

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeals Nos. S-72 and 73 of 2024
[Muhammad Ashraf Ali v. The State]

Appellant : Muhammad Ashraf Ali through Mr. Abdul Hafiz Mari, Advocate.

Respondent : The State through Mr. Neel Parkash, Deputy Prosecutor General Sindh.

Date of Hearing : 08.09.2026

Date of Judgment : 17.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through these connected Criminal Jail Appeals, the appellant Muhammad Ashraf Ali son of Aari Solangi has called in question two judgments, each dated 31.10.2024, passed by the learned Assistant Sessions Judge, Khipro. Criminal Jail Appeal No. S-73 of 2024 arises from Sessions Case No.593 of 2024 (The State v. Ali Sher and others), Crime No.108 of 2024 of Police Station Khipro, registered under sections 324, 353 and 34, P.P.C. By that judgment the appellant, together with Ali Sher and Irshad Ali, was convicted under section 324 read with section 34, P.P.C. and sentenced to rigorous imprisonment for five years with fine of Rs.30,000/-, and under section 353 read with section 34, P.P.C. to rigorous imprisonment for one year with fine of Rs.5,000/-; in default of payment of the respective fines, simple imprisonment for three months and one month was ordered. Both substantive sentences were directed to run concurrently and benefit under section 382-B, Cr.P.C. was extended. Criminal Jail Appeal No.S-72 of 2024 arises from Sessions Case No.594 of 2024 (The State v. Muhammad Ashraf Ali), Crime No.113 of 2024 of the same Police Station, under section 24 of the Sindh Arms Act, 2013. The appellant was sentenced therein to rigorous imprisonment for five years with fine of Rs.50,000/- and, in default, simple imprisonment for six months, with benefit under section 382-B, Cr.P.C. He seeks setting aside of both convictions and sentences; alternatively, reduction of the sentences to the period already undergone.

2. The prosecution case commenced on 07.08.2024 when ASI Ameer Bux Hingoro, accompanied by PC Ali Nawaz, PC Javed Masih, PC Rattan Kumar, PC Khair Muhammad and DPC Muhammad Yousif, left Police Station Khipro in police mobile No.SPE-913 under Roznamcha Entry No.17 at 2100 hours for patrol duty. At about 2345 hours, upon reaching near Bagh Rasti on Khipro-Dhalyar Road, the police party commenced snap checking of vehicles.

3. At about 0015 hours on 08.08.2024, a CD-70 motorcycle approached from Khipro. The police signalled it to stop by torchlight. It stopped at an estimated distance of twenty-five to thirty paces and three riders alighted. According to the accusation, all three opened straight fire upon the police party with the intention of committing their qatl-i-amd, whereupon the police returned fire in self-defence. The exchange allegedly continued for three to four minutes. One culprit then cried that a companion's fire had struck him. The police apprehended the injured person, who disclosed his name as Ali Sher son of Saleh Shar, and also apprehended Irshad Ali son of Juman alias Jumo Shar; the third person escaped. The two apprehended accused identified the escapee as the present appellant Muhammad Ashraf Ali son of Aari Solangi.

4. A big mouser with empty magazine was secured from Ali Sher and a T.T. pistol with empty magazine from Irshad Ali. Six fired pistol empties and six fired SMG empties were collected in torchlight; the motorcycle, bearing engine No.BO35897 and chassis No.CB990015, model 2017/18, was taken into custody under section 550, Cr.P.C. The articles were sealed and the memorandum of arrest and recovery was prepared at about 0130 hours. The police returned at about 0145 hours and, after the relevant station entries, FIRs Nos.108, 109 and 110 of 2024 were registered. Investigation of Crime No.108 of 2024 was entrusted to Inspector Muhammad Nadeem Arain, who inspected the place, recorded statements, forwarded the firearms and empties for forensic examination and obtained the report.

