

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No. D-08 of 2025

Cr. Appeal No. D-09 of 2025

Appellant : Khan Muhammad s/o Muhammad
Afzal Nindwani
Through Mr. Saeed Ahmed Bijarani,
Advocate.

Respondent : The State
Through Mr. Nazeer Ahmed
Bhangwar, Deputy Prosecutor
General, for the State.

Date of hearing : 08.07.2025

Date of Decision : 15.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—These two appeals, Criminal Appeal No.D-08 of 2025 and Criminal Appeal No.D-09 of 2025, arise from a single judgment dated 20.02.2025, passed by the learned Special Judge Anti-Terrorism Court Kashmore @ Kandhkot in Special Case No.59/2024, and its offshoot Special Case No.59-A/2024. Both cases were amalgamated and tried jointly by the learned trial court. The appellant, Khan Muhammad Nindwani, stands convicted and sentenced to various terms as under:-

- For offence u/s 324 PPC r/w section 149 PPC to Rigorous imprisonment for 10 year and directed to pay fine of Rs. 50,000/- to, failing which he would undergo simple imprisonment for an additional three-month term.
- For offence u/s 7(1)(b) Anti-Terrorism Act, 1997 to Rigorous imprisonment for 10 year and directed to pay fine of Rs. 50,000/- to, failing which he would undergo simple imprisonment for an additional three-month term.

- For offence u/s 353 PPC r/w section 149 PPC to Rigorous imprisonment for 02 year.
- For offence u/s 399 PPC r/w section 149 PPC to Rigorous imprisonment for 10 year and directed to pay fine of Rs. 30,000/- , failing which he would undergo simple imprisonment for an additional three-month term.
- For offence u/s 402 PPC r/w section 149 PPC to Rigorous imprisonment for 07 year and directed to pay fine of Rs. 20,000/- to, failing which he would undergo simple imprisonment for an additional two-month term.
- For offence u/s 440 PPC r/w section 149 PPC to Rigorous imprisonment for 05 year and directed to pay fine of Rs.20,000/- to, failing which he would undergo simple imprisonment for an additional two-month term.
- For offence u/s 23(i)-A Sindh Arms Act, 2013 to Rigorous imprisonment for 10 year and directed to pay fine of Rs.30,000/- to, failing which he would undergo simple imprisonment for an additional three-month term.
- All the sentences awarded to accused shall run concurrently with benefit extended u/s 382-B Cr.P.C.
- The property of accused Khan Muhammad is also forfeited to the state as required u/s 7(2) of Anti-Terrorism Act, 1997.

Being aggrieved by the said judgment, the appellant has preferred these appeals, seeking to set aside his conviction and sentence.

2. The prosecution's case commenced with FIR No.14/2024, lodged by ASI Saeed Ali Bajkani (PW-1) on 31.03.2024 at 22:00 hours at P.S. Ghulam Sarwar Sarki. The complainant alleged that on the same date, while on patrolling duty with subordinate staff, he received spy information about culprits standing on a link road near Jeeal Noonari curve with the intention to commit an offence. Upon reaching the spot at 20:00 hours, they allegedly identified eight accused persons, including the appellant Khan Muhammad, all armed with various weapons (TT pistol, G-3 rifle, Kalashnikovs). On seeing the police party, the accused allegedly opened straight fire with the intention to kill. The police retaliated, and during the 20-minute encounter, one accused (appellant Khan Muhammad) sustained a gunshot injury to his right leg. The remaining accused fled, leaving the injured appellant and a TT pistol.

The appellant was apprehended, the pistol secured, and he failed to produce its valid license. The complainant prepared a memo of arrest and recovery, observed bullet marks on the police mobile, and took the injured to RHC Tangwani for medical assistance. Subsequently, he lodged FIR No.14/2024 for the encounter and FIR No.15/2024 for offence under the Sindh Arms Act against the appellant Khan Muhammad.

3. Following the registration of FIRs, Inspector Zahoor Ahmed Lashari (PW-6) conducted the investigation and submitted challans. The case of the absconding accused was kept on the dormant file. The offshoot case (FIR No. 15/2024) was amalgamated with the main case (FIR No.14/2024) vide order dated 27.08.2024. A combined charge was framed against the appellant Khan Muhammad, to which he pleaded not guilty and claimed trial.

