

**THE HIGH COURT OF SINDH, CIRCUIT COURT AT
LARKANA**

Before:

Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada',

**Criminal Appeal No.D-13 of 2026
Criminal Appeal No.D-14 of 2026**

(Maqsood @ Masood @ Fouji v. The State)

Appellant: Maqsood @ Masood @ Fouji,
through Mr. Habibullah G. Ghouri, Advocate.

Respondent: The State,
through Mr. Sardar Ali Solangi, D.P.G., Sindh.

Date of hearing: 12.08.2026.

Date of Judgment: 12.08.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this common judgment, we intend to dispose of Criminal Appeal No.D-13 of 2026, arising out of Special Case No.73/2024, originating from Crime No.18/2024 registered at Police Station Dilmurad, District Jacobabad, for offences punishable under Sections 324, 353, 399, 402, 427, 148 and 149, P.P.C. read with Sections 6/7 of the Anti-Terrorism Act, 1997, as well as Criminal Appeal No.D-14 of 2026 arising out of Special Case No.73-A/2024, originating from connected Crime No.19/2024 of same police station registered under Sections 23(i)(A) and 25 of the Sindh Arms Act, 2013. Both appeals arise from the same occurrence, were tried together and culminated in one consolidated judgment dated 07.03.2026 passed by the learned Special Judge, Anti-Terrorism Court, Shikarpur, Camp at Jacobabad. The evidence in both cases is substantially interconnected and, therefore, both matters are being decided through this common judgment.

2. Briefly stated, the prosecution case is that on 23.07.2024 ASI Ghulam Yasin Unar, complainant of the case, allegedly left Police Station Dilmurad along with police officials for patrolling. During patrol, he claimed

to have received information that the appellant, described as a proclaimed offender in other cases, along with his companions was present near Basham/Bisham Laro with an intention to commit crime. According to the prosecution, the police party proceeded towards the indicated place and at about 21:00 hours saw the appellant and other persons allegedly armed with different weapons viz. Repeater Gun and TT Pistols. It is alleged that, upon seeing the police vehicle, the accused persons opened straight firing upon the police party with intention to commit their murder and to deter them from performing their lawful duties. The police party allegedly retaliated and an encounter continued for about four to five minutes, during which a bullet allegedly hit the tyre of the police vehicle. The prosecution further alleged that during the exchange of firing one of the accused persons raised cries that he had sustained an injury from the firing of his own companions, where after the remaining accused escaped by taking advantage of darkness. The complainant allegedly moved forward and found one injured person lying at the spot with a repeater gun lying near him. According to him, the injured person disclosed his name as Maqsood @ Masood @ Fouji and stated that the repeater was unlicensed. He was arrested and the repeater was allegedly secured through a mashirnama in the presence of police officials. The injured/appellant was thereafter referred to Civil Hospital Jacobabad and the complainant registered FIR No.18/2024 and a separate FIR bearing Crime No.19/2024, was also registered regarding the alleged unlicensed repeater.

3. After registration of the cases, Inspector Ali Muhammad Odho conducted investigation and submitted challan under Section 173, Cr.P.C. The cases of the absconding co-accused were separated and kept on dormant file. Subsequently, the connected arms case was amalgamated with the main case through proceedings under Section 21-M of the Anti-Terrorism Act. The learned trial Court framed an amalgamated charge against the appellant, who pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined six witnesses. PW-1 ASI Ghulam Yasin Unar was the complainant; PW-2 PC Shabir Ahmed was produced as an eyewitness and mashir of arrest and recovery; PW-3 Dr. Ghulam Murtaza Khoso was the Medical Officer who examined the injured/appellant; PW-4 PC Darya Khan was produced as

mashir of inspection of the place of occurrence; PW-5 WPC Sajid Ali dealt with the Malkhana record; and PW-6 Inspector Ali Muhammad Odho was the Investigating Officer. The trial Court relied mainly upon PW-1 and PW-2 as eyewitnesses and upon the remaining witnesses as corroborative witnesses.