5. The appellant was arrested eight days later, on 16.08.2024. ASI Muharram Samejho left Police Station Khipro with his subordinate staff under Roznamcha Entry No.07 at 1200 hours. On reaching Khipro Wah curve from Hingoro Chowk, he received spy information that the appellant, required in Crime No.108 of 2024, was present near Mujahid Water Stop on Khipro-Mirpurkhas Road. At about 1300 hours the police reached there and apprehended him when, upon seeing the police vehicle, he attempted to leave. Search of the left fold of his shalwar yielded one unnumbered T.T. pistol in working condition, with magazine containing three live bullets. The appellant produced no licence. Crime No.113 of 2024 was accordingly registered under section 24 of the Sindh Arms Act, 2013.

6. In the arms case the place was inspected at about 1530 hours. The weapon and ammunition were deposited in the malkhana under Entry No.69 of Register No.19. On 19.08.2024 PC Saleem carried the sealed case property to the Forensic Science Laboratory, Hyderabad, under departure Entry No.23 at 0600 hours and letter No.1918/2024, obtained the laboratory receipt and returned under Entry No.20 at 2015 hours. Upon completion of investigation, separate challans were

submitted. The cases were sent up to the Court of Sessions and transferred to the learned trial Court.

7. Separate charges were framed. In Sessions Case No.593 of 2024 the appellant, Ali Sher and Irshad Ali were charged under sections 324, 353 and 34, P.P.C. In Sessions Case No.594 of 2024 the appellant was charged under section 24 of the Sindh Arms Act, 2013. All accused pleaded not guilty and claimed trial.

8. In Sessions Case No.593 of 2024, PW-1 ASI Ameer Bux, complainant, produced the departure entry as Ex.3-A, memorandum of arrest and recovery as Ex.3-B, return entries as Ex.3-C and Ex.3-D and FIR as Ex.3-E. He narrated the encounter, the apprehension of Ali Sher and Irshad Ali, the escape of their third companion, the firing from both sides and the seizure of the weapons, empties and motorcycle. He identified the accused and case property.

9. PW-2 PC Ali Nawaz supported the complainant regarding departure, snap checking, exchange of fire, arrest of the two co-accused, recovery and sealing of the articles. He produced the memorandum of inspection of the place as Ex.4-A. PW-3 Inspector Muhammad Nadeem Arain, Investigating Officer, produced the relevant Roznamcha entries as Ex.5-A and Ex.5-B, the forensic report as Ex.5-C and photographs as Ex.5-D and Ex.5-E. He spoke to receipt of the papers and property, inspection of the scene, recording of statements, forensic examination of the weapons and the later arrest of the appellant.

10. In Sessions Case No.594 of 2024, PW-1 ASI Muharram Samejho, complainant, proved the departure entry, arrest and recovery memorandum, return entry and FIR as Ex.3-A to Ex.3-D. He attributed recovery of the working T.T. pistol and three live bullets directly to the appellant. PW-2 PC Ali Nawaz supported the arrest, personal search and recovery, and produced the site-inspection memorandum as Ex.4-A.

11. PW-3 PC Saleem proved carriage of the sealed property to the Forensic Science Laboratory under the relevant entries, forwarding letter and laboratory receipt. PW-4 ASI Rab Rakhio Chandio, Investigating Officer, described receipt of the papers and property, inspection of the place, dispatch of the weapon for expert examination, collection of the report and submission of challan. PW-5 WHC Muhammad Khan Kumbhar proved deposit of the property in the malkhana through Entry No.69 of Register No.19, produced as Ex.7-A.

12. After closure of the prosecution evidence, the appellant was examined separately under section 342, Cr.P.C. in both cases. He denied the allegations, alleged false implication and asserted that the weapon was foisted upon him

because he had not paid bribe to the police. He described the ballistic material as managed. He neither examined himself on oath under section 340(2), Cr.P.C. nor produced defence evidence. His silence does not relieve the prosecution of its burden and is not treated as substantive evidence against him.

13. The learned trial Court found the police witnesses consistent on the date, time, place and material manner of both occurrences; treated the official entries and forensic material as corroborative; held that section 103, Cr.P.C. did not invalidate a personal search and, in the arms matter, stood expressly excluded by section 34 of the Sindh Arms Act, 2013; and rejected the plea of foisting as unsubstantiated. The convictions and sentences described in paragraph 1 followed.

