IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Jail Appeal No. S-124 of 2024

Appellant:	Hakim Ali alias Hakoo, *through* Mr. Rukhsar Ahmed Junejo, Advocate
The State:	*Through* Mr. Muhammad Raza Katohar, Deputy Prosecutor General
Date of Hearing:	16.06.2025.
Date of Short Order:	16.06.2025.
Date of Reason:	07.07.2025.

JUDGMENT

Ali Haider 'Ada', J;- Through this appeal, the appellant assailed the judgment dated 10.09.2024, passed by the learned Additional Sessions Judge-III, Naushahro Feroze (hereinafter referred to as the trial Court) in Sessions Case No. 340 of 2022, titled The State v. Hakim Ali alias Hakoo, arising out of Crime No. 76 of 2022, registered under Section 23(1)(a) of the Sindh Arms Act, 2013, at Police Station Naushahro Feroze. Following a full-fledged trial, the appellant was convicted and sentenced to undergo rigorous imprisonment for a term of five (05) years, along with a fine of Rs. 30,000/- (Rupees Thirty Thousand only). In case of default in payment of the fine, he was further directed to undergo simple imprisonment for a period of three (03) months. However, the benefit of Section 382-B of the Code of Criminal Procedure, 1898, was extended to the appellant.

2. The prosecution case, in brief, is that on 16.03.2022, SIP Muhammad Ishaque, accompanied by subordinate staff, left Police Station Naushahro Feroze for routine patrolling. When the police party reached Tharo Shah Chowk, they received spy information that the accused, Hakim Ali alias Hakoo, involved in FIR No. 62 of 2022 registered at Police Station Naushahro Feroze for an offence punishable under Section 392, PPC, was proceeding towards Naushahro Feroze. Acting upon this information, the police began checking vehicles on the road leading to Naushahro Feroze. At about 12:00 noon, a motorcycle (Honda 125) was seen approaching. Upon being stopped for snap checking, the rider attempted to flee but was tactfully apprehended by the police. SIP Muhammad Ishaque appointed his subordinate staff as mashirs and, upon inquiry, the apprehended accused disclosed his name and address.

During his personal search, one TT pistol was recovered from the right fold of his trouser, along with five live bullets. Further recovery included a National Identity Card, a mobile phone, and cash amounting to Rs. 200/-. Upon inquiry, the accused failed to produce a license for the pistol or documents for the motorcycle. He was arrested for the offence relating to the unlicensed weapon, in addition to his earlier arrest in Crime No. 62 of 2022. Necessary formalities were completed at the scene, and the case property, along with the accused, was brought to the police station, where the instant FIR was lodged. On the same day, i.e., 16.03.2022, the complainant revisited the place of incident and prepared the site inspection memo in the presence of his subordinate staff. During the course of investigation, the recovered weapon along with five live bullets was sent to the Forensic Science Laboratory (FSL) Larkana on 29.03.2022 through Police Constable Ghulam Shakir for testing. The report from the FSL was received on 05.04.2022. After the usual investigation, the challan was submitted and the accused was sent up for trial.

3. Upon submission of the challan, the learned trial Court took cognizance of the matter and provided the requisite documents to the accused. Thereafter, on 13.05.2022, the charge was framed, to which the accused pleaded not guilty and claimed trial. The prosecution was directed to produce its evidence, and in compliance, examined PW-1 SIP Muhammad Ishaque, the complainant, who produced and exhibited the memo of arrest and recovery, copy of FIR, memo of site inspection, forwarding letter to FSL Larkana, report of the Firearm Expert, photograph of the pistol, and relevant entries from the roznamcha. The prosecution also examined PW-2 Aijaz Ali, the mashir of the memo of arrest, recovery, and site inspection.

4. Subsequently, the learned State Counsel closed the prosecution side by filing a statement to that effect. The learned trial Court then recorded the statement of the accused under Section 342, Cr.P.C. In his statement, the appellant denied the allegations, professed innocence, and sought acquittal. However, he neither examined himself on oath under Section 340(2), Cr.P.C, nor produced any defense evidence. After hearing arguments from both sides, the learned trial Court delivered the impugned judgment dated 10.09.2024, convicting the appellant as noted above. The said judgment is now under challenge before this Court through the instant Criminal Jail Appeal.

