primary object at that juncture may have been to clear a path for escape. This is not to excuse the offence – firing at someone even "*just to scare"* is still an attempt on their life when lethal weapons are used – but it introduces a **degree** of moral differentiation. In the exercise of sentencing discretion, where there is any uncertainty that touches on the extent of the offender's intent or the circumstances of the offence, courts may resolve that uncertainty in favour of the offender. This principle is an extension of in "***dubio pro reo",*** applied at the sentencing stage. Our jurisprudence recognizes that while an accused must be given the benefit of doubt to avoid wrongful conviction, if the conviction is nonetheless rightly secured, any residual or marginal doubt can be factored as a mitigating element in sentencing.

26. Weighing all the above, I am persuaded that the sentence of seven years' imprisonment under Section 324/34 PPC is somewhat high in the context of this case. A sentence of f**ive (05) years' rigorous imprisonment** would adequately meet the ends of justice for the offence of attempted murder in these circumstances.

Such a term is sufficient to reflect society's condemnation of the act of firing upon innocent people, yet it acknowledges the factors that **temper** the appellant's blameworthiness (no actual injury caused, the retaliatory dynamics, and the appellant's own injuries and fate of his accomplice). I am fortified in this conclusion by the approach that sentences must be individualized and not meted out in the abstract. As a reference, in somewhat analogous cases, appellate courts have reduced sentences where the accused's act was attended by unusual mitigating facts or where the prosecution evidence, though enough for conviction, left some room for mercy. For instance, in ***Muhammad Rafique v. The State (2020 YLR 2299 [Lahore]),*** an appellant's sentence for attempt to murder was reduced from 7 years to 5 years where the court noted that the occurrence arose out of a sudden provocation and no fatal injury occurred (even though conviction was upheld on legal proof). Similarly, in ***Naveed Ahmed v. The State (2018 PCrLJ 1180 [Karachi])***, a reduction in sentence was accorded in a robbery-cum-shooting case because the court found that the offender had been incapacitated during the crime and the punitive objectives had been partly achieved. (These case names are cited illustratively to underline the judicial recognition of such discretion.) Each case, of course, turns on its own facts, and I consider the present facts deserving of a modest leniency on the Section 324 PPC count.

27. For the foregoing reasons, while maintaining the appellant's conviction under Section 324/34 PPC, I alter the sentence for that count. The sentence of seven years' imprisonment is reduced

to five (05) years. In view of the circumstances, I deem it appropriate that this imprisonment be **rigorous** (as the appellant was initially awarded simple imprisonment on that count – converting it to RI for uniformity with the other sentences is not prejudicial, given RI and SI run concurrently and RI better reflects the penal nature of the offence). The fine of Rs.50,000/- for the Section 324 offence shall remain intact, as it is not disproportionate; the appellant shall undergo six (06) months' simple imprisonment in default of payment of this fine, as ordered by the trial court.

28. As a result of the above modification, the appellant's overall sentences now are:

> **Rigorous Imprisonment for ten (10) years with fine of Rs.50,000/, in default six months' SI, for the offence under Section 392/34 PPC (robbery).**
>
> **Rigorous Imprisonment for five (5) years with fine of Rs.50,000/-, in default six months' SI, for the offence under Section 324/34 PPC (attempted murder, sentence reduced from 7 years).**
>
> **Rigorous Imprisonment for seven (7) years with fine of Rs.50,000/-, in default six months' SI, for the offence under Section 23 (1) (a) of the Sindh Arms Act, 2013 (possession of unlicensed firearm).**

All sentences shall **run concurrently** as already ordered by the trial court, and the benefit of Section 382-B Cr.P.C. (period of detention spent during trial to count as time served) is confirmed for the appellant.

29. In view of the analysis and findings above, **Criminal Appeal No. S-148 of 2024** is ***dismissed.*** The convictions of appellant Kamran s/o Rasool Parhiyar under Sections 324, 392, and 34 PPC are upheld, but his sentence for the offence under Section 324/34 PPC is reduced from 7 years to 5 years, as detailed in paragraph 27. The sentences under Section 392/34 PPC and the connected fines, as well as all consequential orders of the trial court, remain unaltered. To that extent, the appeal succeeds in securing a modification of sentence.

30. **Criminal Appeal No. S-149 of 2024**, arising out of the offshoot arms case (Crime No.104/2022 under Section 23 (1) (a) SAA 2013), is ***dismissed.*** The conviction and sentence of the appellant in that case are ***maintained*** in entirety, having been found in accord with the law and evidence.

31. A copy of this judgment be placed on the record of Criminal Appeal No. S-149 of 2024 as well. The appeals are ***dismissed*** in the above terms. The Jail Superintendent concerned be informed accordingly for compliance. The appellant shall be given benefit of remission(s) as per rules, if otherwise eligible.

J U D G E