

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-92 of 2024

## **BEFORE:**

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Noor Muhammad son of Fazal Ahmed,  
Through Mr. Ali Ahmed Khan, advocate

Respondent : Through Mr. Shafi Muhamamd Mahar, DPG

Date of hearing : 23.09.2025

Date of Judgment : 23.09.2025

Reasons recorded on : 24.09.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.** – In the matter of Noor Muhammad Abro son of Fazal Ahmed Abro versus The State, this Court convened to adjudicate upon the criminal appeal filed against the judgment dated 30<sup>th</sup> August, 2024 passed by the learned Anti-Terrorism Court-I, Sukkur in Special Case No.12/2023 and 12-A/2023. The impugned judgment had convicted the appellant under Section 23(i)(a) of the Sindh Arms Act, 2013 and sentenced him to rigorous imprisonment for five years along with a fine of Rs. 100,000, while acquitting him of charges under Section 11-F(6) of the Anti-Terrorism Act, 1997.

2. The foundational facts of this case emanate from FIR No. 18/2023 registered at Police Station CTD, Sukkur on 14th June 2023, wherein Sub-Inspector Sajid Ali alleged that during routine patrolling, he received spy information at Taj Petrol Pump that an active worker of banned organization Sindhu Desh Revolutionary Army (SRA) namely Noor Ahmed Abro, after collecting contribution from the general public of Sukkur area, was waiting at Madrasa Picket for conveyance. Acting upon this information, the police party proceeded to the pointed place where they apprehended the appellant who was

allegedly holding a black-colored hand-bag. Upon personal search, a 30-bore pistol with magazine containing five live bullets was allegedly recovered from the left fold of his shalwar, and the hand-bag reportedly contained a receipt book bearing the words "Sindhu Desh Revolutionary Army," cash amounting to Rs.35,000 of different denominations, one blue ball-pen, and the appellant's CNIC.

3. The genesis of the trial proceedings commenced when the learned Anti-Terrorism Court-I, Sukkur took oath under Section 16 of the Anti-Terrorism Act, 1997 and supplied documents to the accused in compliance with Section 265-C of the Criminal Procedure Code. Since the evidence in both cases was common, they were consolidated under Section 21-M of the Anti-Terrorism Act, 1997, with Special Case No.12/2023 designated as the leading case. A combined charge was framed against the accused, to which he pleaded not guilty and claimed trial.

4. The prosecution, in its endeavor to establish the case, examined six witnesses including the complainant SIP Sajid Ali, mashir HC Tafseer Hussain Shah, PC Jawed Ahmed Soomro, HC Mukhtiar Ali, Inspector/I.O Ashraf Ali Mangi, and mashir Ghulam Sarwar. The complainant produced the memo of arrest and recovery, copies of both FIRs, and relevant roznamcha entries. HC Tafseer Hussain Shah, who served as a mashir, corroborated the complainant's version regarding the recovery of the unlicensed pistol and the contents of the hand-bag. PC Jawed Ahmed confirmed depositing the sealed parcel at the Forensic Science Laboratory, Larkana, while HC Mukhtiar Ali testified about keeping the case property in the malkhana. The investigating officer produced various documents including the mashirnama of recovery of pamphlets, criminal record of the accused, FSL reports, and other relevant evidence.

5. During the course of arguments, learned counsel for the appellant advanced multiple contentions challenging the conviction. The primary argument centered on the non-appreciation and mis-appreciation of evidence by the learned trial court, contending that the judgment resulted from the court's failure to apply its judicial mind properly. Counsel emphasized the substantial contradictions furnished by the complainant and prosecution witnesses, arguing that these contradictions had not been adequately considered by the trial court. A significant argument raised concerned the violation of Section 103 of the Criminal Procedure Code, as despite the appellant's arrest at a thickly populated area near the bus terminal Sukkur where thousands of people and vehicles were present, the police did not associate any person from the locality as mashir. The most compelling argument presented by the appellant's counsel related to the apparent contradiction in the trial court's findings, wherein the appellant was acquitted in Crime No.18/2023 under Section 11-F(6) of the Anti-Terrorism Act, 1997 based on the same set of evidence, yet convicted in Crime No.19/2023 under Section 23(i)(a) of the Sindh Arms Act, 2013. This dichotomous approach by the trial court, where identical evidence led to acquittal in one case and conviction in another, raised serious questions about the consistency and reliability of the evidence. Furthermore, counsel argued that the appellant was innocent and had been falsely involved in the case by police at the instance of his brother Sardar Ahmed, with whom he had a dispute over landed property.

6. The learned Additional Prosecutor General, appearing for the State, defended the impugned judgment by arguing that the prosecution had successfully established the recovery of the unlicensed pistol with magazine and five live bullets from the appellant's possession. The State counsel contended that all prosecution witnesses had given consistent evidence regarding the recovery of the firearm, supported by roznamcha entries, mashirnamas, and the

forensic laboratory report confirming that the pistol was semi-automatic and in working order.