5. The learned trial Court ultimately convicted the appellant and sentenced him to rigorous imprisonment for seven years under Section 324, P.P.C.; two years under Section 353, P.P.C.; two years under Section 148, P.P.C.; two years under Section 427, P.P.C.; ten years under Section 7(1)(b)(d) of the Anti-Terrorism Act; and fourteen years under Section 23(a)(i) of the Sindh Arms Act. All sentences were ordered to run concurrently.

6. Learned counsel for the appellant, while assailing the impugned judgment, contended that the prosecution had failed to prove the charge beyond reasonable doubt and that the conviction was based upon an unreliable and internally inconsistent police account. He contended that the alleged encounter lasted four to five minutes, yet no police official sustained any injury; that material contradictions existed between the evidence of the complainant and the alleged eyewitness; that all material witnesses were police officials subordinate to the complainant; and that the learned trial Court treated material contradictions as minor discrepancies without examining their effect upon the prosecution case. He further contended that the alleged recovery of the repeater was doubtful, particularly because the weapon was allegedly lying near the injured/appellant rather than being recovered from his conscious possession. The learned counsel for the appellant relied upon the principle that even a single circumstance creating reasonable doubt entitles an accused to its benefit as a matter of right. He also specifically challenge the alleged delay, the absence of injury to any member of the police party, contradictions between the prosecution evidence and expert evidence and the failure of the trial Court to properly appreciate the evidence.

7. Learned D.P.G. Sindh, on the other hand, supported the impugned judgment. He contended that the appellant was apprehended at the spot in an injured condition immediately after the alleged encounter and that the repeater was recovered in his presence. According to him, the

complainant and eyewitness fully supported the prosecution version, the medical evidence established that the appellant had sustained a fresh injury on the date of occurrence and the recovered weapon and empties were subjected to forensic examination, with the report supporting the prosecution. He contended that the evidence of police officials could not be discarded merely because they happened to be members of the police force and that no motive for false implication had been established. He, therefore, maintained that the prosecution had successfully proved its case and prayed for dismissal of both appeals.

8. We have heard learned counsel for the appellant and learned D.P.G. Sindh at considerable length and have carefully examined the impugned judgment, the evidence reproduced therein and the material available on record.

9. Since both appeals arise out of one occurrence and the connected arms case is founded upon the alleged recovery made in consequence of the same occurrence, we consider it appropriate to examine the prosecution evidence cumulatively. The central question is not whether some occurrence involving firing took place, nor whether the appellant suffered an injury, but whether the prosecution has established, through reliable and confidence-inspiring evidence, that this appellant committed each of the offences for which he has been convicted and that the alleged repeater was proved to have been in his conscious and unlawful possession. It is an elementary principle of criminal justice that the burden lies upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution has to stand upon the strength of its own evidence and cannot obtain a conviction merely because the defence has not produced evidence. An accused is not required to prove his innocence. Where the prosecution evidence gives rise to a reasonable doubt regarding identity, participation, recovery or any essential ingredient of the offence, such doubt must go to the accused. The fact that the appellant did not examine himself on oath or did not produce defence evidence cannot repair deficiencies in the prosecution case.

10. On careful appraisal, the first difficulty confronting the prosecution is the reliability of the alleged ocular account. PW-1 ASI Ghulam