4. To substantiate its case, the prosecution examined six witnesses including PW-1 ASI Saeed Ali Bajkani (Complainant), PW-2 PC Faiq Ali Khoso (Eye witness/Mashir), PW-3 PC Raja Azhar Ali (Depositor of case property), PW-4 WPC Kifayatullah (Malkhana Incharge), PW-5 Medical Officer Asadullah (Examined injured accused), and PW-6 I.O. Inspector Zahoor Ahmed Lashari. The appellant, in his statement under Section 342 Cr.P.C., denied the allegations, claimed innocence, and stated that he was arrested prior to the incident and the weapon was foisted upon him. He neither examined himself on oath nor led any defense evidence.

5. The learned trial court, after hearing arguments, found the prosecution to have proved its case beyond reasonable doubt and convicted the appellant on all charges, sentencing him accordingly.

6. Mr. Saeed Ahmed Bijarani, the learned advocate for the appellant, vehemently argued that the impugned judgment is illegal, erroneous, and unsustainable in law and on facts, leading to a miscarriage of justice. His primary contentions are that the appellant has been falsely implicated by the police to show their efficiency, especially as a crackdown was allegedly initiated against the Nindwani community. It was contended that the appellant was picked up from his house prior to this incident (referencing FIR No.29/2024 PS Karampur on 27.03.2024) and subsequently "half-fried" to strengthen a concocted case. All prosecution witnesses are police officials, making them interested and inimical witnesses. Despite the incident allegedly occurring on a "common place" and spy information being received in advance, no independent public witness was cited or produced, which casts serious doubt on the prosecution's narrative. There are significant and material contradictions in the statements of the prosecution witnesses, particularly between PW-1 and PW-2, which render their testimonies unreliable and untrustworthy. These contradictions relate to crucial aspects of the incident and investigation. Despite an alleged 20-minute encounter with "straight firing" by the accused with "intention to kill," not a single scratch was sustained by any police official. While bullet marks on the police mobile were alleged, the damaged vehicle was never produced before the trial court, further weakening the charges of attempted murder and deterring public servants. The case property was sent to the laboratories with considerable delay, which makes the prosecution's case doubtful and raises concerns about the integrity of the evidence. The charges under Sections 399 and 402 PPC (preparation and assembly for dacoity) are not sufficiently proven. There is no extraneous circumstance or specific evidence demonstrating the intention or preparation for committing dacoity; mere bare words of the

witnesses are insufficient. General allegations have been leveled against the appellant, with no specific role attributed to him in the commission of the alleged offences, especially concerning the firing. It was argued that the crime weapon (TT pistol) was foisted upon the appellant to strengthen the false case. The prosecution has failed to prove its case beyond a shadow of reasonable doubt, and any doubt arising from the evidence must go in favor of the accused, as per the golden rule of criminal jurisprudence.

7. Mr. Nazeer Ahmed Bhangwar, the learned DPG for the State, supported the impugned judgment and contended that the prosecution had successfully proved its case against the appellant. His arguments, as reflected in the trial court's judgment. The appellant was nominated in the FIR, and the complainant (PW-1) and eyewitness (PW-2) fully supported the prosecution's case on all material aspects, implicating the appellant in the commission of the offence. The ocular account is corroborated by the medical evidence (PW-5), which confirmed the fresh gunshot injury on the appellant, and by the positive FSL report (Ex.15/F, Ex.15/G) regarding the empties and the recovered TT pistol. No enmity or ill-will was brought on record by the defense to suggest that the police officials would falsely implicate the appellant. The evidence of the police witnesses is straightforward, inspires confidence, and their credibility was not shaken during cross-examination, despite minor discrepancies. There is sufficient ocular as well as circumstantial evidence available on record to prove the appellant's involvement in the commission of the offence, including attacking the police party and possessing an unlicensed weapon.

8. We have meticulously perused the impugned judgment, the FIRs, the combined charge sheet, and the detailed depositions of all prosecution witnesses, along with the grounds of appeal. While

the learned trial court placed reliance on the consistency of the police witnesses and the forensic reports, a deeper and more critical examination of the evidence reveals several material contradictions, glaring omissions, and inherent flaws in the prosecution's case. These deficiencies, when viewed cumulatively, render the guilt of the appellant highly doubtful and compel this Court to intervene to prevent a miscarriage of justice.