5. The learned counsel for the appellant contended that the prosecution failed to establish the recovery proceedings against the appellant beyond reasonable doubt, as no independent witness was produced to corroborate the alleged recovery. He further argued that there was an unexplained delay of twelve (12) days in sending the recovered weapon to the Forensic Science Laboratory for examination, which casts serious doubt on the veracity of the prosecution's case. It was further submitted that the prosecution did not adduce any cogent or convincing evidence sufficient to sustain a conviction. Therefore, the impugned judgment is liable to be set aside. Ultimately, the learned defense counsel prayed for the acquittal of the appellant.

6. Conversely, the learned State Counsel supported the prosecution's case, relying on the recovery of the weapon, which, according to him, was made from the exclusive possession of the appellant. He contended that there was no evidence of any prior enmity or mala fide intent that could suggest the false implication of the appellant in this case. He maintained that the findings of the learned trial Court were based on a proper appreciation of the evidence on record and, therefore, warranted no interference. Accordingly, he prayed for the dismissal of the appeal.

7. Heard arguments advanced by the learned counsel for the appellant and the learned State Counsel. The record has been carefully examined in light of their submissions, with a thorough and judicious appraisal of the evidence available.

8. The prosecution's case primarily hinges on the alleged recovery of a weapon from the possession of the appellant. In cases where the entire prosecution story is dependent upon such a recovery, it is incumbent upon the prosecution to establish its case with greater care and caution, ensuring proof beyond reasonable doubt. However, upon a detailed and judicious appraisal of the evidence on record, it becomes evident that the prosecution has failed to discharge this burden. The recovery proceedings are conspicuously silent regarding the presence or involvement of any independent witness, notwithstanding that the alleged recovery took place in a busy public area. Notably, a village by the name of Achaar Machi is located near the place of arrest, and a residential house is situated adjacent to the site where the appellant was apprehended. This fact was, in fact, acknowledged by the prosecution witnesses themselves. While it is true that police officials are legally

competent witnesses, it is equally well-settled that where the circumstances provide a reasonable opportunity to associate independent witnesses, particularly in a public or populated area, the prosecution is under a legal duty to do so. Failure to associate any independent witness in such circumstances raises serious doubts about the fairness, transparency, and authenticity of the recovery proceedings. This obligation of the prosecution to secure independent corroboration, where appropriate, has been consistently recognized by the Superior Courts. In ***Muhammad Nasir Butt and 2 others v. The State and others*** **(2025 SCMR 662),** the Hon'ble Supreme Court held that:

> *9. No private witness of the locality was associated to attest the alleged recovery of crime weapon on the pointation of convict Baqir Butt. Due to non-association of any private witness of the locality to attest the recovery of alleged weapon of offence/lack of independent corroboration, the same is disbelieved. Reliance in this regard is placed on the case of "Muhamamd Ismail v. The State[3]".*

Additional reliance is placed on the judgment titled ***Nazeer Ahmad v. The State*** **(2021 P Cr. L J Note 41 [Sindh]),** wherein the Court observed 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:-*
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> *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."*
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> *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.*

9. According to the prosecution's version, the alleged recovery of the weapon took place on 16.03.2022. However, the Forensic Science Laboratory (FSL) report reveals that the weapon was received on 29.03.2022, resulting in an unexplained delay of twelve (12) days. The prosecution's case remains conspicuously silent on the reasons for this delay. Neither the Investigating Officer nor any other prosecution witness has provided a satisfactory explanation for the failure to dispatch the recovered weapon to the FSL without undue delay. In the absence of a plausible justification, such an excessive and unexplained lapse raises grave concerns regarding the integrity of the weapon's custody and the possibility of tampering during this interim period.