Yasin stated that he left the police station at about 20:00 hours along with PC Shabir Ahmed, PC Zahoor Ahmed and driver PC Azhar Ali in a police vehicle. He stated that at about 20:45 hours they reached Dilmurad Chowk, received information and proceeded to the indicated place, reaching there at about 21:00 hours. PW-2 PC Shabir Ahmed, however, while describing the departure, stated that ASI Ghulam Yasin proceeded with him and PC Zahoor Ahmed, without mentioning the driver PC Azhar Ali who, according to PW-1, was the person driving the police vehicle. This is not by itself decisive, but it assumes significance when the entire prosecution case rests upon a very small police party allegedly witnessing a nighttime armed encounter from a vehicle whose headlights were the stated source of identification. The discrepancy becomes more significant because PW-1 claimed that the accused persons were identified in the flash of the headlights of the police vehicle. According to him, five persons were seen, with specific weapons attributed to the appellant and each co-accused. PW-2 similarly claimed identification through the headlights. Yet the prosecution has not placed before the Court any convincing independent material explaining the visibility conditions, distance between the police vehicle and the alleged accused persons, exact position of the vehicle, or the manner in which five persons could be distinctly identified at night during an alleged sudden exchange of firing. The prosecution case, therefore, depends heavily upon the assertion of the police witnesses that they could identify the appellant and attribute a particular weapon to him. Such assertion requires careful scrutiny where there is no independent witness and where the alleged occurrence is itself said to have taken place at night. More importantly, the evidence regarding the weapon and the manner of its recovery does not wholly correspond with the theory advanced by the prosecution. PW-1 stated that after the firing he found one accused lying injured and a repeater gun lying near him. He picked up the repeater, checked it and found it empty. He then stated that the appellant disclosed that the repeater was without a license. Thus, the very account of PW-1 describes the weapon as lying near the injured appellant. The distinction between a weapon being found near an accused and its recovery from his conscious possession cannot be overlooked, particularly when the connected case under the Sindh Arms Act depends upon proof of unlawful possession.

11. The learned trial Court treated the alleged recovery as established without adequately considering whether the prosecution proved conscious possession in the legal sense. The fact that the appellant was found injured near a repeater may create suspicion, but suspicion cannot replace proof. The prosecution was required to establish through confidence-inspiring evidence that the repeater was in the appellant's possession and control. The subsequent forensic examination, even if taken at its highest in favour of the prosecution, could establish only the forensic connection of the weapon or empties with firing; it could not by itself establish that the appellant was the person who possessed or fired the weapon. The forensic report could not cure a doubtful foundational recovery.

12. The medical evidence also requires proper appreciation. PW-3 Dr. Ghulam Murtaza Khoso stated that the appellant was brought to Civil Hospital, Jacobabad at 09:30 p.m. on 23.07.2024 and that he found a lacerated punctured wound measuring approximately 7 cm x 6 cm on the right leg. He declared the injury fresh and caused by a hard and penetrating substance. This undoubtedly establishes that the appellant had sustained an injury on the relevant date. It does not, however, establish how the injury was caused, whether it was caused during an exchange of firing, whether it was caused by a shot fired by a police official, or whether it proves that the appellant himself had been firing upon the police party. The medical officer did not witness the occurrence and his evidence cannot be extended beyond what it actually proves. There is yet another important aspect. According to PW-1, after the alleged encounter he arrested the appellant, prepared the arrest and recovery memo, prepared the letter for treatment and thereafter returned to the police station, from where the appellant was referred for medical treatment. PW-2 similarly stated that after the arrest and recovery the party returned to the police station and the appellant was thereafter referred to hospital. Yet the Medical Officer stated that the injured appellant was brought to the hospital at 09:30 p.m. This timing requires reconciliation with the prosecution's own sequence of events, according to which the encounter occurred at approximately 09:00 p.m., followed by arrest, preparation of documents, return to the police station and then referral. The prosecution has not satisfactorily explained this sequence. In a case depending upon a claimed immediate encounter and spot arrest, the chronology of the arrest,

preparation of memo, referral and medical examination assumes material significance.

13. The evidence of PW-4 PC Darya Khan introduces another difficulty. He stated that on 24.07.2024 he proceeded with ASI Mehrab Khan and SHO Ali Muhammad Odho from Police Station Garhi Hassan for inspection of the place of occurrence. They reached Police Station Dilmurad, from where ASI Ghulam Yasin proceeded with them to the alleged place of encounter. He further stated that after inspection they proceeded for arrest of the appellant and that the SHO formally arrested him while he was admitted in Civil Hospital. This account does not sit comfortably with the prosecution's primary case that the appellant had already been arrested by ASI Ghulam Yasin at the place of occurrence immediately after the encounter on 23.07.2024 and that the arrest memo had already been prepared there. The prosecution has not explained why PW-4 speaks of a subsequent arrest by the SHO on 24.07.2024 if the appellant had already been arrested on the spot on the previous night. The discrepancy is not merely a matter of nomenclature. Arrest is a foundational circumstance connecting the accused with the alleged occurrence and the recovery. PW-1 speaks of an actual spot arrest; PW-2 supports that version; whereas PW-4 describes a formal arrest of an accused already admitted in hospital on the following day. The prosecution has not satisfactorily clarified whether there were two separate arrests, whether one was merely formal, or why the second arrest was necessary if the appellant had already been arrested and remained in police custody. In a case in which the recovery is itself disputed, uncertainty regarding the precise point and manner of arrest necessarily affects the reliability of the recovery proceedings.

