

**THE HIGH COURT OF SINDH, CIRCUIT COURT AT
LARKANA**

Criminal Appeal No.S-104 of 2023

Criminal Appeal No.S-105 of 2023

(Mashooque Ali Gopang v. The State)

Appellant: Mashooque Ali Gopang through Mr. Ali Raza Pathan, Advocate.

Respondent: The State through Mr. Sardar Ali Solangi, D.P.G. Sindh.

Complainant: Zahid Hussain Gopang through Mr. Athar Abbas Solangi, Advocate.

Date of hearing: 18.06.2026.

Date of Judgment: 04.09.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this common judgment, I intend to dispose of Criminal Appeal No.S-104 of 2023 arising out of Sessions Case No.482 of 2021 pertaining to Crime No.206 of 2021 registered at Police Station Kamber City for offences punishable under Sections 302, 311 and 34, P.P.C., as well as Criminal Appeal No.S-105 of 2023 arising out of Sessions Case No.424 of 2021 relating to Crime No.222 of 2021 registered at the same police station for an offence punishable under Section 24 of the Sindh Arms Act, 2013, as both the appeals arise out of the same occurrence, involve common questions of fact and law, the evidence recorded in both cases is substantially interconnected and, therefore, can conveniently be decided by means of this single judgment.

2. Through judgment dated 30.11.2023 passed by the learned 1st Additional Sessions Judge, Kamber, the appellant Mashooque Ali was convicted in Sessions Case No.482 of 2021 under Section 302 (c) read with Section 34, P.P.C. and sentenced to suffer rigorous imprisonment for fourteen (14) years as Ta'zir, besides payment of compensation of Rs.15,00,000/- to the legal heirs of deceased Sikander Ali under Section

544-A, Cr.P.C. and, in default whereof, to further undergo rigorous imprisonment for four (04) years. Benefit of Section 382-B, Cr.P.C. was, however, extended to him. By the same date, in Sessions Case No.424 of 2021, the appellant was also convicted under Section 24 of the Sindh Arms Act, 2013 and sentenced to suffer rigorous imprisonment for seven (07) years with fine of Rs.100,000/- and, in default of payment thereof, to further undergo simple imprisonment for three (03) months. The benefit of Section 382-B, Cr.P.C. was also extended. Against the aforesaid judgments, the appellant has preferred the present appeals.

3. Briefly stated, the prosecution case in Criminal Appeal No.S-104 of 2023, as set out in the FIR lodged by complainant Zahid Hussain son of Sikander Ali Gopang on 25.08.2021 at Police Station Kamber City, is that about one week prior to the occurrence, a dispute had arisen between Asif Gopang and Sohrab alias Kali Baam Gopang over certain monetary transactions, which dispute was allegedly settled by deceased Sikander Ali in his capacity as a respected elder of the community (*Nekmard*). According to the complainant, the accused persons developed resentment against the deceased on account of such settlement. It was alleged that on 25.08.2021 at about 6:30 a.m., while the complainant, his father Sikander Ali, Nadir Hussain and Ali Murtaza were returning after morning walk near NADRA Office on Kamber-Waggan Road, four persons riding on two motorcycles arrived there, two of whom were identified as Sohrab alias Kali Baam and Raja, while the remaining two were stated to have concealed their faces. It was alleged that after extending threats, all the accused made indiscriminate firing upon deceased Sikander Ali, resulting in multiple firearm injuries causing his instantaneous death at the spot. The complainant thereafter proceeded to the police station and lodged the F.I.R. to the above effect.

4. During investigation, statements of witnesses under Section 161, Cr.P.C. were recorded, the place of occurrence was inspected, bloodstained earth, empties and other incriminating articles were secured through mashirnamas, the dead body was subjected to post-mortem examination, site plan was prepared and other usual formalities of investigation were completed. Initially, only two accused persons were nominated in the F.I.R., whereas the present appellant was subsequently

implicated during investigation on the basis of statements of alleged eye-witnesses. After completion of investigation, the Investigating Officer submitted report under Section 173, Cr.P.C. before the concerned Magistrate, who transmitted the case to the Court of Sessions for trial.

