

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Jail Appeal No.S-119 of 2024

Appellant

Irshad @ Gulab Gopang : Through Mr. Shabbir Ali Bozdar, Advocate.

State.

: Through Mr. Mansoor Ahmed Shaikh,
Deputy Prosecutor General Sindh.

Dates of hearing: : 23-05-2025.

Date of Short Order : 23-05-2025.

Date of Reason : 02-06-2025.

JUDGMENT

Ali Haider 'Ada',J - This Criminal Jail Appeal is directed against the judgment dated 07-10-2024, passed by the learned Sessions Judge, Naushahro Feroze, in Sessions Case No. 357 of 2024, arising out of FIR No. 52 of 2024, registered at Police Station Muhabatdero, for an offence punishable under Section 23(i)(a) of the Sindh Arms Act, 2013. Through the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of two (02) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only). In case of default in payment of fine, the appellant was directed to suffer simple imprisonment for a further period of one (01) month. However, the appellant was extended the benefit of Section 382-B, Cr.P.C., and the sentence was ordered to run accordingly.

2. The prosecution case, in brief, is that on 04-05-2024, the complainant, along with his subordinate staff, left the Police Station for routine patrolling of the area. When the police party reached Bhour Mori, they received spy information that a suspicious person was present at Safety Bunder, armed with a pistol. After receiving of said information, the complainant party proceeded

to the pointed place, where they found and apprehended the said person. Upon interrogation, the apprehended person disclosed his name and on conducting a personal search, the police recovered one 30-bore pistol along with three live bullets from his possession. As the accused failed to produce any valid license for the said weapon and ammunition. Then memo of arrest and recovery was prepared on the spot in presence of mashir. Thereafter, the accused along with the case property was brought to the Police Station, where FIR No. 52 of 2024 was registered on the same day under Section 23(i)(a) of the Sindh Arms Act, 2013.

3. The investigation was completed and thereafter the appellant was sent up for trial. On 30-05-2024, the learned trial Court framed a charge against the appellant, to which he pleaded not guilty and claimed to be tried.

4. At the trial, the prosecution examined PW-1 SIP Khadim Hussain, who is the complainant of the case. He produced in evidence the memo of arrest and recovery, roznamcha entry, FIR, road certificate, FSL report and the Criminal record of the appellant. The prosecution then examined PC Sajjad Ali as Mashir of the arrest and recovery. Upon conclusion of the prosecution evidence, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C., wherein he denied the allegations and professed innocence. After hearing the learned counsel for the parties, the trial Court passed the impugned judgment, which is now under challenge through this appeal.

5. Learned counsel for the appellant contended that there was an unexplained delay of three days in sending the case property to the Forensic Science Laboratory (FSL), which creates serious doubt and the prosecution failed to establish its case beyond a reasonable doubt, particularly in the absence of any independent witness to corroborate the version of the

prosecution. It was emphasized that the law does not require a multitude of circumstances to raise doubt; even a single circumstance that creates reasonable doubt is sufficient to entitle the accused to the benefit of doubt. In support of his submissions, learned counsel placed reliance on the case of *Moinuddin alias Waseem v. The State* (2016 YLR 523).

6. Conversely, the learned Deputy Prosecutor General supported the impugned judgment on the ground that the recovery was duly effected from the appellant, and there was no allegation of enmity against the police officials that could suggest false implication. He argued that the recovery was genuine and the entire process was carried out in accordance with due process of law. Therefore, according to him, the appellant is not entitled to the benefit of acquittal merely on the basis of minor discrepancies.

7. Heard the arguments advanced by learned counsel for the parties and have thoroughly examined the material available on the record.