14. PW-4 further stated that at the place of occurrence five empty 12-bore cartridges, six empty bullets of 7.62 bore and five empty shells of 30-bore pistol were found at the position allegedly occupied by the accused persons, while eight empty shells of 7.62 bore were found from the position of the police party. He also stated that blood stains were available at the spot and that the complainant told him they belonged to Maqsood Jamali. The evidence thus describes a scene containing empties of several different calibres and weapons attributed to different persons. Yet there is no independent evidence identifying which particular weapon fired which

particular shot, nor does the mere presence of empties at the scene establish that the appellant fired any shot. The same principle applies to the alleged damage to the police vehicle. The prosecution alleged that a bullet hit the tyre of the police vehicle. However, the prosecution evidence, does not satisfactorily establish who fired the shot which allegedly damaged the tyre. There is no reliable evidence attributing that particular shot to the appellant and that the existence of damage, even if accepted, cannot be termed as a proof in the circumstances of the prosecution case, particularly keeping in view the ambiguous situation. Likewise, the charge under Sections 399 and 402, P.P.C. required independent consideration. The prosecution case was that the appellant and others were standing at the place with intention to commit a crime/dacoity. The evidence, however, principally describes the subsequent encounter with police. No completed dacoity occurred; no victim of an intended dacoity was examined; no property prepared for or connected with a specific dacoity was recovered; and no independent circumstance was identified which, beyond the bare assertion of the police witnesses, demonstrated the necessary preparation or assembly for the particular offence alleged. The same deficiency affects the finding under Sections 148 and 149, P.P.C. The prosecution was required to establish the unlawful assembly and the common object and then connect the appellant with acts done in prosecution of that common object. Once the identification and individual participation of the appellant become doubtful, the derivative finding of common object cannot automatically stand merely because several persons were allegedly present at the spot. The prosecution evidence must first establish the appellant's reliable participation in the alleged assembly and the criminal object attributed to it. In the present case, the foundation for such finding rests upon the same police account whose material weaknesses have already been noticed. The conviction under Section 353, P.P.C. also cannot be sustained merely upon proof that firing allegedly took place. The prosecution was required to prove the ingredients of assault or criminal force and the necessary connection with the public servant's lawful discharge of duty. While the police witnesses alleged that firing was directed towards them, no police official sustained even a minor firearm injury. We are conscious that injury to the victim is not necessarily an indispensable requirement in every case of assault; however, in the peculiar circumstances before us, the absence of any injury to the police party becomes relevant

when the entire allegation of murderous firing and the intention attributed to the appellant rests solely upon the interested police account.

