

IN THE HIGH COURT OF SINDH,CIRCUIT COURT MIRPURKHAS
Criminal Appeal No.S-06 of 2024.
Criminal Appeal No.S-140 of 2018 (Old Number)

Date	Order with signature of Judge
Appellant:	Muhammad Hanif S/o Muhammad Siddique (confined at Central Prison Hyderabad) Through Mr. Om Parkash H. Karmani, Advocate.
The State:	Through Mr. Ghulam Abbas Dalwani Deputy Prosecutor General.
Date of Hearing.	24.07.2025.
Date of Decision.	24.07.2025.
Date of Reason.	29.07.2025.

J U D G M E N T .

Ali Haider 'Ada',J:-Through this appeal, the appellant has challenged the judgment dated 02.06.2018 passed by the learned Sessions Judge, Tharparkar at Mithi, in Sessions Case No. 13 of 2017, titled The State v. Muhammad Hanif, arising out of Crime No. 02 of 2017 registered at Police Station Diplo, for an offence punishable under Section 23-(1)(a) of the Sindh Arms Act, 2013. By virtue of the impugned judgment, the appellant was convicted and sentence to undergo rigorous imprisonment for a period of seven (07) years, along with a fine of Rs.100,000/- (Rupees One Hundred Thousand only). In case of default in payment of fine, the appellant was directed to suffer simple imprisonment for a further period of six (06) 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 on 12.01.2017 at about 1630 hours, the appellant/accused, who had already been arrested in Crime No. 01/2017 registered for offences punishable under Sections 302, 201, and 34, PPC, allegedly confessed to his guilt during the course of interrogation and voluntarily offered to produce the weapon used in the commission of the said offence (Main Case). Pursuant to his disclosure, the appellant led the police party to a specific location, namely his house, wherefrom one 12-bore country-made pistol along with three live cartridges was recovered. A recovery memo (mashirnama) was prepared at the spot in accordance with law. Subsequently, the present FIR was

registered under the Sindh Arms Act, 2013. After completion of usual investigation, the police submitted the final challan, and the appellant was sent up for trial. The learned trial Court framed the charge against the appellant on 07.04.2017, to which he pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined the witnesses: PW-1 Natho, who acted as mashir (witness) of the memo of recovery and the memo of the visit to the place of incident. During his deposition, he exhibited both memos. PW-2 ASI Onarsingh, the complainant of the case, who during the course of his examination-in-chief, exhibited a copy of the FIR. PW-3 ASI Ramesh Kumar, the Investigation Officer of the case, who exhibited the letter addressed to the Forensic Science Laboratory and the corresponding Forensic Examination Report.

4. Thereafter, the learned State Counsel, through a statement dated 23.01.2017, closed the prosecution's evidence. Subsequently, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C., wherein the appellant denied the allegations, professed his innocence, and claimed false implication in the case. However, he neither opted to examine himself on oath under Section 340(2), Cr.P.C, nor he produce any evidence in his defence. Upon conclusion of trial and after hearing arguments from both sides, the learned trial Court delivered the impugned judgment, which is now under challenge through the present criminal appeal filed by the appellant.

5. Learned counsel for the appellant contended that the impugned judgment is vitiated by illegality, as the learned trial Court failed to appreciate material inconsistencies that emerged during the course of evidence. It was argued that the prosecution failed to establish the guilt of the accused beyond reasonable doubt, particularly as the prosecution did not prove the safe custody or safe transmission of the recovered weapon. In absence of such critical evidence, the integrity of the case property becomes doubtful, and consequently, the entire prosecution case loses its credibility. He submitted that the benefit of doubt must be extended to the appellant, as it is a well-settled principle of criminal jurisprudence that such benefit always goes to the accused.

6. On the other hand, learned Deputy Prosecutor General argued that the recovery was made on the pointation of the accused, and there was no

mala fide intention on part of the police to foist the recovered weapon upon the appellant. He maintained that the appellant failed to provide any plausible explanation regarding the recovery and the prosecution successfully discharged its burden. It was further submitted that the learned trial Court passed a well-reasoned and speaking judgment, warranting no interference by this appellate Court.