14. Mr. Abdul Hafiz Mari, learned counsel for the appellant, contended that the prosecution cases were doubtful and rested entirely upon police officials subordinate to the complainants; no private person was associated despite the alleged actions occurring on public roads; no member of the police party sustained injury and no damage to the police vehicle was proved despite an exchange of fire said to have continued for several minutes. He submitted that the appellant was not arrested at the scene of Crime No.108 of 2024 and was named only through the statement of co-accused, that no test-identification parade was held, and that the later weapon recovery was foisted to strengthen an otherwise weak encounter case. He prayed for acquittal; in the alternative, he sought reduction of sentence to the period undergone, particularly because the identically placed co-accused had already received that relief.

15. Conversely, Mr. Neel Parkash, learned Deputy Prosecutor General, supported the impugned judgments. He submitted that the patrol departure, occurrence, return and registration were reflected in contemporaneous Roznamcha entries; the apprehended accused, recovered empties, firearms, motorcycle and injury to Ali Sher supplied objective features inconsistent with a paper encounter; and the later recovery from the appellant, documented malkhana custody and forensic examination connected him with the unlawful use of the weapon. He maintained that police officials are competent witnesses, that section 103, Cr.P.C. was not attracted to personal search and that the defence established no animus for substitution or foisting. He did not dispute the order dated 11.09.2025 in Criminal Appeal No.S-205 of 2024 reducing the co-accused's sentences to the period undergone.

16. I have heard the learned counsel for the appellant and the learned Deputy Prosecutor General for the State, and have carefully perused both impugned judgments, the evidence reproduced and discussed therein, the forensic and custody material referred to on record, the jail rolls and the connected order concerning the

co-accused. The questions requiring determination are: first, whether the appellant's participation in Crime No.108 of 2024 was proved beyond reasonable doubt; secondly, whether possession and unlawful purpose under section 24 of the Sindh Arms Act, 2013 were independently established; and thirdly, whether the sentences call for interference.

17. An appeal against conviction entails an independent and comprehensive reappraisal of the evidence. The prosecution must prove every essential ingredient beyond reasonable doubt and cannot derive strength from a weak defence. *Tariq Pervez v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230), *Muhammad Mansha v. The State* (2018 SCMR 772) and *Ayub Masih v. The State* (PLD 2002 SC 1048) establish that even one circumstance creating reasonable doubt in a prudent mind entitles the accused to its benefit as of right. Equally, doubt must arise rationally from the record; it cannot be conjectural or artificially constructed.

18. Because Crime No.108 of 2024 is a police-encounter case, enhanced caution is necessary. *Zeeshan alias Shani v. The State* (2012 SCMR 428) stresses the desirability of an investigation possessing an independent character where the police are participants in the occurrence. *Nazeer Ahmed v. The State* (PLD 2009 Karachi 191), *Agha Qais v. The State* (2009 PCr.LJ 1334) and *Mohammad Amir and others v. The State* (2020 MLD 1777) likewise warn that a conviction cannot safely rest upon a self-serving encounter narrative riddled with material gaps, unexplained forensic delay or inherently improbable features. These authorities prescribe scrutiny; they do not create a rule that official testimony is legally incompetent.

19. Police officials are as competent as other witnesses, though their evidence must be appraised in its setting. *Shahzad Kalay Khan v. The State* (2020 YLR 1719 [Sindh]) recognises that official testimony is not discarded merely because of official status unless mala fide is established or the evidence is dented in cross-examination. *Niaz-ud-Din v. The State* (2011 SCMR 725) and *Qasim Shahzad and another v. The State and others* (2023 SCMR 117) reiterate that evidence is weighed for quality, not counted. Here, the two occurrence witnesses were consistent upon the patrol, stopping of the motorcycle, three riders alighting, firing from both sides, arrest of two riders, escape of the third, and collection of firearms and empties. Their account was supported by the contemporaneous station entries and the physical material produced in evidence.