8. The record reflects that the appellant was charged under Section 23(i)(a) of the Sindh Arms Act, 2013, for alleged possession of an unlicensed 30-bore pistol along with three live rounds. However, upon careful examination of the prosecution case, it becomes evident that the charge has not been proved beyond a reasonable doubt. According to the prosecution, the recovery was made pursuant to spy information allegedly received by the complainant. Yet, despite having prior intimation, no effort was made to associate any independent or private person from the locality as a mashir to witness the recovery proceedings. The complainant himself admitted during cross-examination that no private person was asked to act as a mashir at the time of recovery, despite the fact that the incident occurred in a busy area where the presence of private witnesses could reasonably be expected. This unexplained

failure to associate an independent witness creates serious doubt on the recovery, especially in view of that in cases arising under special laws, such as the Sindh Arms Act, wherein the punishment is stringent and the consequences severe, the prosecution is duty-bound to ensure transparency at every stage of investigation and recovery. In instant case, where prosecution relies solely on official witnesses, who are also complainants and recovery witnesses, without any corroboration from independent sources, the quality of such evidence must be assessed with greater caution. The absence of independent corroboration, particularly in the face of admitted opportunity to secure it, renders the prosecution case doubtful. In support of this legal position, reliance is placed upon the case of *Muhammad Ramzan alias Chuto v. The State* (2020 YLR 2582), *Waris v. The State* (2019 YLR 2381).

9. Furthermore, the complainant testified during trial that the case property was sent to the FSL, Larkana, for examination through PC Amir Ali Kalhoro. However, a perusal of the FSL report reveals a different version; it reflects that the weapon was brought to the laboratory and signed for by another official, namely PC Abdul Majeed. This discrepancy in the identity of the person who delivered the case property to the FSL raises serious questions regarding the safe transmission of the chain of custody. Despite this material contradiction, the prosecution failed to examine either of the two officials, PC Amir Ali Kalhoro or PC Abdul Majeed, who were supposedly involved in the dispatch and delivery of the case property to the FSL. Moreover, the prosecution also failed to record the statement of the Malkhana In-charge, who would have been the custodian of the recovered weapon during the period it remained in police custody prior to dispatch. This omission is of considerable significance, as the safe custody of case property and its secure transmission to the FSL form an essential link in the evidentiary chain. Any break in this chain renders the

prosecution's case doubtful. In cases involving recovery of weapons or narcotics, the prosecution must establish an unbroken chain of custody, supported by credible evidence. Reliance in this regard is placed upon the judgment of this Court *Wahid Bux alias Wahido v. The State* (2022 PCrLJ 1631).

10. The record reveals that the FIR was registered on 04.05.2024, whereas the alleged weapon was received by the FSL on 07.05.2024. This delay of three days in sending the case property to the FSL remains unexplained on the record. No evidence was brought on file to show where or in whose custody the weapon remained during this intervening period. This omission is not merely technical; it raised serious doubt about the prosecution's version. Any delay in sending the recovered weapon to the FSL adversely affects the prosecution's case unless a plausible justification is provided. In the absence of any such explanation, the evidence becomes doubtful and the benefit of such doubt must go to the accused. Reliance in this regard is placed upon the case of *Muhammad Ahsan Kamal and others v. The State* (2020 PCrLJ Note 12). In the case of *Muhammad Shakeel alias Banarsi v. The State* (2021 PCrLJ 1887), the Division Bench of this Court held that the prosecution had failed to establish the case against the accused due to an unexplained delay in sending the material case property or weapon for forensic analysis. Additionally, the prosecution did not associate any independent witness to corroborate its version, which further weakened the case. A similar view was taken in *Mehrab alias Mehro v. The State* (2022 YLR 2460).