5. So far as Criminal Appeal No.S-105 of 2023 is concerned, the prosecution case is that on 08.09.2021, during investigation of the above murder case, the appellant was allegedly arrested by complainant SIP Attaullah Mirani on spy information from Kamber-Rahooja Road near Raj Wah and was found in possession of one unlicensed 12-bore repeater having rubbed number along with five live cartridges and cash amounting to Rs.500/-. As the appellant allegedly failed to produce any lawful license or permit authorizing possession of the said weapon, a separate F.I.R. bearing Crime No.222 of 2021 under Section 24 of the Sindh Arms Act, 2013 was registered against him. Upon completion of investigation, usual challan was submitted before the competent Court, where after the case was also transmitted to the learned trial Court for disposal in accordance with law.

6. After the cases were committed to the Court of Sessions, the learned trial Court, having found sufficient grounds to proceed against the appellant, framed formal charges in both the Sessions Cases. In Sessions Case No.482 of 2021, the appellant was charged for having committed the offence punishable under Sections 302, 311 and 34, P.P.C., whereas in Sessions Case No.424 of 2021 he was separately charged under Section 24 of the Sindh Arms Act, 2013. The substance of accusations was read over and explained to him, to which he pleaded 'not guilty' and claimed trial. Consequently, the prosecution was called upon to establish the accusations by leading evidence.

7. In order to substantiate the charge in the murder case, the prosecution examined as many as ten witnesses.

PW-1 Zahid Hussain, complainant and son of the deceased, appeared before the trial Court and reiterated the allegations contained in the F.I.R. He deposed regarding the alleged motive, the occurrence, the role assigned to each accused, the registration of the F.I.R., inspection of the place of occurrence

by the Investigating Officer, recovery of bloodstained earth, empties and production of bloodstained clothes of the deceased. During cross-examination, however, he admitted, inter alia, that the present appellant had not been nominated in the F.I.R.; that no role whatsoever had been assigned to him therein; that the present appellant was identified subsequently at the police station after the occurrence; that the place of incident was surrounded by residential houses, shops and commercial establishments; that no independent person from the locality was associated with the investigation; and that the present appellant belonged to the same community. He denied the defence suggestion that the appellant had been falsely implicated subsequently owing to his alleged relationship with the absconding accused persons and previous enmity.

PW-2 Nadir Hussain Gopang was examined as an eye-witness. He supported the prosecution version by attributing a specific firearm injury to the present appellant. He also deposed regarding the subsequent recording of his statements under Sections 161 and 164, Cr.P.C. During cross-examination, he admitted that he was closely related to the complainant; that he had shifted to Kamber only a couple of years prior to the incident; that the locality consisted of residential houses and commercial establishments; and that no independent inhabitant of the area was cited as an eye-witness. He further admitted that he had no personal knowledge regarding the previous dispute allegedly constituting the motive and was not present at the alleged settlement.

PW-3 Badaruddin Gopang appeared as mashir of inspection of the place of occurrence, recovery of bloodstained earth, empties, bloodstained clothes of the deceased and the subsequent arrest and alleged recovery of the repeater from the appellant. He produced the relevant mashirnamas and identified the case property before the Court. During cross-examination, he admitted that he was a cousin of the

complainant. He further conceded that the Investigating Officer had first requested other persons to act as mashirs, who allegedly declined, where after he and another close relative were associated with the proceedings. He denied the suggestion that all mashirnamas had been prepared subsequently at the police station.

PW-4 Muhammad Khan Rind, Tapedar, deposed regarding preparation of the site sketch of the place of occurrence on the pointing out of the complainant. He produced the site plan before the trial Court. During cross-examination, he admitted that the original requisition issued by the Mukhtiarkar had not been produced; that certain additions appearing in the site plan were not in his handwriting; and that important public buildings, including the NADRA Office and educational institutions, existed in the immediate vicinity of the alleged place of occurrence.

PW-5 Dr. Muhammad Idrees, the Medical Officer, conducted the post-mortem examination of deceased Sikander Ali and produced the Lash Chakas Form and post-mortem report. He deposed that the deceased had sustained multiple firearm injuries which, in his opinion, were sufficient to cause death in the ordinary course of nature. He further opined that death had occurred due to hemorrhage and cardio-respiratory failure consequent upon firearm injuries.

