

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No. S-12 of 2025

Cr. Jail Appeal No. S-13 of 2025

Appellant : Amir Ali s/o Jamaluddin Buriro
Through Mr. Farhat Ali Bugti,
Advocate.

Respondent : The State
Through Mr. Sardar Ali Solangi,
Deputy Prosecutor General.

Date of hearing : 23.07.2025

Date of Decision : 23.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—These two jail appeals, Criminal Jail Appeal No.S-12 of 2025 and Criminal Jail Appeal No.S-13 of 2025, arise from two judgments dated 10.04.2025, passed by the learned 1st Additional Sessions Judge/MCTC, Shikarpur in Sessions Case No.437/2024 and Sessions case No.438/2024. The appellant, Aamir Ali Buriro, stands convicted and sentenced to various terms as under:-

- For offence u/s 324 PPC to Rigorous imprisonment for 05 years and directed to pay fine of Rs. 20,000/-, failing which he would undergo simple imprisonment for an additional two-month term.
- For offence u/s 401 PPC to Rigorous imprisonment for 03 years and directed to pay fine of Rs. 10,000/-, failing which he would undergo simple imprisonment for an additional one-month term.
- For offence u/s 353 PPC to Rigorous imprisonment for 01 year and directed to pay fine of Rs. 10,000/-, failing which he would undergo simple imprisonment for an additional one-month term.
- For offence u/s 25 Sindh Arms Act, 2013 to Rigorous imprisonment for 07 years and directed to pay fine of Rs.20,000/-, failing which he would undergo simple imprisonment for an additional two-month term.
- All the sentences awarded to accused shall run concurrently with benefit extended u/s 382-B Cr.P.C.

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.79/2024, lodged by ASI Safdar Ahmed Shaikh on 06.08.2024 at 1800 hours at P.S Lakhi Gate. The complainant alleged that he along with his subordinate staff left PS in a Government vehicle No.SPE-624 under entry No.16 at 1630 hours for patrolling. Whilst patrol, when they reached at link road near Shankar Bharti temple, noticed three persons standing at road for committing some offence. They stopped vehicle and asked them to surrender. On seeing the police party, they allegedly opened straight fires with intention to kill. The police retaliated, and during the 3/4 minutes encounter, one of the accused (appellant Aamir Ali) sustained a gunshot injury to his right leg. The remaining accused fled, leaving the injured appellant and a TT pistol. The appellant was apprehended along with a TT pistol and 04 live bullets. On inquiry appellant failed to produce valid license. The complainant sent the injured to Civil Hospital Shikarpur for medical assistance. Subsequently, he lodged FIR No.79/2024 for the encounter and FIR No.80/2024 for offence under the Sindh Arms Act against the appellant.

3. Following the registration of FIRs, I.O/SIP Ghulam Nabi Shaikh (PW-3) conducted the investigation and submitted reports u/s 173 Cr.P.C. Both the cases were tried separately. Separate charges were framed against the appellant Aamir Ali, to which he pleaded not guilty and claimed trial.

4. To substantiate its case, the prosecution examined WHC Khadim Hussain, ASI Allah Dino (mashir), SIP Ghulam Nabi (I.O), ASI Safdar Ahmed (complainant), PC Ali Muhammad (Bearer), Dr. Masood Ahmed (MLO). The appellant, in his statement under Section

342 Cr.P.C., denied the allegations and claimed innocence. He neither examined himself on oath nor led evidence in his defense.

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. Farhat Ali Bugti, the learned advocate for the appellant, vehemently argued that the impugned judgment is illegal, erroneous, and unsustainable in law and 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. It was contended that the appellant was picked up from his house prior to registration of FIR 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", 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, which render their testimonies unreliable and untrustworthy. These contradictions relate to crucial aspects of the incident and investigation. Despite an alleged 3/4 minutes encounter with "straight firing" by the accused with "intention to kill," not a single scratch was sustained by any police official nor any bullet hit to the police mobile, further weakening the charges of attempted murder and deterring public servants from discharging their lawful duties. 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 401 PPC (belonging to the gang of thieves) are not