15. The prosecution's case under the Anti-Terrorism Act requires even greater caution. The trial Court framed a point concerning whether the alleged conduct created terror, panic and a sense of insecurity in the minds of the police party as well as the people of the locality and answered it in the affirmative. However, the record does not show examination of any independent resident or person from the locality who actually experienced such terror or insecurity. The mere description of an encounter as one involving terror or panic does not dispense with the prosecution's obligation to prove the ingredients of the particular offence under the Anti-Terrorism Act. Furthermore, it is worthwhile to note that we are not unmindful of the proposition that evidence of police officials is not to be discarded merely because the witnesses happen to be police officials. The question, however, is not whether police officials are legally competent witnesses; they undoubtedly are. The question is whether their testimony in the present case inspires the degree of confidence required to sustain conviction on serious charges carrying substantial sentences. Here, PW-1 and PW-2 are subordinate police officials forming part of the same police party, their evidence is not supported by any independent eyewitness and material questions arise concerning the composition of the police party, chronology of arrest and medical examination, nature of recovery and attribution of firing. The trial Court, therefore, was required to examine their testimony with greater care rather than simply observing that they remained constant regarding the date, time and place. The learned trial Court also placed considerable reliance upon the FSL report. The FSL report may provide corroboration where the foundational evidence of recovery and linkage is otherwise reliable. It cannot, however, independently prove the identity of the offender. A forensic finding that a particular firearm or empties are connected with firing does not, without further reliable evidence, establish that the appellant possessed the firearm at the relevant time or fired the shot which constituted the alleged offence. In the present case, where the recovery itself is surrounded by uncertainty and the weapon was stated by PW-1 to have been lying near the injured appellant, the FSL report cannot be treated as an answer to the fundamental question of conscious possession and individual participation.

16. The chain of custody also assumes importance. PW-5 WPC Sajid Ali stated that on 24.07.2024 Inspector Ali Muhammad Odho collected the case property for sending it to the FSL and that it was returned on 08.08.2024 and thereafter deposited in the Malkhana. PW-6 stated that the property was sent to the FSL on 26.07.2024 through PC Hamadullah Soomro and was brought back on 06.08.2024. These dates, as reproduced in the evidence, do not completely correspond with the account of PW-5 regarding collection and return of the property. While every discrepancy in dates does not necessarily destroy a prosecution case, such discrepancies become material when the forensic report is relied upon as an important link connecting the alleged recovered weapon with the occurrence.

17. The prosecution also failed to bring forward any independent witness from the locality. We do not hold that the evidence of police officials must invariably be corroborated by private witnesses. Nevertheless, where the prosecution alleges an armed encounter at a particular place and time, involving several persons, lasting four to five minutes and creating terror and insecurity in the locality, the absence of any independent witness or other neutral material assumes significance. Furthermore, we observe that the evidence in a criminal case is not to be tested merely by asking whether witnesses agree upon the broad date and place. The Court must examine whether the witnesses agree upon the material circumstances which connect the accused with the offence. In the present matter, the material questions are: who constituted the police party; how identification was made at night; precisely when and where the appellant was arrested; whether the repeater was recovered from his person or merely found near him; why PW-4 speaks of a subsequent arrest at hospital; what exactly the FSL establishes; and which particular act or shot is attributable to the appellant. These questions go to the root of the case. We also find that the learned trial Court did not adequately distinguish between proof of an occurrence and proof of the accused's guilt. Even if the prosecution version that some exchange of firing occurred is accepted for purposes of argument, that circumstance by itself does not establish beyond reasonable doubt that the appellant was one of the persons who opened fire upon the police party, that he possessed the repeater in question, that he fired the shot which allegedly damaged the vehicle, that he shared the requisite common object, or that his conduct

fulfilled the ingredients of the Anti-Terrorism Act. Each such proposition required reliable evidence.

18. The cumulative effect of these circumstances is important. The prosecution evidence cannot be divided into isolated pieces and each piece used to corroborate another when the foundational circumstances themselves are doubtful. The medical evidence establishes injury to the appellant but does not establish the manner or source of that injury. The alleged recovery establishes, at best, the presence of a repeater near the appellant according to PW-1, but does not independently establish conscious possession. The FSL report may establish a forensic relationship of the weapon/empties with firing, but does not establish the appellant as the person who fired the weapon. The damage to the vehicle, even if accepted, does not establish that the appellant caused it. The presence of empties at the scene does not identify the appellant as their user. The police ocular account, meanwhile, suffers from the material discrepancies and unexplained circumstances already discussed.