PW-6 SIP Arbab Ali Wadho, the first Investigating Officer, deposed regarding registration of the F.I.R., inspection of the place of occurrence, preparation of mashirnamas, collection of bloodstained earth, empties and other articles, and completion of the initial phase of investigation.

PW-7 SIP Attaullah Mirani, the subsequent Investigating Officer, deposed regarding further investigation, nomination and arrest of the appellant, recovery of the alleged crime weapon, submission of the weapon to the Forensic Science Laboratory and completion of investigation.

PW-8 Police Constable Kashif Ali proved handing over of the dead body of the deceased to his legal heirs after post-mortem examination.

PW-9 Mr. Ali Bux Mashori, the learned Civil Judge and Judicial Magistrate, proved recording of statements of prosecution witnesses under Section 164, Cr.P.C.

Lastly, PW-10 WHC Riaz Hussain produced the relevant entry from Register No.19 concerning deposit of the case property in the Malkhana. Thereafter, the learned State Counsel closed the prosecution side.

8. In the connected Sessions Case arising out of Crime No.222 of 2021 under Section 24 of the Sindh Arms Act, 2013, the prosecution examined three witnesses only.

PW-1 SIP Attaullah Mirani, complainant and Investigating Officer, deposed regarding the alleged arrest of the appellant on spy information and recovery of one unlicensed repeater along with five live cartridges and cash. He also produced the departure and arrival entries, mashirnama of arrest and recovery, copy of the F.I.R., R.C. and ballistic expert's report.

PW-2 Badaruddin Gopang appeared as mashir of arrest and recovery and supported the prosecution version.

PW-3 WHC Riaz Hussain produced the relevant Malkhana entry relating to deposit of the recovered weapon. After examination of the said witnesses, the prosecution closed its evidence.

9. Upon conclusion of the prosecution evidence in both the cases, the statement of the appellant under Section 342, Cr.P.C. was recorded by the learned trial Court, wherein every incriminating circumstance appearing in the prosecution evidence was put to him. The appellant denied each and every allegation levelled against him and professed complete innocence. He specifically pleaded that he had been falsely

implicated owing to his alleged relationship with the absconding accused persons and previous hostility between the parties. He further asserted that no weapon had ever been recovered from his possession and that the alleged recovery had been foisted upon him during investigation at the instance of the complainant party. The appellant, however, neither examined himself on oath in terms of Section 340 (2), Cr.P.C. nor opted to produce any witness in his defence.

10. Upon appraisal of the evidence and after hearing the learned counsel for the parties, the learned trial Court, through separate judgments both dated 30.11.2023, convicted and sentenced the appellant in the manner already noted hereinabove. Feeling aggrieved by the findings recorded by the learned trial Court, the appellant has preferred the present appeals before this Court challenging the legality, propriety and correctness of both the impugned judgments.

11. Learned counsel for the appellant, while assailing the impugned judgments, contended that the prosecution has miserably failed to prove its case beyond reasonable doubt. According to him, the entire prosecution case is replete with material contradictions, omissions and improvements which have not only shaken the veracity of the ocular account but have also rendered the prosecution story highly doubtful. He contended that the appellant was not nominated in the FIR despite the complainant claiming to have witnessed the occurrence with sufficient opportunity to identify the assailants. The subsequent implication of the appellant during investigation, on the basis of supplementary statements of interested witnesses, without any lawful test identification parade, was stated to be a glaring circumstance destroying the credibility of the prosecution case. Learned counsel further contended that the complainant and both alleged eye-witnesses are admittedly close relatives of the deceased and highly interested witnesses, whereas despite the alleged occurrence having taken place on a public road near the NADRA Office and other public institutions surrounded by residential houses, shops and commercial establishments, no independent witness was associated either at the time of occurrence or during investigation. He contended that withholding of independent witnesses, though readily available, attracts an adverse inference against the prosecution under Article 129 (g) of the