10. Another serious shortcoming in the prosecution's case, which warrants careful judicial scrutiny, relates to the chain of custody and preservation of the allegedly recovered weapon. A thorough examination of the record reveals that no documentary evidence has been produced to demonstrate that the said weapon was duly entered into the Malkhana register. Furthermore, the prosecution failed to produce any official custodian or competent witness from the Malkhana to verify the proper receipt, storage, and handling of the case property. In the absence of credible and corroborated evidence affirming the secure custody of the recovered item, the prosecution's assertion regarding its lawful safe custody remains unsubstantiated and fraught with serious doubts. Such a procedural lapse fundamentally undermines the reliability of the recovery process and casts a shadow over the evidentiary integrity of the weapon. In this context, reliance is placed upon the case of ***Kamal Din alias Kamala v. The State*** **(2018 SCMR 577),** wherein 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. The Police Rules, 1934, provide a comprehensive regulatory framework governing the handling of case property. Specifically, ***Rule 22.16*** prescribes the procedural requirements for the receipt, labeling, documentation, and storage of articles in the Malkhana. Moreover, ***Rule 22.70*** mandates that every item deposited in the store-room must be recorded meticulously in the prescribed register to ensure traceability and accountability. The prosecution's failure to adhere to these provisions amounts to a significant procedural irregularity, which adversely affects the credibility of the evidence and renders the recovery highly suspect. In the instant case, additionally, the dispatch of the weapon to the Forensic Science Laboratory was purportedly carried out by PC Ghulam Shakir, as noted in the FSL report. However, this witness was not examined by the prosecution. Reliance in this regard is placed on the case of ***Gulab alias Aro v. he State*** **(2023 P Cr. L J 958),** wherein it was held that:

> *According to ASI Muhammad Arif, after arrest and recovery, he brought the accused to the Police Station and kept the revolver in the Malkhana of Police Station but such entry of the Malkhana has not been produced before the trial Court. Incharge Malkhana was also not examined before the trial Court. The weapon was sent to the Ballistic Expert through PC Muhammad Hussain but said Muhammad Hussain has also not been examined by the prosecution. Safe custody and safe transmission of the weapon to the Ballistic Expert have not been established at the trial. Moreso, there was 09 days delay in sending weapon to the Ballistic Expert.*

Further, 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).*

12. It is a well-established principle of law that where there is a break in the chain of evidence regarding the safe and secure custody of case property,

extending through to its transmission to the Forensic Science Laboratory, the probability of safe custody and transmission becomes highly questionable. This principle was observed in case of ***Nasrullah alias Momin and another v. The State*** **(2023 P Cr. L J 589-DB),** where it was held that:

> *It is a settled principle of law that when the chains of circumstantial evidence from safe and secure custody of case property till its safe transmission to forensic science laboratory are missing, then the safe custody and transmission are not probable. In this context, the positive report of Ballistic expert lost its significance. Reliance is placed on the case of Nazeer Ahmed v. State 2016 SCMR 1656.*

13. It is pertinent to mention here that, according to the prosecution's own case, the complainant acted as the Investigating Officer in the present matter. In cases involving the recovery of a weapon used in the commission of an offence, the investigation is expected to be conducted with utmost diligence, impartiality, and strict compliance with procedural safeguards. However, in the instant case, glaring deficiencies are apparent in the prosecution's account. In this context, 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]).*

14. In light of the foregoing discussion, where the prosecution's evidence is either disbelieved or remains unsubstantiated; and the witnesses fail to prove the guilt of the accused beyond a reasonable doubt, the well-established legal principle of granting the benefit of doubt in favour of the accused must be applied. This principle constitutes a fundamental principle of Criminal Jurisprudence and is summarized in the maxim ***in dubio pro reo*****,** means ***"when in doubt, the benefit must be given to the accused."*** In the case of ***Ahmed Ali v. The State*** **(2023 SCMR 781),** the Honourable Supreme Court of Pakistan categorically 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 detailed discussion above, it is manifest that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. In view of that, the short order dated 16-06-2025 had already allowed the instant appeal. For that reason, the appellant was acquitted, and the judgment of conviction and sentence against the appellant was set aside. The appellant was ordered to be released forthwith, if not required in any other case. The present detailed reasoning is thus in support of the said short order.

JUDGE