sufficiently proven. There is no extraneous circumstance or specific evidence demonstrating the intention or preparation for committing an offence; 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. Sardar Ali Solangi, 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 are as reflected in the trial court's judgment. The appellant was nominated in the FIR, and the complainant and eyewitness 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, which confirmed the fresh gunshot injury on the knee of appellant, and by the positive FSL report 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, except 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. I have minutely perused the impugned judgment, the FIRs, the charge sheets, 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. My findings on the critical aspects, which form the basis for my decision, are that the testimonies of PW-2 ASI Allah Dino and PW-4 Complainant/ASI Safdar Ahmed, 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-2 ASI Allah Dino, the mahsir, explicitly stated in his examination in chief that pistol recovered from the possession of appellant was found loaded with 03 live bullets, whereas complainant has contradicted him stating that such pistol was found loaded with 04 live bullets; ASI Allah Dino has deposed in his cross-examination that they consumed 01 hour and 10 minutes in completing all the formalities at the venue of occurrence, whereas complainant ASI Safdar Ali has deposed that 45 minutes were consumed in completing all the formalities over there. These are direct and fundamental contradictions concerning the recovery, casting serious doubt on its authenticity and the circumstances under which the arrest and recovery were affected. ASI Allah Dino has deposed that 02 seals were affixed on the parcel of alleged pistol whereas complainant ASI Safdar Ahmed has deposed that he affixed

03 seals on the parcel of pistol. Such a significant discrepancy in the critical procedural step further undermines the reliability and credibility of the witnesses and 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 my 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 almost all the material witnesses. Despite this, 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 "no private witness 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 3/4 minute encounter involving "straight firing" by multiple armed accused with "intention to kill," not a single police official sustained any injury nor police mobile got hit by any bullet. 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 06.08.2024. While PW-3 I.O/SIP Ghulam Nabi stated that he sent the property at FSL on 21.08.2024, PW-1 HC Khadim Hussain, the Malkhana Incharge, revealed that he received the case property from the I.O. to deposit in the Malkhana on 06.08.2024. This significant and unexplained delay of about two weeks in depositing the property 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 401 PPC (assembling for purpose of committing robbery) require the prosecution to prove not merely the presence of the accused but also a concrete intention and overt acts of preparation for committing robbery. 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 robbery." There is no specific evidence

adduced to demonstrate any actual preparation, such as possession of robbery 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 robbery. 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 the 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-6 Medical Officer Dr. Masood Ahmed 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 one LTP wound of entry measuring 0.75 c.m x oval shaped with blackening and burning present with regular and inverted margins present antero-medial side of right knee joint and one LTP wound of exit measuring 1.25 c.m x 1.50 c.m with irregular and averted margins present on back of right knee joint. Such piece of evidence is prima facie indicative of the fact that firearm injury was caused from a close range as the burning occurs due to the hot gases expelled at the time of discharge which denotes even closer proximity, typically within a few inches. This contradicts a police narrative of alleged encounter, where a distant or cross fire is claimed. 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 unexplained and significant delay in handling and dispatching the case property, and the failure to prove the essential ingredients of the robbery 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 2021 SCMR 198, 2022 SCMR 905, 2023 SCMR 1669, PLD 1978 SC 10 and 1990 SCMR 1272, PLD 2007 Karachi 562, wherein the Supreme Court held that testimony of police officials are required to be treated in the same manner as the testimony of any other witness and minor contradiction in statements before police and at trial in evidence of different witnesses of no avail. 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, I am of the candid view that the prosecution has utterly failed to bring home the guilt of the appellant, Aamir Ali, 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.S-12 of 2025 and Criminal Appeal No.S-13 of 2025 are allowed. The impugned judgments dated 10-04-2025, passed by the learned 1st Additional Sessions Judge/MCTC, Shikarpur in Sessions Case No.437/2024 and Sessions Case No.438/2024, are hereby set aside. The appellant, Aamir Ali, is acquitted of all charges leveled against him in FIR No.79/2024 and FIR No.80/2024 of PS Lakhi Gate, Shikarpur. 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

Asghar Altaf/P.A