Qanun-e-Shahadat Order, 1984. Learned counsel further contended that the prosecution has failed to establish the alleged motive. According to him, neither the alleged monetary dispute nor the alleged settlement was proved through any independent evidence. Even the prosecution witnesses admitted during cross-examination that they were not present at the alleged settlement and possessed no personal knowledge regarding the alleged dispute. He contended that an unproved motive cannot legally be relied upon for sustaining a conviction in a capital offence. Learned counsel also referred to the evidence of the prosecution witnesses and submitted that numerous material contradictions surfaced regarding the identification of the appellant, the sequence of events, investigation proceedings, preparation of mashirnamas, the place of occurrence and other material particulars. He contended that these contradictions are not minor discrepancies attributable to lapse of time but strike at the very root of the prosecution case and completely demolish the confidence otherwise required for maintaining a conviction.

12. Learned counsel for the appellant further contended that the alleged recovery of the repeater from the appellant, forming the basis of the connected arms case, is wholly doubtful and cannot be treated as independent corroborative evidence. He contended that the mashirs of recovery are admittedly close relatives of the complainant in the murder case; no independent inhabitant of the locality was associated despite their availability; the alleged recovery was effected during investigation of the murder case by the same Investigating Officer; and the entire proceedings were managed by interested police officials. According to the learned counsel, once the prosecution case in the principal murder case becomes doubtful, the alleged recovery, being a derivative piece of evidence, loses all evidentiary value and cannot independently sustain conviction under Section 24 of the Sindh Arms Act, 2013. Learned counsel finally contended that criminal jurisprudence requires the prosecution to establish its case beyond reasonable doubt through confidence-inspiring, trustworthy and unimpeachable evidence. According to him, where a single circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of an accused, such doubt must necessarily be resolved in favour of the accused as a matter of right and not of grace or concession. He, therefore, prayed that both the appeals be allowed, the impugned

judgments be set aside, the convictions and sentences recorded against the appellant be vacated and the appellant be acquitted of all the charges.

13. Conversely, learned Deputy Prosecutor General, Sindh, assisted by the learned counsel for the complainant, supported the impugned judgments. They argued that the prosecution witnesses remained consistent on all material particulars concerning the occurrence and the role attributed to the appellant. According to them, the ocular account stands fully corroborated by the medical evidence, the recovery of the alleged crime weapon, the forensic report and the surrounding circumstances. They further contended that the appellant has failed to establish any plausible reason as to why the complainant and the eye-witnesses would falsely substitute the real offender and implicate him in a case involving the murder of their close relative. Further contended that relationship of witnesses with the deceased by itself is no ground to discard otherwise confidence-inspiring testimony. They lastly contended that the learned trial Court has appreciated the evidence in its true perspective and has rightly recorded conviction after assigning cogent reasons. They, therefore, prayed for dismissal of both the appeals.

14. I have heard the learned counsel for the parties at considerable length, carefully examined the impugned judgments, minutely reappraised the entire oral as well as documentary evidence available on the record and have also considered the relevant provisions of law and the principles laid down by the Honourable Supreme Court governing appreciation of evidence in criminal cases.

15. Since both the appeals arise out of the same transaction and the evidence adduced in the connected cases is substantially common, they are being decided through this common judgment. The principal question requiring determination is whether the prosecution has succeeded in establishing, beyond reasonable doubt, the guilt of the appellant in the murder case and whether the alleged recovery of the unlicensed repeater is proved independently and in accordance with law so as to sustain the separate conviction under Section 24 of the Sindh Arms Act, 2013.

16. Before advertng to the respective contentions advanced by the learned counsel for the parties, it would be advantageous to examine

the intrinsic worth of the prosecution evidence in the light of the settled principles governing criminal administration of justice. It is by now well-settled that every criminal case is to be decided on the touchstone of proof beyond reasonable doubt; that the prosecution is under a legal obligation to stand on the strength of its own evidence and cannot derive any benefit from the weakness of the defence; and that where the evidence creates hesitation in the mind of a prudent person regarding the involvement of an accused, the benefit flowing from such doubt must invariably be extended in favour of the accused. Guided by the above principles, I now proceed to examine the prosecution evidence in order to ascertain whether the conviction recorded by the learned trial Court can safely be sustained.

