

PRESENTED ON
09-03-2024

Deputy Registrar (Jud.)

IN THE HIGH COURT OF SINDH AT KARACHI 1420

Cr. Appeal No. 181 / of 2024

Sohail,
S/o Shafi Muhammad
Muslim, adult,
Presently confined at prison Landhi Malir
Karachi

Appellant

Versus

1. The State

Respondent

F.I.R. No.531/2023
U/S.23(1)(a), Sindh Arms Act, 2013
P.S. Ibrahim Hyderi, Karachi.

APPEAL UNDER SECTION 410 CRIMINAL PROCEDURE
CODE, 1898



THE HIGH COURT OF SINDH AT KARACHI

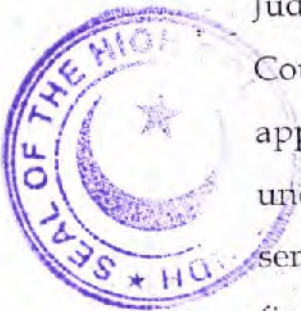
Criminal Appeal No.181 of 2024

Appellant	:	Sohail through Mr. Muhammad Yousif, advocate
Respondent	:	The State through Mr. Altaf Khokhar, Deputy Prosecutor General
Date of hearing	:	13-03-2025
Date of short order	:	13-03-2025
Date of reasons	:	18-03-2025

JUDGMENT

Jan Ali Junejo, J. — This criminal appeal is directed against the judgment dated 27.02.2024 (here-in-after referred to as the "Impugned Judgment") passed by the Additional Sessions Judge-IV, Malir, Karachi (hereinafter referred to as the "Trial Court"), in Sessions Case No. 43 of 2024, whereby the appellant Sohail son of Shafi Muhammad was convicted under Section 23(1)(a) of the Sindh Arms Act, 2013 and sentenced to rigorous imprisonment (RI) for five years with a fine of Rs. 50,000/-, and in default, to further undergo 30 days of simple imprisonment.

2. The case arose out of FIR No. 531/2023, registered at P.S. Ibrahim Hyderi, Karachi, under Section 23(1)(a) of the Sindh Arms Act, 2013. As per the prosecution, on 18.12.2023 at about 0330 hours, a police party led by SIP Abdul Qadir Jakhro was on patrol when they received spy information about suspects in Street No.5, Umar Colony, Ibrahim Hyderi. Upon reaching the location, four suspects tried to flee. Sohail (appellant) and Muhammad Ibrahim were arrested, while two accomplices



managed to escape. The prosecution alleges that a .30 bore pistol with two live rounds was recovered from the appellant, and 1050 grams of charas was recovered from co-accused Muhammad Ibrahim. The weapons and drugs were sealed on the spot, and a memo of arrest and recovery was prepared. The Investigating Officer (IO) SIP Muhammad Pinyal recorded statements of the witnesses, sent the case property for forensic analysis, and submitted a final charge sheet under Section 173 Cr.P.C. The Trial Court framed a formal charge against the Appellant to which the Appellant did not plead guilty.

3. During trial, the prosecution examined four witnesses as under:

PW-1: SIP Abdul Qadir Jakhro (Complainant)

- This witness was examined at **Exhibit 3**.
- He produced the following documents:
 - **Exhibit 3/A: Police Daily Diary Entry No. 23**, which records the departure of the police party for patrolling.
 - **Exhibit 3/B: FIR No. 531/2023**, the First Information Report lodged against the accused.
 - **Exhibit 3/C: Memo of Arrest & Recovery**, documenting the seizure of a .30 bore pistol with two live rounds from the accused Sohail.
 - **Exhibit 3/D: Seizure Memo of Charas**, recording the recovery of 1050 grams of charas from co-accused Muhammad Ibrahim.
 - **Exhibit 3/E: Malkhana Entry Register (No. 19, Entry No. 340/2023)**, proving that the recovered weapon and charas were deposited in safe custody at the police station.



PW-2: HC Waris Ali (Witness of Recovery/Mushir)

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- This witness was examined at Exhibit 4.

PW-3: HC Ali Khan (Malkhana In-charge)

- This witness was examined at Exhibit 5.
- He produced the following document:
 - **Exhibit 5/A: Malkhana Entry No. 340/2023**, confirming that the recovered weapon and narcotics were safely stored in the police station's Malkhana (storehouse).

PW-4: SIP Muhammad Pinyal (Investigating Officer)

- This witness was examined at Exhibit 6.
- He produced the following documents:
 - **Exhibit 6/A: Letter to Forensic Lab**, proving that the weapon and drugs were sent for forensic analysis.
 - **Exhibit 6/B: Forensic Science Laboratory (FSL) Report**, confirming that the .30 bore pistol was in working condition.
 - **Exhibit 6/C: Chemical Examination Report**, establishing that the seized charas was a narcotic substance.
 - **Exhibit 6/D: Final Charge Sheet (Challan) under Section 173 Cr.P.C.**, formally presenting the case against the accused in Court.