19. **It is equally significant that the alleged encounter was said to have lasted four to five minutes and involved firing from several persons armed with a repeater, Kalashnikov and pistols, yet no police official sustained any firearm injury.** Again, absence of injury is not by itself fatal to every allegation of firing. But when combined with the absence of independent witnesses, the nighttime identification, the uncertainty concerning the precise arrest and recovery proceedings, and the absence of reliable attribution of any particular shot to the appellant, it materially strengthens the reasonable doubt already arising from the prosecution evidence. The learned trial Court also appears to have treated the appellant's injured condition as corroboration of the entire prosecution story. Such approach is legally unsafe. The injury only proves that the appellant was injured. It does not prove the prosecution's explanation of the injury unless that explanation is independently established. The Court must guard against converting a neutral or partially corroborative circumstance into proof of every allegation made by the prosecution.

20. The connected arms case stands on no better footing. The prosecution had to establish that the appellant possessed the alleged

repeater without lawful authority. The alleged recovery was made by the same police party which claimed to have arrested the appellant during the encounter. PW-1 himself described the repeater as lying near the injured person and then picked it up. The subsequent formal proceedings were conducted through police witnesses. In these circumstances, the alleged recovery could provide corroboration only if the Court was first satisfied that the recovery was genuine, safe and confidence-inspiring. For the reasons already recorded, that threshold has not been met.

21. We therefore find that the prosecution evidence contains not merely peripheral discrepancies but circumstances affecting the very reliability of the evidence connecting the appellant with the alleged offences. Once reasonable doubt exists regarding the appellant's individual participation and conscious possession, the prosecution cannot obtain a conviction merely by relying upon the general circumstances of an alleged encounter. It is a settled principle of criminal jurisprudence that benefit of doubt is not a concession extended to an accused; it is a right arising from the prosecution's failure to establish guilt beyond reasonable doubt. The doubt need not be demonstrated by a multitude of circumstances. A single circumstance which reasonably shakes the confidence of a prudent mind may be sufficient. In the present case, there are several such circumstances operating cumulatively: the inconsistent accounts concerning the police party; the doubtful chronology of arrest and medical examination; the distinction between recovery from the appellant and recovery of a weapon lying near him; the subsequent formal arrest described by PW-4; the uncertain linkage between the FSL result and the appellant; the absence of independent evidence; and the failure to establish individual responsibility for the alleged firing and vehicle damage. In the case of **Tariq Pervez v. The State (1995 SCMR 1345)**, the Honourable Supreme Court held that even a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to entitle an accused to acquittal. The same principle has been reiterated in the cases of **Muhammad Akram v. The State (2009 SCMR 230)**, **Muhammad Aslam v. The State (2011 SCMR 820)**, **Muhammad Mansha v. The State (2018 SCMR 772)** and in the narcotics context, **Farman Ali and another v. The State (2025 SCMR 1730)**.

22. For the foregoing reasons, we are of the considered view that the prosecution has failed to prove the charges against the appellant beyond reasonable doubt. The findings recorded by the learned trial Court cannot safely be sustained. The deficiencies discussed above go to the root of the prosecution case and create reasonable doubt regarding the appellant's involvement. Consequently, Criminal Appeal No.D-13 of 2026 and Criminal Appeal No.D-14 of 2026 are **allowed**. The consolidated judgment dated 07.03.2026 passed by the learned Special Judge, Anti-Terrorism Court, Shikarpur, Camp at Jacobabad, in Special Case No.73/2024 arising out of Crime No.18/2024 and Special Case No.73-A/2024 arising out of Crime No.19/2024, both registered at Police Station Dilmurad, District Jacobabad, is hereby **set aside** to the extent of the present appellant. The convictions and sentences awarded to appellant Maqsood *alias* Masood *alias* Fouji under the aforementioned provisions of law are accordingly **set aside**. The appellant, Maqsood *alias* Masood *alias* Fouji, is hereby acquitted of all the charges in both cases by extending to him the benefit of doubt. He shall be released forthwith if his custody is not required in any other case.

23. Before parting with this judgment, it is clarified that the observations made herein are confined to the case of the present appellant and shall not be construed as an expression of opinion regarding the guilt or innocence of any co-accused whose case has not been finally adjudicated. The competent Court shall determine their cases independently on the basis of the evidence legally available against them. These are reasons for our short order dated 12.08.2026.

24. The appeals stand **allowed** in the above terms.

JUDGE

JUDGE

APPROVED FOR REPORTING