17. I have carefully examined the impugned judgments, minutely reappraised the entire evidence available on the record and thoughtfully considered the submissions advanced by the learned counsel for the respective parties. The discussion which follows is confined exclusively to determining whether the prosecution has succeeded in establishing the charge against the present appellant beyond reasonable doubt.

18. The first and foremost circumstance which requires consideration is that the appellant was admittedly not nominated in the FIR, which is the earliest version of the prosecution case. The complainant claimed that he had witnessed the occurrence from close proximity along with the other eye-witnesses, yet while lodging the F.I.R. he named only two accused persons and described the remaining assailants as unknown persons. Significantly, no description regarding their appearance, physique or any other distinguishing feature was incorporated in the F.I.R. which could facilitate their subsequent identification. This omission assumes considerable importance because the FIR was lodged promptly after the occurrence and there was sufficient opportunity available to the complainant to disclose all material particulars then within his knowledge. The record further reflects that the appellant was subsequently implicated during the course of investigation on the basis of statements recorded under Section 161, Cr.P.C. It is by now a settled proposition of criminal jurisprudence that where an accused is not named in the FIR and is introduced subsequently during investigation, the evidence regarding such implication requires cautious and independent scrutiny. Mere subsequent

nomination, without satisfactory corroboration through legally admissible evidence, cannot by itself constitute a safe foundation for sustaining a conviction.

19. An equally significant aspect of the matter is that no Test Identification Parade was ever conducted. The complainant admitted during cross-examination that the appellant was identified at the police station after his arrest. Such identification, after the suspect had already come into police custody and had become visible to the witnesses, is devoid of independent evidentiary value. The object of a Test Identification Parade is to ascertain whether a witness who had allegedly seen an unknown offender at the time of occurrence is capable of identifying him without any external influence. Once the witness has already seen the suspect in police custody, the evidentiary value of such identification becomes seriously impaired. In the present case, no explanation worth the name has been furnished by the prosecution as to why the appellant, who is now alleged to have played a specific role during the occurrence, remained unidentified at the stage of registration of the FIR but came to be identified subsequently during investigation without recourse to the legally recognized mode of identification. This unexplained development creates a serious infirmity in the prosecution case qua the appellant and demands cautious appreciation of the evidence relating to him.

20. The ocular account against the appellant has been furnished by the complainant and the other prosecution witnesses, all of whom admittedly belong to the same family. It is settled law that relationship by itself does not render a witness incompetent or unreliable. Nevertheless, where the prosecution case rests exclusively upon the testimony of closely related witnesses and independent witnesses are available but not examined, the Court is under a legal obligation to scrutinize such evidence with greater care and caution before recording a finding of guilt. In the instant case, the occurrence is alleged to have taken place on a public road situated near the NADRA Office and other public places. The prosecution witnesses themselves admitted during cross-examination that residential houses, commercial establishments and other public buildings existed in the vicinity. Notwithstanding such admitted position, no independent person from the locality was associated either as an eye-witness or during

the material stages of investigation. The prosecution has not offered any convincing explanation for withholding such natural witnesses. Although this circumstance alone may not be sufficient to discard the prosecution case, yet while assessing the evidence against the present appellant, it certainly requires the Court to exercise greater caution.

21. Another circumstance which cannot be ignored is that previous hostility between the parties is an admitted feature of the prosecution case. It is well-settled that previous enmity may furnish a motive for commission of an offence; however, it is equally recognized that such hostility may also constitute a motive for false implication. Therefore, in a case where an accused has been implicated subsequent to the registration of the FIR, the evidence relating to his involvement must receive particularly careful scrutiny. This observation is confined only to the case of the present appellant and shall not be construed as reflecting upon the prosecution case against any other accused person. It is also a settled principle that while appreciating evidence in a criminal case, the Court is required to distinguish between minor discrepancies arising from normal errors of observation and those infirmities which strike at the root of the prosecution case. The deficiencies noticed herein, the non-nomination of the appellant in the FIR, his subsequent implication during investigation, absence of a Test Identification Parade and identification after arrest, are not merely peripheral irregularities but constitute circumstances having a direct bearing upon the identity and involvement of the appellant. These aspects, therefore, cannot be lightly ignored. Consequently, at this stage of appraisal, I am of the tentative view that the evidence produced by the prosecution, insofar as it relates to the present appellant alone, requires independent corroboration of a quality sufficient to dispel the doubts arising from the aforementioned circumstances. Whether such corroboration is available from the remaining evidence shall now be examined in the succeeding paragraphs. I shall now examine whether the remaining pieces of evidence relied upon by the prosecution furnish such independent corroboration as would dispel the doubts already noticed regarding the implication of the present appellant. Upon careful scrutiny of the record, I find that they do not.