7. Upon meticulous examination of the evidence and careful analysis of the contradictions, omissions, and commissions that permeate this case, several fundamental flaws emerge that strike at the very foundation of the prosecution's narrative. The most glaring contradiction lies in the trial court's own findings, where identical evidence produced by the same witnesses led to diametrically opposite conclusions, acquittal for collecting funds for a banned organization and conviction for possession of an unlicensed weapon. This internal contradiction within the same judgment creates a reasonable doubt about the credibility and reliability of the entire prosecution case.

8. The evidence concerning the recovery of pamphlets reveals significant contradictions between the investigating officer and the mashir Ghulam Sarwar. While the I.O Inspector Ashraf Ali Mangi claimed that the shopper was opened and checked in presence of mashirs at the spot with the police mobile parked at a distance of only 15 to 20 feet, mashir Ghulam Sarwar contradicted this during cross-examination by stating that the shopper produced by the accused was not opened or checked by the police in his presence and that the police mobile was parked at a distance of 100 paces. Such material contradictions between key witnesses undermine the prosecution's credibility and create serious doubts about the veracity of the alleged recovery.

9. The forensic evidence provides the most damning contradiction to the prosecution's case regarding the receipt book allegedly recovered from the appellant. After obtaining the signature and handwriting of the accused through the Civil Judge & Judicial Magistrate-III, Sukkur, and sending the same to the Forensic Laboratory, the report conclusively established that the signature and writing of the accused did not match with the signature on the receipts of the

receipt book allegedly recovered from him. This forensic evidence definitively contradicts the prosecution's claim that the appellant was involved in collecting funds for the banned organization, which explains why the trial court acquitted him of charges under the Anti-Terrorism Act.

10. The legal precedent established by the Honorable Supreme Court of Pakistan in numerous pronouncements emphasizes that where material contradictions exist between prosecution witnesses, and where forensic evidence contradicts the prosecution's claims, the benefit of doubt must be extended to the accused. In the landmark case of *Muhammad Mansha v. The State* (2018 SCMR 772), the Supreme Court held that "*once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements*". The Court further established that when witnesses make dishonest improvements to strengthen the prosecution case, their testimony loses credibility and evidentiary value. The principle enunciated in *Farman Ahmed v. Muhammad Inayat* (2007 SCMR 1825) is particularly relevant, where the Supreme Court held that "*improvements once found to be deliberate and dishonest would cast serious doubts on veracity of such witness*". In the present case, the material contradictions between the I.O and mashir regarding the recovery of pamphlets, coupled with the forensic evidence that contradicts the prosecution's signature claim, constitute deliberate and dishonest improvements that cast serious doubts on the veracity of all prosecution witnesses. Moreover, the Supreme Court in *Tariq Pervez v. The State* (1995 SCMR 1345) established that "for giving benefit of doubt to an accused person, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession

but as a matter of right". This principle has been consistently reaffirmed in cases such as *Ayub Masih v. State* (PLD 2002 SC 1048) and *Naveed Asghar and 2 Others v. The State* (PLD 2021 SC 600), emphasizing that the mistake of releasing a criminal is better than punishing an innocent. The doctrine of reasonable doubt, deeply embedded in our criminal jurisprudence, finds its foundation in both common law principles and Islamic teachings. The Holy Prophet Muhammad (Peace Be Upon Him) instructed: "Avert punishments when there are doubts" and "Drive off the ordained crimes from the Muslims as far as you can". These teachings underscore the fundamental principle that it is better for ten guilty persons to escape than for one innocent person to be wrongly convicted.

11. The evidence appraisal in this case reveals multiple layers of contradictions and inconsistencies that create a web of reasonable doubt. The prosecution's failure to associate independent witnesses from the thickly populated area where the arrest allegedly took place, the material contradictions between key witnesses regarding the recovery process, the forensic evidence that contradicts the prosecution's claims about the receipt book, and the trial court's own contradictory findings based on identical evidence all contribute to a case that fails to meet the standard of proof beyond reasonable doubt required in criminal law.

12. Furthermore, the principle established in *Altaf Hussain v. The State* (2019 SCMR 274) is directly applicable, which holds that if a set of witnesses is deemed untrustworthy to a certain extent for one accused or one charge, the same set of witnesses cannot be considered reliable for other charges if their evidence cannot be believed. In this case, the trial court found the same witnesses unreliable regarding the terrorism charges (hence the acquittal), yet

relied upon their testimony for the arms charges, creating an inherent contradiction in the judgment.

