

# Order Sheet

## IN THE HIGH COURT OF SINDH, KARACHI

*Criminal Jail Appeal No.S-527 of 2022*

*(Mehboob Ali Mallah Vs. The State)*

**Appellant** : Mehboob Ali son of Muhammad Ayoub by caste Malah, through; Ms. Gul Hafsa, Advocate

**The State** : through; Syed Mumtaz Hussain Shah, Assistant Prosecutor General, Sindh.

**Date of hearings** : 24.02.2025, 23.06.2025, 04.08.2025 & 18.08.2025.

**Date of Decision** : 22.09.2025.

### **JUDGMENT**

**Ali Haider 'Ada'.J:-** Through this Criminal Jail Appeal, the appellant has assailed the judgment dated 11.08.2022, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Thatta (hereinafter referred to as the trial Court), in Sessions Case No. 161 of 2019, arising out of Crime No. 76 of 2019 registered at Police Station Sujawal, for an offence punishable under Section 23(i) of the Sindh Arms Act, 2013. By the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of three years, four months and ten days, and was also directed to pay a fine of Rs.5,000/-, and in case of default in payment of fine, to further suffer simple imprisonment for two months. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that the present FIR is an offshoot of the main case bearing Crime No. 75 of 2019, registered under Section 302, PPC at Police Station Sujawal. The allegation against the appellant is that he committed the murder of his wife on 30.03.2019. On the following day, the police received information through a source, whereupon the appellant was arrested and allegedly found in possession of a SBBL gun along with cartridges. Consequently, a separate FIR was registered under the Sindh Arms Act. After usual investigation, the challan was submitted before the competent Court of law, and the case was later entrusted to the learned trial Court for adjudication.

3. The learned trial Court, after providing the requisite documents to the appellant, framed a charge on 09.07.2019, to which the appellant pleaded not guilty and claimed trial. Consequently, the prosecution was permitted to lead its evidence. In this regard, the prosecution examined its witnesses, including the complainant Shah Nawaz, who was also the investigation officer of the main case as well as the present case. He produced the memo of arrest and recovery of the crime weapon, copy of the FIR, relevant roznamcha entries, letter addressed to the SSP for seeking permission to send the property to the Forensic Science Laboratory for examination, letter of the SSP to the FSL Incharge, and the examination report. Thereafter, the prosecution examined Hamzo, the mashir of arrest and recovery. Subsequently, the learned State Counsel closed the prosecution side by filing a statement to that effect.

4. The learned trial Court thereafter recorded the statement of the appellant under Section 342, Cr.P.C, wherein the appellant professed his innocence, denied the allegations leveled against him, and prayed for his acquittal. However, after hearing the learned counsel for the parties and assessing the material available on record, the learned trial Court passed the impugned judgment, which is now under challenge through the present Criminal Jail Appeal.

5. Learned counsel for the appellant contended that the prosecution case is fraught with major contradictions and material inconsistencies. In particular, the manner and mode of the alleged recovery is highly doubtful. It was further argued that the prosecution utterly failed to establish the safe custody and secure transmission of the case property, while there was also an unexplained delay in sending the recovered weapon to the Forensic Science Laboratory (FSL). Such lapses, according to learned counsel, cast serious doubt upon the integrity of the prosecution evidence. She maintained that the case is riddled with material infirmities and serious doubts, which the law requires to be resolved in favour of the accused. As prayed, the appellant is entitled to acquittal by extending him the benefit of doubt.

6. Conversely, the learned Assistant Prosecutor General supported the impugned judgment and prayed for dismissal of the appeal. He argued that the appellant was arrested promptly on the very next day of the occurrence, and the recovery of the weapon was duly effected in accordance with law. He further submitted that the prosecution had successfully established the chain of events connecting the appellant with the commission of the offence, and the

role attributed to the appellant stood specifically proved through consistent evidence. Hence, the conviction and sentence recorded by the learned trial Court were the result of proper appreciation of evidence, calling for no interference by this Court.

7. Heard the arguments advanced by the learned counsel and perused the material available on record with due judicial scrutiny.

8. As per the prosecution, it had been alleged that the recovery from the appellant was effected on 31.03.2019, and the recovered weapon was subsequently sent to the Forensic Science Laboratory for examination, where it was received on 03.04.2019 through Head Constable Sher Muhammad, who acted as the dispatch rider. However, it is an admitted position that the said dispatch rider, namely HC Sher Muhammad, was not examined before the learned trial Court, which omission creates a serious dent in the prosecution case regarding the safe transmission of the case property.

9. Ordinarily, in natural conduct, after commission of the offence, an accused person does not openly carry the weapon of offence while moving about in the city. In most cases, such weapon is either concealed or disposed of, for example by throwing it into a river or otherwise destroying the evidence. In the present case, the prosecution's stance that the appellant was apprehended while roaming in the city coupled with the crime weapon is against normal human conduct and the general course of events, thereby creating serious doubt regarding the veracity of the alleged recovery.