22. The prosecution has sought to attribute motive to the occurrence by alleging that about one week prior thereto, a dispute relating to monetary transactions had arisen between certain persons and that the deceased had intervened to settle the same, thereby allegedly provoking resentment. However, insofar as the present appellant is concerned, the prosecution has failed to place on record any independent evidence establishing either his participation in the alleged dispute or any circumstance showing that he entertained personal animosity against the deceased on account of such settlement. None of the prosecution witnesses produced any documentary evidence or examined any independent person who had allegedly witnessed the settlement or could substantiate the alleged motive qua the appellant. It is pertinent to note that even the prosecution witnesses, during cross-examination, conceded that they had no direct knowledge of the alleged settlement except what had been conveyed to them. Thus, the alleged motive remains unsubstantiated through independent evidence. It is by now well settled that where the prosecution sets up a specific motive but fails to establish the same through reliable evidence, such failure constitutes a circumstance which may further weaken the prosecution case against the accused concerned, though each case has to be decided on its own facts.

23. I have also carefully examined the testimony of the complainant and the other ocular witnesses only to the extent it concerns the present appellant. While appreciating their evidence, I am mindful of the settled principle that every discrepancy is not sufficient to discredit a witness. However, where the discrepancies relate to material aspects affecting the implication of a particular accused, they assume legal significance. In the instant case, the prosecution witnesses have made material improvements regarding the identity of the appellant after registration of the FIR. Their subsequent attribution of a specific role to the appellant, despite his non-nomination in the earliest version of the occurrence and without the safeguard of a Test Identification Parade, materially affects the evidentiary value of their testimony insofar as it relates to him. These improvements cannot be treated as mere elaborations of an earlier statement but constitute material developments requiring independent corroboration, which is lacking in the present case.

24. Learned D.P.G. Sindh has strongly relied upon the alleged recovery of a repeater from the possession of the appellant during investigation. I have, therefore, independently examined the evidence relating to the said recovery. According to the prosecution, the appellant was arrested during investigation of the murder case and an unlicensed repeater along with live cartridges was recovered from his possession, where after a separate case under Section 24 of the Sindh Arms Act, 2013 was registered against him. The recovery proceedings, however, do not inspire confidence for more than one reason. *Firstly*, the mashirs associated with the alleged recovery are not independent persons from the locality but are admittedly closely related to the complainant party. *Secondly*, despite the alleged recovery having been effected from a public place, no effort appears to have been made to associate any independent inhabitant of the locality. *Thirdly*, the alleged recovery was effected by the same investigating agency which was already investigating the murder case against the appellant. These circumstances, though not conclusive by themselves, require the evidence relating to recovery to be approached with due caution.

25. It is equally significant that the alleged recovery cannot, by itself, cure the serious infirmities already noticed in the prosecution evidence concerning the appellant's nomination and identification. Even if the evidence regarding recovery is examined independently, it remains subject to the ordinary rule that it must inspire confidence and be free from reasonable doubt before it can safely form the basis of conviction. The evidence available on the record falls short of that standard. I am also constrained to observe that certain lapses on the part of the investigating agency have remained unexplained. Although defective investigation by itself cannot furnish a ground for acquittal where the substantive evidence is otherwise confidence inspiring, yet where the prosecution evidence already suffers from inherent weaknesses, such lapses become relevant while determining whether the charge has been proved beyond reasonable doubt. In the present case, the omission to arrange a Test Identification Parade after the appellant's subsequent implication assumes particular significance because that omission directly affects the reliability of the evidence connecting him with the offence.

