

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No. S-05 of 2025

Appellant: Riaz Korai, *through* Mr. Ameenuddin Khaskheli,
Advocate

The State: *Through* Mr. Mansoor Ahmed Shaikh, Deputy
Prosecutor General

Date of Hearing: 23-06-2025.

Date of Short Order: 23-06-2025.

Date of Reason: 30-06-2025.

JUDGMENT

Ali Haider 'Ada', J:- Through this appeal, the appellant assailed the judgment Dated 16-01-2025, passed by the learned Additional Sessions Judge Moro (hereinafter referred to as the "trial Court") in Sessions Case No. 531 of 2024, titled The State vs. Riaz, arising out of Crime No. 17 of 2024, registered for an offence punishable under Section 23 (i) of the Sindh Arms Act, 2013 at Police Station Korai. After a full-fledged trial, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of six (06) years, along with a fine of Rs. 20,000/- (Rupees Twenty Thousand only). In default of payment of the fine, he was further directed to undergo simple imprisonment for a period of six months. However, the benefit of Section 382-B, Cr.P.C., was extended to the appellant.

2. The prosecution case, in brief, is that the complainant, ASI Khan Muhammad, left the police station for patrolling, specifically for the purpose of investigating Crime No. 15 of 2024, registered under Section 381-A of the PPC, When the complainant's party reached Sabeel Stop, he received spy information that the accused in the said crime was waiting for a bus at Miyani Stop on Dadu Link Road. Acting on this information, the complainant and his team proceeded to the indicated location, where they observed the accused sitting. Upon seeing the police, the accused attempted to flee but was apprehended by the police party. During a body search, one 12-bore desi pistol without number along with two live red-colored cartridges was recovered from his possession. Upon interrogation, the accused disclosed his name and address. All proceedings were carried out in the presence of police mashirs. After completing the

necessary legal formalities, a memo of recovery was prepared and the FIR was accordingly registered.

3. After completion of the investigation, the Investigating Officer submitted the final challan against the appellant and sent him up for trial. The learned trial Court supplied copies of the relevant documents to the appellant in compliance with Section 265-C, Cr.P.C. On 30-08-2024, the charge was framed against the appellant, to which he pleaded not guilty and claimed trial. Thereafter, the prosecution was permitted to lead its evidence. In support of its case, the prosecution examined the following witnesses:

PW-1: Khan Muhammad, the complainant and Investigating Officer of the case, who in his deposition produced and exhibited the memo of arrest and recovery of the crime weapon, relevant roznamcha entries showing departure and arrival of the police party, copy of the FIR, road certificate, report of the Ballistic Expert, and photograph of the recovered weapon.

PW-2: Muqem Rehman, who accompanied the complainant as a member of the police party and acted as a second mashir to the arrest and recovery proceedings.

4. After recording the statements of the above witnesses, the learned State Counsel closed the prosecution side by filing a statement to that effect. Thereafter, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C. In his statement, the appellant denied the allegations, professed his innocence and prayed for acquittal. However, he neither examined himself on oath under Section 340(2), Cr.P.C., nor did he lead any defence evidence.

5. Subsequently, after hearing arguments from both sides, the learned trial Court passed the impugned judgment dated 16-01-2025 convicting the appellant as mentioned earlier. The said judgment is now assailed before this Court through the instant criminal appeal.

6. The learned counsel for the appellant contended that the recovery proceedings against the appellant have not been established by the prosecution, as there is no independent evidence to connect the appellant with the commission of the offence. He further argued that there was an unexplained delay of 12 days in sending the recovered weapon to the forensic expert for examination, which creates serious doubt about the prosecution's case. Moreover, the prosecution failed to produce any cogent and convincing

evidence to justify a conviction. Therefore, the impugned judgment is liable to be set aside. Ultimately, the learned counsel for the appellant prayed for the acquittal of the appellant.

7. On the other hand, the learned State Counsel relied on the recovery, asserting that the weapon used in the crime was recovered from the exclusive possession of the appellant. He argued that there is no evidence of any enmity to suggest that the appellant was falsely implicated in the case. Therefore, the findings of the learned trial Court are well-reasoned and based on proper appreciation of evidence. Accordingly, he supported the impugned judgment.

8. Heard, arguments advanced by the learned counsel for the appellant as well as the learned State Counsel and perused the material available on record with due and deeper appreciation.