10. It is also on record that the crime weapon was sent to the Forensic Science Laboratory after an unexplained delay of three (03) days. No plausible explanation has been offered for such delay, nor is there any malkhana entry produced to show that the property remained in safe custody during this period. The prosecution also failed to examine the in-charge of the malkhana, who could have explained the manner in which the property was kept in safe custody and then transmitted to the FSL. Law is well-settled by now that prosecution is under legal obligation to prove the safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory as held by the Honourable Supreme Court in the case of *Kamal Din alias Kamala v. The State* (2018 SCMR 577). Further Reliance is placed upon the case of *Zafar Ali abbasi and another vs Zafar Ali abbasi and others* (2024 SCMR 1773), as it was held that:

9. Furthermore, in order to establish the guilt of the accused, it is the legal obligation of the prosecution to prove each and every link of the chain of evidence beyond reasonable doubt. In the instant case, the alleged recovery was effected on 12.01.2017, while the same was received at the Forensic Science Laboratory on 16.01.2017, indicating an unexplained delay of four days. The prosecution has failed to offer any plausible explanation for this delay. More importantly, the prosecution has not produced any evidence to establish the safe custody and safe transmission of the recovered weapon. Neither the concerned malkhana official nor the dispatch rider was examined to prove the chain of custody. The relevant entry in Register No. 19, which is provision under the Police Rules, 1934, was also withheld. Not a single prosecution witness deposed that after the recovery, the case property was kept in safe custody or entered into the Roznamcha. It is a settled principle of law that mere production of a positive forensic report is not sufficient to sustain a conviction unless the prosecution establishes the integrity of the case property through unbroken and reliable chain of custody. In the present case, the recovery proceedings are jammed with serious doubts and procedural lapses, which cast a shadow over the credibility of the evidence. In such circumstances, where material inconsistencies exist and the recovery itself is rendered doubtful, a conviction cannot be sustained. Reliance is placed upon the case of *Haji Nawaz vs The State* (2020 SCMR 687).

10. Furthermore, the appellant's case is fortified by the following case law, wherein the Superior Courts have consistently held that where the prosecution's case is marred by major inconsistencies, procedural flaws, and doubtful recovery, the accused is entitled to the benefit of doubt. The settled principle of law is that if a single circumstance creates reasonable doubt in the mind of a prudent person, the benefit of such doubt must be extended to the accused, as a matter of right and not of concession.

11. It is well-established in law that where the ocular account becomes doubtful or unreliable, any alleged recovery made pursuant to such account cannot, by itself, be sufficient to uphold the conviction and sentence of an accused. In the present case, the recovery is not only incapable of corroborating the prosecution's version due to the doubtful nature of the ocular evidence, but the recovery proceedings themselves are riddled with serious procedural and evidentiary lacunae. The Honourable Supreme Court of Pakistan, in the case of *Muhammad Ashraf v. The State* (2025 SCMR 1082), has categorically held that:

9. Insofar as the recovery of blood stained hatchet and positive report of Chemical Examiner (Ex.No.18/B), are concerned, without discussing the merits and demerits of these pieces of the prosecution evidence, it is noteworthy that as we have already disbelieved the direct prosecution evidence, therefore, the conviction and sentence of the appellant cannot be maintained merely on the basis of alleged recovery of hatchet and positive FSL report. Reference in this context may be made to the judgments reported as "*Dr. Israr-ul-Haq v. Muhammad Fayyaz* (2007 SCMR 1427), '*Muhammad Afzal alias Abdullah and others v. The State and others*' (2009 SCMR 436),

*'Abdul Mateen v. Sahib Khan and others' (PLD 2006 Supreme Court 538) and 'Nek Muhammad and another v. The State' (PLD 1995 Supreme Court 516).*

12. It is a well-settled principle of criminal jurisprudence that if a single loophole or reasonable doubt emerges on the surface of the prosecution's case, the benefit of such doubt must invariably be extended to the accused. Reliance in this regard is placed on the judgment of *Qurban Ali v. The State* (2025 SCMR 1344).

13. In view of the foregoing reasons and discussion, and upon thorough examination of the record, it has become crystal clear that the prosecution has failed to establish the charge against the appellant beyond the shadow of reasonable doubt. Accordingly, the appellant **Mehboob Ali S/o Muhammad Ayub, by caste Mallah** is hereby acquitted of the charge under Section 23 (i) Sindh Arms Act, arising out of FIR No. 76 of 2019, registered at Police Station Sujawal. Consequently, the conviction and sentence awarded to him through judgment dated 11-08-2022 passed by the learned trial Court in Sessions Case No. 161 of 2019 are hereby set aside. The appellant shall be released forthwith, if not required in any other custody case.

**JUDGE**