11. The record clearly reflects that neither the prosecution witnesses deposed that the case property was deposited in the malkhana nor did any of them confirm that an entry to that effect was made in Register No. XIX. Additionally, no such entry was produced during the evidence. However,

during the examination of the accused under Section 342 Cr.P.C, the learned trial Court posed a question regarding a Malkhana entry purportedly exhibited as Ex.5/A, asking the accused/appellant what he had to say about it. The accused responded that he had no knowledge of the same. Upon careful perusal of the entire record, including the paper book and the original record and proceedings (R&P), it is evident that no document bearing the exhibit number 5/A exists on file. In fact, the document marked as Exhibit 5 is the statement of the learned State Counsel, through which the prosecution evidence was formally closed. Therefore, it is noticeably clear that no malkhana entry of safe custody of the case property was produced or exhibited during the course of evidence. *Rule 22.70 of the Police Rules, 1934* governs this aspect and mandates the maintenance of *Register No. XIX*, which deals with the inventory of all case property deposited in the malkhana. The Rule reads as under:

22.70. *Register No.XIX. This register shall be maintained in Form 22.70.*

With the exception of articles already included in registered No.XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

FORM No.22.70

Police Station. _____ District

- 1- Serial No.
- 2- No. Of first information report (if any), from whom taken (if taken from a person), and from what place.
- 3- Date of deposit and name of depositor.
- 4- Description of property.
- 5- Reference to report asked for order regarding disposal of property.
- 6- How disposal of and date.
- 7- Signature of recipient (including person by whom dispatched).

8- Remarks.

12. The prosecution's failure to produce this mandatory register or to lead any evidence demonstrating compliance with *Rule 22.70* creates a serious dent in the chain of custody and raises grave doubts regarding the case property. Such an omission, coupled with the improper attribution of a non-existent exhibit, further undermines the evidence of the prosecution and entitles the accused/appellant to the benefit of doubt.

13. Moreover, if, the relevant provisions of the Police Rules, 1934 are perused, *Rule 22.16* lays down a comprehensive mechanism for the handling, marking, and identification of case property, particularly weapons recovered. This Rule ensures that each weapon seized must be properly labeled and identified with reference to its source and the corresponding police proceedings. For ease of reference, Rule 22.16 reads as follows:

22-16. Case property. -- (1) The police shall seize weapons, articles and property in connection with criminal cases and take charge of property which may be unclaimed.

- (a) under the implied authority of Section 170, Code of Criminal Procedure;*
- (b) in the course of searches made in police investigations under Sections, 51, 165 and 166, Code of Criminal Procedure;*
- (c) under Section 153, Code of Criminal Procedure, as regards weights, measures, or instruments for weighting that are false;*
- (d) under Section 550, Code of Criminal Procedure, as regards property alleged or suspected to have been stolen : provided that if the property consists of an animal or animals belonging to Government or to persons of good status it may be made over to them or to a commissioned or a gazetted officer, under the orders of a Magistrate, who is empowered to make such an order under Section 523, Criminal Procedure Code.*
- (e) under Section 550, Code of Criminal Procedure, as regards property found under circumstances which create suspicion of the commission of an offence; when an offence in respect of an animal is committed and such animal is not stolen property such animal shall be seized and send with the case to the Magistrate having jurisdiction;*
- (f) under Section 25 of the Police Act, as regards unclaimed property;*

Ordinarily the police shall not take possession of moveable property as unclaimed when it is in the possession of an innocent finder, but in cities and in cantonments the police may, in compliance with an order issued under Section 26 or 27 of the Police Act, take possession and dispose of unclaimed property made over to them by innocent finders.

Such property shall be entered in the store-room register, unless a special register is prescribed for the purpose by the District Magistrate.

(g) under the provisions of Local and Special Laws.

(2) Each weapon, or article of property not being cattle, seized under the above rule, shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station.

If articles are made up into a parcel, the parcel shall be secured with sealing wax bearing the seal impression of the responsible officer, and shall be similarly marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.

Cattle shall be placed in the pound and shall be carefully described in the case diary or other report regarding their seizure from the police station.

All expenses for feeding and watering cattle kept in the pound in connection with cases shall invariably be recovered from the District Magistrate and not from the complainant.

(3) The police shall send to headquarters or to magisterial outposts,---

(a) all weapons, articles and property connected with cases sent for trial;

(b) suspicious, in-claimed and other property, when ordered to do so by a competent Magistrate.