9. The prosecution case primarily rests upon the recovery of the weapon from the possession of the appellant. In such cases, where the entire prosecution story hinges on the alleged recovery, the prosecution is required to take steps with greater care and caution to establish its case beyond a reasonable doubt. However, after deeper appreciation of the evidence available on record, it is observed that the prosecution has failed to discharge this burden. The recovery proceedings are entirely silent regarding the presence or involvement of any independent witness, despite the fact that the alleged recovery took place in a busy public area. This fact was, in fact, admitted by the prosecution witnesses themselves. While there is no doubt that police officials are competent witnesses under the law, it is equally well-settled that when the circumstances afford a fair and reasonable opportunity to associate independent witnesses, especially in a public or crowded place, the prosecution is duty-bound to do so. Failure to associate any independent source in such a context casts serious doubt on the fairness and authenticity of the recovery proceedings. The legal obligation of the prosecution to secure independent corroboration in appropriate cases has been well-recognized by Superior Courts. Reliance in this regard may be placed on the judgment titled *Nazeer Ahmad v. The State* (2021 P Cr. L J Note 41 [Sindh]), wherein it was held that:

11. It is also of worth-importance that the requirements of section 103, Cr.P.C. have not been fulfilled in its letter and spirit. The purpose of associating independent mashirs of the locality is to ensure transparency in the process of recovery. The trial Court in the impugned judgment has relied

upon the provisions of section 34 of Sindh Arms Act, 2013 holding that by virtue of the said provision of law, application of section 103, Cr.P.C. has been excluded in the cases under the said Act of 2013. In this connection, it may be observed that the provisions of Section 34 of the Arms Act, 2013, do not expressly exclude the provisions of section 103, Cr.P.C. to be applied in the cases under the Sindh Arms Act, 2013, but it simply provides that besides private persons, police officials can also be associated as mashirs of recovery. In this connection, it would be advantageous to refer to the case of Shan v. The State reported in 2015 P.Cr.LJ 747 [Sindh] wherein it was held as under:-

12. It is significant to mention that section 34 of Sindh Arms Act has not expressly excluded the provisions of section 103, Cr.P.C. But on the contrary, section 34 has provided a legal cover that police officials also can act as witnesses of recovery besides the private persons. The proviso to section to section 34 of Sindh Arms Act, provides that any police officer or present person present on the spot can be witness of search and recovery, therefore, it was prime duty of the police to prefer a private witness if available at the spot to maintain transparency and fairness of the alleged recovery. It is the prime duty of Courts to ensure during the course of the administration of justice that there must be a plausible explanation for non-association of witnesses from public."

15. In the instant case although, in order to justify non-association of private witnesses of the locality as envisaged under section 103, Cr.P.C, the complainant SIP Qamar Zaman as well as mashir PC Faiz Mohammad have stated in their respective evidence that private mashirs were not available at the place of incident; however, such their assertion has been belied by mashirnama of place of incident Ex.4/B dated 17.07.2014 wherein it has specifically been mentioned that at the place of incident there is frequent passage of public/private persons. Besides, it also mentions that on all the four sides of the place of incident, four different villages are situated. In this view of the matter, no plausible explanation has been offered by the complainant/prosecution as to why the efforts were not made to collect private mashirs from the inhabitants of the said four villages or from the private persons passing through near the place of incident.

10. Furthermore, as per prosecution case, the alleged recovery of the weapon was effected on 27-06-2024. However, as per the examination report issued by the Firearms Expert (FSL), the weapon was received in the laboratory on 09-07-2024, after an unexplained delay of 12 days. The prosecution evidence is completely silent regarding the reasons behind this delay. No explanation has been offered by the Investigating Officer or any other prosecution witness to justify why the recovered weapon was not promptly sent to the Forensic Science Laboratory. In the absence of any plausible explanation, such an inordinate and unexplained delay raises serious doubt about the safe custody and tamper-proof handling of the weapon during this period. The Honourable Supreme Court of Pakistan, in the case titled *Kamal Din alias Kamala v. The*

State (2018 SCMR 577), has held that: “.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.”