13. The examination of the chain of custody also reveals significant gaps. The case property was handled by multiple persons, from the complainant to various police officials to the forensic laboratory and back, without proper documentation of each transfer. The forensic laboratory report, while confirming that the pistol was in working condition, does not establish the crucial link between the appellant and the weapon beyond the testimony of witnesses whose credibility has been seriously compromised by material contradictions.

14. After exhaustive analysis of the evidence, legal precedents, and the principles of natural justice, this Court arrives at the inescapable conclusion that the prosecution has failed to establish the appellant's guilt beyond reasonable doubt. The material contradictions between prosecution witnesses, the forensic evidence that contradicts key prosecution claims, the violation of procedural safeguards under Section 103 of the Criminal Procedure Code, and the trial court's own contradictory findings based on identical evidence all combine to create a reasonable doubt that must be resolved in favor of the appellant. The fundamental principle that governs criminal jurisprudence, that an accused person is presumed innocent until proven guilty beyond reasonable doubt, has been violated in this case. The prosecution's duty to prove guilt through unimpeachable evidence has not been discharged, and the benefit of doubt, which is not a matter of grace but a matter of right, must be extended to the appellant.

15. In the realm of criminal law, the courts must be vigilant guardians of individual liberty and must ensure that convictions are based on evidence that is not only legally admissible but also confidence-inspiring, trustworthy, and

reliable. The evidence in this case falls short of these exacting standards, and the conviction cannot be sustained on such infirm foundations.

16. The present case illuminates several critical issues in the administration of criminal justice that merit judicial comment. First, the practice of police officials serving as the sole mashirs in criminal cases, particularly in populated areas where independent witnesses are readily available, undermines the credibility of recovery proceedings and violates the spirit of Section 103 of the Criminal Procedure Code. Courts must insist on strict compliance with procedural safeguards to prevent fabrication of evidence and protect the rights of accused persons. Second, the phenomenon of trial courts reaching contradictory conclusions based on identical evidence highlights the need for more rigorous judicial analysis and consistency in evidence appraisal. When the same set of witnesses and evidence leads to acquittal for one charge and conviction for another, it raises serious questions about the reliability of the evidence and the thoroughness of judicial scrutiny. Third, the role of forensic evidence in modern criminal jurisprudence cannot be overstated. When scientific evidence contradicts witness testimony, courts must give primacy to objective forensic findings over subjective human testimony, which is prone to error, bias, and manipulation. The forensic report in this case, which definitively established that the appellant's signature did not match the signatures on the receipt book, should have been given greater weight in assessing the overall credibility of the prosecution case.

17. This Court, entrusted with the solemn responsibility of administering justice, so it is observed that the present case exemplifies the fundamental tension between the State's duty to prosecute crime and the individual's right to fair trial and due process. The criminal justice system must strike a delicate balance between these competing interests, always erring on



the side of protecting individual liberty when evidence fails to meet the exacting standards required for criminal conviction. The present case also demonstrates the evolution of criminal jurisprudence toward greater reliance on scientific evidence and forensic analysis. The traditional model of criminal prosecution, heavily dependent on witness testimony, must adapt to incorporate modern forensic techniques that provide objective, scientific verification of facts. Courts must develop the expertise to properly evaluate and weigh forensic evidence against traditional forms of proof. Furthermore, this case highlights the need for comprehensive reform in police investigation procedures, particularly regarding the association of independent witnesses and the maintenance of proper chain of custody. The credibility of criminal justice system depends not only on the fairness of trials but also on the integrity of the investigation process that precedes them.

18. In light of the detailed analysis of evidence, examination of legal precedents, and application of established principles of criminal jurisprudence, this Court finds that the conviction of the appellant cannot be sustained. The material contradictions in witness testimony, the forensic evidence that contradicts key prosecution claims, the procedural violations in the investigation, and the trial court's own contradictory findings based on identical evidence create reasonable doubts that must be resolved in favor of the appellant. The principle of presumption of innocence, the requirement of proof beyond reasonable doubt, and the doctrine that benefit of doubt is a matter of right rather than grace, all combine to compel the conclusion that the appellant is entitled to acquittal. The conviction based on such infirm evidence would constitute a miscarriage of justice and violate the fundamental principles that govern criminal law. Therefore, in exercise of the appellate jurisdiction vested in this Court, and in furtherance of the ends of justice, this Criminal Appeal is

hereby allowed. The conviction and sentence awarded by the learned Anti-Terrorism Court-I, Sukkur vide judgment dated 30th August 2024 in Special Case No.12/2023 and 12-A/2023 are set aside. The appellant Noor Muhammad Abro is acquitted of all charges leveled against him and shall be released forthwith unless required to be detained in connection with any other criminal matter. The case property, if any, shall be disposed of according to law. This judgment shall serve as the detailed reasons for the short order pronounced on 23rd September 2025.

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