20. The absence of injury to any member of the police party and the absence of any proved bullet mark upon police mobile No.SPE-913 assume material significance when the prosecution itself alleges that three persons, from a distance

of about twenty-five to thirty paces, opened straight fire upon the police and that the exchange continued for three to four minutes. The prosecution witnesses may not be disbelieved merely because they are police officials; nevertheless, in a police-encounter case the Court is required to examine the evidence with heightened caution. In *Mohammad Amir and others v. The State* (2020 MLD 1777) and *Muhammad Hanif and others v. The State* (Criminal Appeals Nos.S-47, S-50 and S-51 of 2021, High Court of Sindh, judgment dated 19.11.2021), absence of corresponding objective signs of the alleged encounter was treated as a circumstance capable of contributing to reasonable doubt. In the present case, the circumstance does not stand alone but must be read with the serious deficiencies concerning identification of the present appellant.

21. Admittedly, the appellant was not apprehended at the place of occurrence. Two persons, namely Ali Sher and Irshad Ali, were arrested there, whereas the third rider escaped. The appellant came to be implicated because the apprehended accused allegedly disclosed his name. Such statement, made to the police while the makers were in custody, is not substantive evidence against the appellant in view of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, save to the limited extent contemplated by Article 40 where a fact is thereby discovered. No fact relevant to the appellant's identity in Crime No.108 of 2024 was discovered in consequence of that statement. Thus, the naming by co-accused could at best furnish an investigative lead; it could not constitute proof of participation.

22. The prosecution was therefore required to establish the identity of the alleged escapee through legally dependable independent evidence. No test-identification parade was held. The occurrence took place shortly after midnight, the three riders were said to have stopped twenty-five to thirty paces away and firing immediately ensued. There is nothing in the evidence discussed before this Court showing that the police officials already knew the appellant or had any prior acquaintance with him. *Subha Sadiq v. The State* (2025 SCMR 50) and *Kanwar Anwar Ali v. The State* (PLD 2019 SC 488) reiterate that where an accused is not previously known to the witnesses, identification ought ordinarily to be tested through a prompt and fair identification parade and subsequent dock identification, standing alone, is inherently weak. In these circumstances, the omission is not a mere procedural irregularity but strikes at the identity of the appellant as the third rider.

23. The later arrest of the appellant on 16.08.2024 and recovery of a pistol from his person cannot cure that foundational defect in Crime No.108 of 2024. The recovery occurred eight days after the alleged encounter at a different place and constitutes the subject-matter of a separate FIR. The evidence discussed in the impugned judgments does not identify any specific ballistic conclusion establishing

that the pistol recovered from the appellant on 16.08.2024 had fired any of the empties collected from the place of the encounter on 08.08.2024. In the absence of such scientifically established nexus, the subsequent possession of a weapon may be adjudged in the separate arms case, but it cannot retrospectively prove that the appellant was one of the three persons who fired upon the police in Crime No.108 of 2024.

24. When the above circumstances are considered cumulatively, namely that the appellant was not arrested at the scene, his name emerged from the statement of co-accused, no test-identification parade was conducted, no police official sustained injury, no damage to the police vehicle was proved despite the alleged straight firing, and the later recovery has not been shown through any specific ballistic conclusion discussed on record to identify him as the escapee, a reasonable doubt arises regarding his participation in the encounter. The rule stated in *Tariq Pervez v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and *Muhammad Mansha v. The State* (2018 SCMR 772) is that even a single reasonable circumstance entitles an accused to benefit of doubt as a matter of right. Criminal Jail Appeal No.S-73 of 2024 therefore merits acceptance on merits. The conviction and sentence of the appellant in Sessions Case No.593 of 2024, arising out of Crime No.108 of 2024 of Police Station Khipro under sections 324 and 353 read with section 34, P.P.C., cannot be sustained.

25. The arms case must nevertheless be examined independently. Crime No.113 of 2024 arose from a distinct occurrence dated 16.08.2024, eight days after the alleged encounter. According to the prosecution, ASI Muharram Samejho and the accompanying police officials acted upon spy information, reached near Mujahid Water Stop on Khipro-Mirpurkhas Road and apprehended the appellant, whereafter one unnumbered T.T. pistol in working condition with three live bullets was allegedly recovered from the left fold of his shalwar. The recovery, if accepted, may establish possession of an arm; it does not by itself complete the offence charged under section 24 of the Sindh Arms Act, 2013.