9. Our findings on the critical aspects, which form the basis for our decision, are that the testimonies of PW-1 ASI Saeed Ali and PW-2 PC Faiq Ali, who are the linchpins of the prosecution's ocular account, suffer from significant and irreconcilable contradictions on crucial aspects of the incident and the subsequent investigation. Such discrepancies strike at the very root of the prosecution's narrative and vitiate the evidentiary value of their statements. PW-1 ASI Saeed Ali, the complainant, explicitly stated in his cross-examination that the memo of arrest and recovery being backbone of the case was prepared "at P.S by one munshi" on torchlight. Conversely, PW-2 PC Faiq Ali, who was a mashir to the said document, categorically asserted that the memo was prepared "at Investigation place of incident in standing position on torch light" and that he was personally handling the torch. This is a direct and fundamental contradiction concerning the time, place, and manner of preparing a vital document, casting serious doubt on its authenticity and the circumstances under which the arrest and recovery were affected. PW-1 claimed that about "25 minutes" were spent in completing all formalities at the spot. However, PW-2 contradicted this by stating that they took "about one hour" to complete all formalities at the place of incident. Such a significant discrepancy in the duration of a critical procedural step further undermines the reliability and credibility of the witnesses. PW-1 stated that he received spy information at Bholi graveyard at 2000 hours, and the distance from

there to the place of incident was about "3/4 km." In stark contrast, PW-2 stated that ASI received spy information at Bholi graveyard at "1800 hours," and the distance between the place of information and the place of incident was "about 5/6 km." These inconsistencies regarding the precise timing and distances related to the spy information and the incident location raise grave questions about the coherence and truthfulness of the police's initial narrative and the actual sequence of events.

10. It is a settled principle of criminal law that contradictions on material points are fatal to the prosecution's case, as they indicate that the witnesses are either not truthful or were not present at the scene as claimed. The learned trial court's observation that these were "few immaterial discrepancies and minor contradictions" is, in our considered opinion, an erroneous appreciation of the evidence, as the contradictions highlighted are fundamental to the prosecution's story. The incident, as alleged by the prosecution, occurred on a "common way," a public place, as admitted by the Investigating Officer (PW-6). Despite this, and the alleged receipt of spy information well in advance, no independent public witness was associated with the memo of arrest and recovery, nor was any such witness produced during the trial. The I.O.'s perfunctory explanation that he "tried to associate private person but nobody was available there" is a common and often unconvincing excuse. In cases where police officials are the sole witnesses, their testimonies must be subjected to rigorous scrutiny, as they are inherently interested in the success of the prosecution. The sacrosanct principle of independent corroboration, particularly in cases involving police encounters and recovery, cannot be overemphasized. The prosecution cannot merely rely on the official status of its witnesses; their testimonies must be free from material contradictions and supported by independent evidence. The absence of a single

independent witness, despite the alleged public nature of the incident, creates a significant void in the prosecution's evidence and casts serious doubt on the veracity of the occurrence.

11. It strains credulity that in an alleged 20-minute encounter involving "straight firing" by multiple armed accused with "intention to kill," not a single police official sustained any injury. While the prosecution claimed that the police mobile was hit by two bullets on its roof, this damaged vehicle, a crucial piece of physical evidence, was never produced before the trial court for inspection. The non-production of such material evidence, especially when it forms the very basis for grave charges like attempted murder (Section 324 PPC) and deterring public servants from discharging their lawful duties (Section 353 PPC), leads to an adverse inference against the prosecution. This omission raises serious doubts about the intensity and nature of the alleged firing by the accused party, or indeed, whether the incident transpired in the manner claimed.

12. The integrity of the case property is paramount in criminal proceedings. The FIR was lodged on 31.03.2024. While PW-3 PC Raja Azhar Ali stated that he deposited the property at FSL Larkana and Chemical Laboratory Rohri on 02.04.2024, PW-4 WPC Kifayatullah, the Malkhana Incharge, revealed that he received the case property from the I.O. for deposit in the Malkhana only on 17.04.2024. This significant and unexplained delay of over two weeks in depositing the property into proper custody, and its subsequent dispatch to the forensic laboratories raises grave suspicions regarding the safe custody and integrity of the evidence. Such a prolonged and unaccounted-for delay renders the subsequent forensic reports unreliable, as the possibility of tampering or manipulation during this period cannot be ruled out.