7. Heard the arguments advanced by learned counsel for the parties and have carefully perused the material available on the record with due care and caution.

8. In cases involving recovery, it is incumbent upon the prosecution to establish a clear and unbroken chain of circumstances that connects the accused not only with the recovery itself but also with the commission of the alleged offence. Where the prosecution claims that the accused voluntarily led to the discovery of incriminating material, it becomes the duty of the Investigating agency to record the accused's statement to that effect under the law. The prosecution must demonstrate through reliable and admissible evidence that such a statement was recorded and that it directly led to the recovery. Failure to record or produce such a statement on the record seriously undermines the credibility of the recovery and disrupts the chain of evidence, thereby rendering the prosecution case doubtful. In the present case, although it is alleged that the appellant voluntarily led to the recovery of the pistol on 12.01.2017, there is no statement of the accused recorded, showing that he made any disclosure that resulted in the recovery. The absence of a recorded disclosure statement deprives the recovery of its foundational legal basis, and therefore, such recovery cannot be treated as a discovery under the law. Reliance is placed upon the case of *Zafar Ali abbasi and another vs Zafar Ali abbasi and others* (2024 SCMR 1773).

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.

***Muhammad Rahim vs The State* (2024 PCr.L.J 42)**

18. It is stated earlier that the alleged occurrence took place on 10.12.2020, and on the same date, seven crime empties of T.T pistol were also taken into possession by the investigation officer through recovery memo in the presence of witnesses, whereas the crime weapon, i.e., T.T pistol was recovered allegedly on the pointation of the appellant on 19.12.2020. The prosecution produced a positive report of the Firearms Expert (Ex.P/6-A), according to which the Firearms Expert received parcel No.2 of crime empties of a .30 bore pistol and parcel No.4 of the crime weapon, i.e. T.T pistol .03 bore on 11.01.2020 with a delay of twenty-two days after recovery of crime weapon and after a delay of thirty-two days of recovery of crime empties from the place of occurrence. The crime empties recovered from the place of occurrence and the crime weapon recovered on the alleged pointation of the appellant were sent together to the Firearms Expert, but the same has been found in violation of the verdict of the Hon'ble Supreme Court, and this court held that the recovered empties should not be retained by the police for a wait of recovery of crime weapon. Rather it has categorically been held that sending the empties together with the crime weapon to the ballistic expert makes the entire process suspicious and highly doubtful. In this case, it is obligatory upon the investigation

officer to have sent the seven crime empties recovered from the place of occurrence as soon as possible without delay to FSL and without waiting for recovery of the crime weapon. Moreso, it is apparent from the record that the crime empties were secured from the crime scene on 10.12.2020 on the day of the murder of the deceased, but the same were retained in possession, whereas the crime weapon was allegedly recovered on 19.12.2020, whereafter the empties and alleged crime weapon were sent together to the FSL for ballistic analysis, which has diminished its evidentiary value because it gives rise to manipulation and padding. Therefore, the Firearms Expert report in this regard is inconsequential to the prosecution case. Reliance is placed in the case titled as *Nazir Ahmed v. The State* (2016 SCMR 1628), *Ali Sher and others v. The State* (2008 SCMR 707) and *Israr Ali v. The State* (2007 SCMR 525). In the case of *Muhammad Ashraf v. The State* (2019 SCMR 652) the Hon'ble Supreme Court observed as under:

"After scrutiny of evidence, it has been observed by us that no such corroboration is available on record because the empties secured from the spot and the .30 bore pistol allegedly recovered from the possession of appellant at the time of his arrest were sent to the office of FSL on the same day i.e. on 21.03.2002 after the arrest of appellant on 23.01.2002. In these circumstances, the report of FSL cannot be relied and is legally inconsequential."

19. Apart from that the prosecution has failed to establish safe custody of the recovered empties from the place of occurrence and the T.T pistol and their safe transmission to the Forensic Science Laboratory. It has not been explained by the prosecution that the weapons and empties were retained by whom during the investigation period. For the sake of argument, if it is assumed that the case property was lying in the Malkhana of the police station, then no report/entry of the Malkhana nor any witness was produced to corroborate the version of the prosecution. The law is well-settled by now that the prosecution is under a legal obligation to prove the safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory.