11. It is pertinent to note that, according to the prosecution itself, the complainant acted as the Investigating Officer in the present case. When the recovery of a crime weapon is involved, it is expected that the investigation be carried out with due diligence, objectivity and strict adherence to procedural requirements. However, in the instant case, there are serious flaws in the prosecution's version, particularly with regard to the inspection of the crime scene. The record reveals that neither a site inspection memo (mashirnama) nor a proper site plan was produced by the prosecution. Though both the complainant and the prosecution witnesses deposed that the crime scene was inspected after registration of the FIR, no memo of site inspection was placed on record. This omission is a clear violation of **Rule 25.10 of the Police Rules, 1934**, which mandates that the Investigating Officer must inspect the place of occurrence, note all material facts, and draw a proper site plan reflecting those facts. For ready reference, Rule 25.10 of the Police Rules, 1934, provides 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.

12. Further support is drawn from the case of *Daim v. The State*, 2021 P.Cr.L.J 1061 [Sindh], wherein it was held that:

20. It is also an admitted position that the complainant himself investigated the entire case and submitted challan before the concerned court. Such conduct of the police official has not been appreciated by the Superior Courts. In the case of *Nazeer Ahmed v. The State* reported in PLD 2009 Karachi 191 this Court, while dealing with this point, held that Police Officer who simultaneously is the complainant as well as the Investigating Officer of the case, cannot be expected to collect and preserve evidence which goes against his case and that such Investigating Officer cannot properly perform duties of an independent and fair investigating officer. Reference in this connection can also be made to the cases reported as *Mohammad Siddique v. The State* (2011 YLR 2261 [Karachi]) and *Mohammad Akram v. The State* (1995 MLD 1532 [Peshawar]).

13. Another significant deficiency in the prosecution's case, warranting serious judicial scrutiny, pertains to the chain of custody and preservation of the allegedly recovered weapon. A meticulous examination of the record discloses that no documentary proof has been adduced to establish that the said weapon was duly entered into the malkhana register. Moreover, the prosecution failed to produce any official custodian or relevant witness from the malkhana to verify the receipt, storage, or handling of the case property. In the absence of credible and corroborated evidence attesting to the proper safe custody of the recovered item, the prosecution's claim regarding its lawful and secure custody remains unproven and open to serious doubt. This lapse materially undermines the reliability of the recovery proceedings and casts a shadow over the evidentiary sanctity of the weapon. The *Police Rules, 1934*, prescribe a detailed regulatory framework for handling case property. In particular, *Rule 22.16* outlines the procedural requirements for the receipt, labeling, documentation, and storage of articles in the malkhana. Additionally, *Rule 22.70* mandates that every item placed in the store-room must be accurately recorded in the prescribed register, ensuring traceability and accountability. The prosecution's failure to comply with these provisions reflects a serious procedural irregularity, thereby impairing the credibility of the evidence and rendering the recovery highly questionable. In support of the above legal proposition, reliance is placed on the judgment of *Wahid Bux alias Wahido vs The State*, (2022 PCr.LJ 1631), wherein held that:

12. The complainant/Investigation officer during his cross-examination stated that "I handed over the recovered weapon to WHC of P.S Tamachani for keeping the same in malkhana. It is correct to suggest that I have not produced such entry." The prosecution to established safe custody of the recovered weapon not examined the said WHC or any other responsible official (incharge) at Malakhana on the relevant date and time to confirm the deposit of the weapon in malkhana. In this view of the matter, the fact of depositing the weapon in malkhana has become doubtful. In this regard reliance may be placed on the case of Umed Ali v. The State (2018 MLD 1311) and Ikramullah and others v. The State (2015 SCMR 1002).

14. In view of the foregoing discussion, when the prosecution evidence is either disbelieved or remains unsubstantiated and the witnesses fail to establish the guilt of the accused beyond reasonable doubt, the well-established legal principle of the benefit of doubt must be extended in favor of the accused. This principle forms a foundational pillar of criminal jurisprudence and is enshrined in the maxim *in dubio pro reo*, meaning, "when in doubt, the benefit must go to

the accused.” In case of *Ahmed Ali vs the state* (2023 SCMR 781), The Honourable Supreme Court held that:

12. *Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).*

15. For the foregoing reasons and in light of the discussion above, it is evident that the prosecution failed to establish its case against the appellant beyond reasonable doubt. Accordingly, the appeal was allowed and the impugned judgment dated 16-01-2025, passed in Sessions Case No. 531 of 2024 arising out of FIR No. 17 of 2024, registered under Section 23(i) of the Sindh Arms Act, 2013, was set aside. Consequently, the appellant, Riaz Korai, was acquitted of the charge and ordered to be released forthwith, unless required to be detained in any other case. These are the detailed reasons for the short order announced on 23-06-2025.

JUDGE