26. Section 24 is materially different from a provision punishing mere unlicensed possession. Its express ingredient is that the arm or ammunition, licensed or unlicensed, must be possessed with the aim of using it for an unlawful purpose, or of facilitating another person to use it for such purpose. Thus, besides conscious possession, the prosecution was required to prove the unlawful-purpose element beyond reasonable doubt. In *Ayaz Ali v. The State* (PLD 2014 Sindh 282), while examining the scheme of sections 23 and 24 of the Act, this Court drew the distinction between possession in contravention of the licensing requirement and possession with the aim of unlawful use. The same construction was applied in *Mohsin Ali v. The State* (Criminal Appeal No.186 of 2018, High Court of Sindh),

where conviction under section 24 was set aside because the prosecution had led no evidence satisfying the requirement that possession was for an unlawful purpose.

27. In the present case, the prosecution sought to derive the unlawful purpose principally from the allegation that the appellant was the third participant in Crime No.108 of 2024. That foundation no longer survives. For the reasons already recorded, the appellant's participation in the alleged encounter has not been proved beyond reasonable doubt. More importantly, the evidence discussed in the impugned judgments does not disclose any specific ballistic conclusion that the pistol allegedly recovered on 16.08.2024 had fired any of the empties secured from the place of occurrence on 08.08.2024. The subsequent recovery therefore remains unconnected, by any proved scientific nexus, with the alleged unlawful firing forming the basis of the principal case.

28. The fact that the pistol was allegedly unlicensed, working and accompanied by three live rounds may raise suspicion regarding the legality of its possession, but suspicion, however strong, cannot substitute proof of an essential statutory ingredient. Nor can the appellant's alleged attempt to leave on seeing the police vehicle, without more, safely establish that he possessed the arm with the aim of committing an unlawful act. The offence under section 24 cannot be completed merely by proving physical possession and absence of a licence while leaving the required unlawful purpose to conjecture. The prosecution had to establish both actus reus and the requisite mens rea; it failed to do so.

29. There is another circumstance which reinforces the need for caution. The alleged arrest and recovery took place on a public road after receipt of prior spy information, yet no independent person was associated in the proceedings and the entire recovery rests upon police officials. Section 34 of the Sindh Arms Act, 2013 excludes the mandatory application of section 103, Cr.P.C.; therefore, non-association of a private mashir is not by itself sufficient to discard an otherwise confidence-inspiring recovery. Even so, where the prosecution must prove not only recovery but the further and distinct element of unlawful purpose, the absence of independent corroboration assumes relevance in the cumulative appraisal. The statutory exclusion cannot be used to dispense with proof of the substantive ingredients of section 24.

30. The malkhana entry, carrier evidence and forensic transmission may establish continuity of custody of the article allegedly recovered; they do not establish the purpose for which the appellant possessed it. Chain of custody proves identity and safe transmission of case property, not mens rea. Once the alleged encounter is excluded as a proved unlawful purpose and no other criminal design, intended offence, threatened use or facilitating conduct is established through

independent evidence, the prosecution case falls short of section 24. The benefit of that deficiency must go to the appellant. The principle reiterated in *Tariq Pervez v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and *Muhammad Mansha v. The State* (2018 SCMR 772) applies with full force: a single reasonable circumstance creating doubt entitles an accused to acquittal as of right.

31. Consequently, Criminal Jail Appeal No.S-72 of 2024 also merits acceptance. The conviction recorded in Sessions Case No.594 of 2024, arising out of Crime No.113 of 2024 of Police Station Khipro under section 24 of the Sindh Arms Act, 2013, is not sustainable because the prosecution has failed to prove beyond reasonable doubt that the alleged possession of the pistol was accompanied by the statutory aim of using it for an unlawful purpose. The impugned judgment dated 31.10.2024 is therefore liable to be set aside in that case as well.

32. For these reasons, both the criminal jail appeals are allowed and the impugned Judgments in both cases are set-aside. The Appellant is acquitted of the charge and is directed to be released forthwith if not wanted in any other case.

JUDGE

APPROVED FOR REPORTING

Faisal