13. The charges under Sections 399 PPC (making preparation to commit dacoity) and 402 PPC (assembling for purpose of committing dacoity) require the prosecution to prove not merely the presence of the accused but also a concrete intention and overt acts of preparation for committing dacoity. The prosecution's case rests solely on the bald assertion that the accused were "standing with intention to commit some offence" or "assembled with intention to commit dacoity." There is no specific evidence adduced to demonstrate any actual preparation, such as possession of dacoity tools, a specific plan, or any other extraneous circumstance leading to the conclusion that in fact they had assembled at venue of occurrence for the purpose of committing dacoity. Mere suspicion or general allegations are insufficient to establish these essential ingredients of the offence. The prosecution has failed to adduce any concrete evidence to establish the requisite intention and preparation, thus rendering these charges unsubstantiated.

14. The allegations against the appellant appear to be general in nature, lacking specific details regarding his individual role in the alleged firing, beyond being armed. The appellant's defense plea that he was arrested prior to the incident and that the weapon was foisted upon him, though not independently proven by the defense, gains considerable weight when viewed against the backdrop of the numerous inconsistencies, omissions, and inherent flaws in the prosecution's evidence. While PW-5 Medical Officer Asadullah confirmed a fresh gunshot wound on the appellant, his testimony could not definitively rule out a "friendly fire" or an injury sustained under circumstances other than the alleged encounter, especially considering his statement that the injury might have been caused from a distance of 7-8 feet. This further weakens the prosecution's claim that the injury was sustained during the alleged encounter with the police.

15. The cumulative effect of the material and irreconcilable contradictions in the eyewitness accounts, the conspicuous absence of independent corroboration, the non-production of crucial physical evidence (damaged vehicle), the unexplained and significant delay in handling and dispatching the case property, and the failure to prove the essential ingredients of the dacoity charges, creates a strong, reasonable, and insurmountable doubt about the prosecution's narrative. It is a fundamental and golden rule of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt. If any single circumstance or fact creates a doubt in a prudent mind, the benefit of that doubt must invariably go to the accused, regardless of whether he has taken such a plea. The onus to prove guilt beyond reasonable doubt rests squarely and solely on the prosecution, and in the instant case, they have manifestly failed to discharge this onerous burden. It is a settled principle that if two interpretations of evidence are possible, the one favoring the accused must be adopted. While the learned trial court cited judgments like *Zafar Vs. The State* (2008 SCMR 1254), *Asif Vs. The State* (2020 SCMR 610), and *Nazir Ahmed Vs. The State* (2023 SCMR 1299) to underscore the competence of police witnesses and the irrelevance of minor discrepancies, these judgments do not apply where the contradictions are material, irreconcilable, and strike at the core of the prosecution's case, as is evident in the present appeals. The discrepancies here are far from "minor" and directly impact the credibility and veracity of the prosecution's story.

16. In light of the foregoing detailed reasons and discussions, we are of the considered view that the prosecution has utterly failed to bring home the guilt of the appellant, Khan Muhammad, beyond a reasonable shadow of doubt. The evidence on record is fraught with inconsistencies and omissions, and it would be

unsafe and against the principles of justice to uphold the conviction based on such flawed and unreliable testimony.

17. For the reasons stated above, both Criminal Appeal No.D-08 of 2025 and Criminal Appeal No.D-09 of 2025 are allowed. The impugned judgment dated 20.02.2025, passed by the learned Special Judge Anti-Terrorism Court Kashmore @ Kandhkot in Special Case No.59/2024 and Special Case No. 59-A/2024, is hereby set aside. The appellant, Khan Muhammad, is acquitted of all charges leveled against him in FIR No. 14/2024 and FIR No. 15/2024. He shall be released forthwith, if not required in any other case. The office is directed to transmit a copy of this order to the learned trial court for compliance and necessary action.

JUDGE

JUDGE

Asghar Altaf/P.A