Anwar Faheem alias Anoo alias Zeeshan vs The State
(2024 MLD 762)

30. Record reflects that earlier despite hectic efforts, SIP Tariq Ali could not find out the culprits of FIR No.544 of 2011, which was disposed of in A-Class on 10.08.2011 and on 06.10.2011, permission was granted to re-investigate the matter by the trial Court (Exh.23/G). Crime empties recovered from the place of incident were received by Ballistics Expert on 06.09.2011, whereas, FIR was registered on 25.07.2011. Sending the crime empties to the forensic division with the considerable delay has also not been explained properly, as such no sobriety can be attached to the positive report, with regard to the safe custody of the crime empties at police station and its safe transit, the Honorable apex court in the case of *Kamaluddin alias Kamala v. The State* (2018 SCMR 577) has held as under:

"As regards the alleged recovery of Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice to it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the investigating officer, had

divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission"

Abdul Samad Brohi vs The State (2023 YLR 2227)

12. WPC Zubair Ahmed the P.W. 5 who deposited the gun for the FSL report has not produced the entry of the roznamcha register showing his receiving the case property by him. In his examination-in-chief, he has deposed that I.O. Muhammad Siddique has handed over to him one parcel of case property, while in his cross-examination; he has pointed out from his statement under section 161, Cr.P.C. that he had received the parcel of gun and empties separately which is not the case of prosecution. The perusal of RC reflects that the property of the main case and this case were sent together. It does not reflect from the RC that the gun and the cartages so recovered from the appellant were sent for FSL only the crime number is mentioned. The PC Saifullah who carried the case property and deposited the same with the office of FSL, deposed that on 16.02.2021 he received the case property from the Investigation Officer but deposited the same with the office of Ballistic Expert on 17.02.2021, he had not explained as to where the property was for one day such failure create very serious doubt in the safe transmission of the alleged recovered gun and make the recovery doubtful.

Owais and another vs The State (2022 PCr.L.J 920)

17. The safe custody and safe transmission of the pistols and empties have also not been proved before trial Court. It has not been explained by the prosecution that the weapons and empties were retained by whom during intervening period. For the sake of arguments, if it is assumed that the case property was lying in the Malkhana then no report/entry of the Malkhana has been produced to corroborate the version of prosecution. No official from Forensic Division has been examined in this case. Investigating Officer nowhere has deposed about safe custody of the pistol at Police Station and its safe transmission to the Ballistic Expert, as such positive report of FSL would not improve the case of prosecution. 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).

Rasool Bux vs The State (2021 YLR 1906)

14. Apart from above, there is also unexplained delay in sending the crime weapon to the Ballistic Expert as the same was allegedly recovered from the accused on 03.05.2019 where it was sent to the Ballistic Expert on 07.5.2019 i.e. after about four days as is evident from the FSL report ex.03/D wherein against the column "Date Received", "07.05.2019" has been written. In the case reported as Samandar alias Qurban and others v. The State reported in 2017 MLD

539 Karachi, while dealing with the point of delay in sending the weapon to Ballistic Expert, this Court held as under:

"Apart from above sending of crime weapon to ballistic expert for forensic report with delay of 20 days of their recovery also added further doubt into the prosecution case, thus in view of above coupled with non-compliance of section 103, Cr.P.C., it can safely be presumed that alleged recovery of crime weapon was not made from the possession of the appellants as alleged by the prosecution."

11. In view of the foregoing reasons and detailed discussion, the instant appeal was allowed vide short order dated 24.07.2025, whereby the appellant was acquitted of the charge levelled against him. Consequently, the judgment dated 02.06.2018 passed by the learned trial Court in Sessions Case No.13 of 2017 was set aside. The Jail Authorities were directed to release the appellant forthwith, if not required in any other criminal case. These are the detailed reasons in support of the short order announced earlier.

JUDGE

Adnan Ashraf Nizamani