(4) Motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by Section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court.

14. This failure further damaged the evidentiary value of the recovery. As, non-compliance with the mandatory provisions governing the custody, documentation, and identification of case property vitiates the prosecution's case.

15. Additionally, upon examination of the record, it transpires that the complainant, during the course of his examination-in-chief, categorically

admitted that he did not produce the relevant roznamcha entries pertaining to the movements and key events connected with the investigation. These roznamcha entries are not mere formalities but are essential documentary evidence that serve to corroborate the prosecution narrative and ensure transparency in the investigation process. The absence of these entries creates a serious vacuum in the prosecution's case and renders the entire chain of custody and procedural compliance highly doubtful. In this regard, *Rule 22.48(2) of the Police Rules, 1934*, is explicit and mandates the recording of all events occurring at or reported to the police station. In the case of ***Ramesh Kumar v. The State (2024 MLD 608)*** the Division Bench of this Court in para-12 has held as under;

12. *"We have come to the conclusion that prosecution has failed to prove it's' case against the appellant for the reasons that SHO had failed to associate with him private persons to witness recovery proceedings. It is case of the prosecution that had grenades were handed over to the incharge Malkhana of the police station but he has failed to produce entry of Malkhana to satisfy the Court that in fact he had kept hand grenades at the Malkhana in safe custody, explosive substance was sent to the expert after 03 days without explaining the delay. Record reflects that hand grenades were handed over to ASI Amanat Ali, he has also not been examined by the prosecution. Clearance Certificate produced by the prosecution at Ex.4/D, there is clear overwriting in the date. Learned Addl.P.G could not explain about the overwriting in date. On our minute examination, the prosecution has utterly failed to establish safe custody of the explosive substance at police station and its safe transmission to the expert. Honourable Supreme Court in the case of Kamaluddin alias Kamala v. The State, (2018 SCMR577) has laid down the following principle:*

"4. As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooque DSP/SDPO (PW-18), the Investigating Officer, had divulged before the trial Court that the recoveries relied upon in this case had been effected 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 weapons 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.

16. It further emerges from the record that the complainant, despite being the first informant, himself proceeded to conduct the investigation instead of handing over the same to an independent Police Officer. The result of such from the fact that no memo was prepared to show that the place of incident was ever visited, nor was any site inspection carried out. It is a well-established norm that when the investigation is conducted by a police officer, the first and foremost step taken is to proceed to the scene of crime and prepare a site inspection memo in accordance with the prescribed rules. In this regard, *Rule 25.10 of the Police Rules, 1934*, provides explicit guidance on the duty of an Investigating Officer upon the commencement of investigation. The Rule reads as follows:

25.10. Immediate despatch of an officer to the spot. – When a report of a cognizable case is recorded and it is decided not to dispense with investigation under section 157(1). Criminal Procedure Code, a police officer shall proceed to the scene immediately. The officer who first proceeds to the spot shall, if he be not competent to complete the investigation, take all possible steps to preserve the scene of the crime from disturbance, to record particulars of and secure the presence of potential witnesses, obtain information relating to the case and arrest the culprit.

17. The Rule makes it abundantly clear that it is a mandatory duty of the Investigating Officer to visit the place of incident, examine it thoroughly and document his observations, including the preparation of Memo. The absence of such crucial steps in the present case further reflects the superficial and one-sided nature of the investigation. Reliance is placed upon the case of *Muhammad Ramzan alias Chuto vs The State (Supra)*

18. In view of the foregoing reasons discussed herein above, it is held that the prosecution has failed to establish its case against the appellant/accused beyond reasonable doubt. Consequently, the instant appeal is allowed. The conviction and sentence recorded by the learned trial Court vide judgment dated 07.10.2024 is set aside; and the appellant, Irshad alias Gulab Gopang, is acquitted of the charge. These are the detailed reasons of short order dated 23.05.2025.

JUDGE