26. The cumulative effect of the circumstances discussed above is that the prosecution has failed to remove the reasonable doubt arising specifically with regard to the implication of the present appellant. The evidence relied upon for connecting him with the commission of the alleged offences lacks the degree of certainty which the law requires before a conviction can safely be maintained. It is a cardinal principle of criminal jurisprudence that suspicion, howsoever grave, cannot substitute legal proof, and where two views of the evidence are reasonably possible, the one favourable to the accused must prevail.

27. Before parting with the discussion, it would be advantageous to reiterate the settled principles governing criminal trials. It is an elementary rule of criminal jurisprudence that the burden always rests upon the prosecution to prove its case against an accused person beyond reasonable doubt through reliable, cogent and confidence-inspiring evidence. The prosecution must stand on the strength of its own case and cannot derive any advantage from any perceived weakness in the defence. Unless the evidence produced inspires confidence and excludes every reasonable hypothesis consistent with the innocence of the accused, a conviction cannot legally be sustained. In the present case, as discussed in the foregoing paragraphs, the appellant was admittedly not nominated in the FIR; he was implicated subsequently during investigation; no Test Identification Parade was conducted despite his initial non-identification; the subsequent identification before the police does not possess independent evidentiary value; the evidence connecting him with the occurrence lacks independent corroboration of the nature required by law; and the prosecution has failed to dispel the reasonable doubt arising from these circumstances. These deficiencies relate exclusively to the evidence led against the present appellant and it is only in that context that the same have been considered by this Court. Likewise, the evidence relating to the alleged recovery of the repeater, forming the basis of the connected prosecution under Section 24 of the Sindh Arms Act, 2013, also does not inspire confidence sufficient to sustain a conviction. The recovery proceedings are sought to be proved through evidence which, for the reasons already discussed, does not attain the standard of proof required in criminal cases. Consequently, the conviction recorded in the connected arms case also cannot safely be maintained.

28. The Honourable Supreme Court of Pakistan has consistently held that if a single circumstance creates reasonable doubt regarding the guilt of an accused, such doubt is sufficient to entitle him to acquittal as a matter of right and not as a matter of concession. In the case reported as **Tariq Pervez v. The State (1995 SCMR 1345)**, it was held that it is not necessary that there should be many circumstances creating doubt; even one circumstance creating reasonable doubt in the mind of a prudent person is enough to extend the benefit of doubt to an accused. The same principle was reaffirmed in a reported case as **Muhammad Mansha v. The State (2018 SCMR 772)**, wherein the Honourable Supreme Court observed that the benefit of doubt is not a matter of grace but an indefeasible right of an accused. Applying the above settled principles to the facts of the present case, I am of the considered view that the prosecution has not been able to establish the guilt of the present appellant beyond reasonable doubt. The learned trial Court, with utmost respect, did not adequately appreciate the legal effect of the material infirmities discussed hereinabove while evaluating the evidence against the appellant. Consequently, the impugned judgments, to the extent they relate to the present appellant, cannot be sustained.

29. Before recording the operative order, I consider it necessary to clarify that all observations made in this judgment are confined exclusively to the appraisal of evidence concerning appellant Mashooque Ali. Since the remaining nominated accused have not yet faced trial, nothing contained herein shall be construed as an expression of opinion, directly or indirectly, on the merits of the prosecution case against them. The learned trial Court, as and when such cases come before it, shall decide the same strictly on the basis of the evidence that may be produced before it, entirely uninfluenced by any observation contained in this judgment.

30. For what has been discussed above, Criminal Appeal No.S-104 of 2023 and Criminal Appeal No.S-105 of 2023 are **allowed**. The respective judgments dated 30.11.2023 passed by the learned 1st Additional Sessions Judge, Kamber, in Sessions Case No.482 of 2021 and Sessions Case No.424 of 2021, insofar as they relate to appellant Mashooque Ali, are hereby **set aside**. Consequently, the conviction and sentences awarded to the appellant

under Section 302 (c), P.P.C. and Section 24 of the Sindh Arms Act, 2013 are also **set aside** and he is **acquitted** of the charges by extending to him the **benefit of doubt**. The appellant shall be released forthwith, if not required to be detained in any other custody case.

JUDGE

Qazi Tahir PA/*