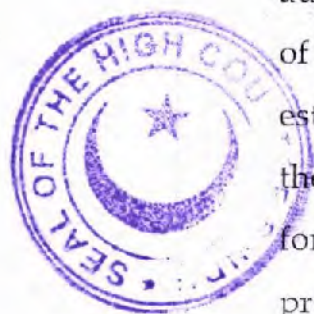


The prosecution concluded its case, and the statement of the Appellant was recorded under Section 342 of the Criminal Procedure Code (Cr.P.C.), wherein he asserted his innocence. The Appellant neither presented any defence evidence nor chose to testify under oath in accordance with Section 340(2) of the Cr.P.C. As a result, the learned trial Court rendered the Impugned Judgment, convicting and sentencing the Appellant while making the following observations:

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- The **ocular evidence** of the prosecution witnesses was consistent and remained unshaken during cross-examination.
- The **recovered property** was kept in safe custody, and its chain of custody was **not challenged** by the defense.
- The defense failed to produce any evidence of false implication.
- The prosecution established **guilt beyond a reasonable doubt**, leading to the appellant's conviction.

4. The learned counsel for the appellant argued that the appellant has been falsely implicated due to a land dispute with the Katchhi community, and the entire case is based on fabricated evidence. It was contended that the prosecution failed to associate independent witnesses, despite the arrest occurring in a populated area, and the memo of recovery lacked essential details, raising serious doubts about its authenticity. The learned counsel further argued that the chain of safe custody of the recovered weapon and charas was not established, as evident from the missing entries in the Malkhana Register and delays in sending the property for forensic analysis. Additionally, contradictions in the prosecution witnesses' testimonies regarding the use of torchlight, the manner of recovery, and the presence of other accused render the case highly doubtful. It was urged that, given these inconsistencies and the failure to prove the case beyond a reasonable doubt, the impugned judgment be set aside, and the appellant be acquitted.



5. Per contra, Conversely, the learned Deputy Prosecutor General (DPG) vehemently opposed the appeal, arguing that the prosecution successfully proved its case beyond a reasonable doubt through consistent and corroborated

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testimonies of police witnesses. It was submitted that independent witnesses are not mandatory for conviction, especially in cases where the recovery is made during a late-night raid in an isolated area. The learned DPG maintained that the weapon and charas were recovered from the appellant, properly sealed, and sent for forensic examination, which confirmed their authenticity. The absence of any motive for false implication by the police further strengthens the prosecution's case. Moreover, minor contradictions in witnesses' depositions do not materially affect the case, and mere technical irregularities in documentation do not warrant acquittal. Therefore, it was prayed that the appeal be dismissed, and the conviction and sentence awarded by the trial Court be upheld.

6. After thoroughly evaluating the arguments advanced by the learned counsel for the appellant and the learned Deputy Prosecutor General (DPG) for the State, as well as meticulously reviewing the case record, the following observations emerge: The prosecution's case is riddled with inconsistencies and contradictions, creating serious doubt regarding the recovery of the weapon and the credibility of the evidence. The Memo of Arrest and Recovery, as well as the testimony of PW HC Waris Ali, explicitly state that the weapon and bullets were recovered from the fold of the appellant's trousers. However, SIP Abdul Qadir, the complainant, failed to disclose this crucial fact during his testimony, raising doubts about the accuracy of the recovery process. Additionally, neither SIP Abdul Qadir, mashir HC Waris Ali, the Memo of Arrest and Recovery, the sketch of the pistol, nor the FIR mention any serial number on the recovered pistol. In stark contrast, the Forensic Science Laboratory (FSL) Report (Exh. 6/E) states that the pistol bore the number PAM-6041, which was never disclosed by any



[6]

prosecution witness during their evidence. Furthermore, a letter dated 19-12-2023, issued by the Investigating Officer (I.O.) to the AIG Forensic Department Sindh, shows that the pistol was without a number, whereas a note of the FSL dated 19-12-2023 states that the pistol bore the number PAM-6041, creating an unexplained contradiction. The credibility of the police version is further shaken by inconsistencies in how the spy information was received—SIP Abdul Qadir claimed he was informed through phone, while mashir HC Waris Ali stated that the spy informer arrived on foot. Moreover, WHC Ali Khan, the Malkhana in-charge, admitted during cross-examination that he did not receive any personal search articles of the accused, but only the case property parcels in a sealed condition, further undermining the prosecution's claim regarding the appellant's possession of the weapon. These contradictions and omissions severely damage the prosecution's case, making it unsafe to sustain a conviction.



7. It is a foundational principle of criminal law that the prosecution must establish guilt *beyond a reasonable doubt*, with even the slightest uncertainty favoring the accused. In a parallel scenario, as observed in *Muhammad Hamdani v. The State* (2018 YLR 2687), this Court acquitted the accused by extending the benefit of doubt in a case under Section 23(1)(a) of the Sindh Arms Act, 2013. This position is further corroborated by the Honourable Supreme Court of Pakistan's ruling in *Sajjan Solangi v. The State* (2019 SCMR 844), which underscores the imperative of adhering to this standard.

8. In light of the foregoing discussion, it is evident that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. The impugned judgment is not sustainable under the law. In these circumstances, Criminal

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Appeal filed on behalf of the appellant stands **allowed**, and the conviction and sentence passed by the learned trial court, by virtue of the impugned judgment, are hereby set-aside. The Appellant shall be released forthwith if not required to be detained in any other pending case. These are the reasons for short Order dated: 13-03-2025.


JUDGE




THE HIGH COURT OF SINDH, KARACHI
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(MUHAMMAD SARFARAZ)
I/C: ASSISTANT REGISTRAR (COPYING)

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