

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Appeal No. S - 89 of 2025

Appellant: Tarique son of Sikandar bycaste Bhatti through
Mr. Nusrat Hussain Memon, Advocate.

The State Through Mr. Khalil Ahmed Maitlo, Deputy
Prosecutor General Sindh.

Date of hearing: 20.08.2026

Date of decision: 20.08.2026.

J U D G M E N T

SURESH KUMAR, J.- This Criminal Appeal is directed against the Judgment dated 29.08.2025 passed by learned Additional Sessions Judge, Moro in Sessions case No.622/2024 Re. State v. Tarique and others arising out of FIR No. 245/2024 for offence under sections 324, 353, 34 PPC registered at P.S Naushahro Feroze whereby appellant was convicted and sentenced as under :-

- (i) For offence under section 324 PPC, the appellant shall undergo F.I for seven years and pay a fine of Rs. 20,000/-, in default thereof, appellant to undergo SI for six months.
- (ii) For the offence under section 353 PPC the appellant shall undergo F.I for two years and pay a fine of Rs. 20,000/-, in default thereof, appellant to undergo SI for three months.

2. The facts leading to the instant appeal, as depicted in the FIR, are that on 09.05.2024 at 0100 hours, complainant ASI Ghulam Hyder Panhwar lodged an FIR at P.S. Sadhuja, stating that he, along with his staff PC Noor Muhammad and others, departed from P.S. for patrolling in a private vehicle. While patrolling, when they reached Sadhuja stop, the complainant received intelligence information that three persons were standing under suspicious circumstances. Upon receiving such information, the complainant, along with his staff, reached the indicated location, duly armed with weapons. However, upon seeing the police, the accused began to fire directly with the intention to commit murder. The encounter continued for 2 to 3 minutes until the firing ceased. One of the accused informed his companions that he had sustained a firearm injury to his leg, while the others, taking advantage of the darkness, managed to escape. The police party arrested one of the accused, who was found in possession of a pistol, in the presence of mashirs PC Nizamuddin and PC Zaffar Ali. Upon inquiry, the arrested accused disclosed his name as Tarique, son of Sikandar Bhatti. The accused could not produce a valid arms license. During further inquiry, the

arrested accused revealed that the escapees were his friends. He was subsequently brought to P.S., and the above FIR was lodged.

3. After the submission of the charge sheet, the appellant was tried by the learned Additional Sessions Judge, Moro. Following the supply of copies to the appellant, a formal charge was framed against the accused, to which he pleaded not guilty and requested a trial.

4. At trial, the prosecution examined ASI Ghulam Hyder at Ex. 3. He produced the memo of arrest and recovery at Ex. 3-A, departure and arrival entries at Ex. 3-B, a letter of medical examination at Ex. 3-C, and a copy of the FIR at Ex. 3-D. The statement of P.W. Nisar Ahmed Solangi was recorded at Ex. 4, and he produced the entry of the memo of site inspection at Ex. 4-A and Ex. 4-B, a letter of discharge of the accused, his statement, and the Huliya form at Ex. 4-C and Ex. 4-D, as well as a letter and R.C. at Ex. 4-E and Ex. 4-F. The statement of PC Fida Hussain and the FSL report were recorded at Ex. 4-G and Ex. 4-H. The statement of PC Zaffar Ali Buriro was recorded at Ex. 5, and the statement of Fida Hussain was recorded at Ex. 6.

5. Thereafter, the learned trial court recorded the statement of the appellant under Section 342 of the Cr.P.C. After hearing the arguments, the learned Additional Sessions Judge, Moro, convicted and sentenced the appellant as mentioned above in the impugned judgment.

6. Learned counsel appearing on behalf of the appellant has argued that the appellant is innocent and has been falsely implicated in the case by the police. He further contends that the impugned judgment passed by the learned trial court is the result of misreading and non-appreciation of the evidence. He also argues that the conviction was based on a misunderstanding or the ignoring of key evidence from the prosecution, which undermines the validity of the judgment in the instant case.

7. Conversely, the Deputy P.G. for the State, while supporting the impugned judgment, has contended that the prosecution has proved its case through trustworthy evidence. He has also contended.

8. Having scanned the prosecution case, I have found that it comprises the complainant ASI Ghulam Hyder (Ex-3), I.O. Nisar

Ahmed (Ex-4), mashir/eye witness PC Zaffar Ali (Ex-5), and Dispatcher PC Muhammad Siddique (Ex-6). Among them, complainant ASI Ghulam Hyder and eye witness/mashir PC Zaffar Ali are the star witnesses in the case, as they allegedly participated in the encounter and also arrested the appellant and recovered an unlicensed weapon from his possession. In order to ascertain the veracity of the testimony of both, they were cross-examined along with other witnesses, but they failed the test of cross-examination as they are not consistent regarding the material facts of the alleged incident. Complainant ASI Ghulam Hyder deposed in his cross-examination that they left the PS in a white Mehran car for patrolling, but mashir PC Zaffar Ali deposed in his cross-examination that they left the PS in a private white Alto car. It can be inferred from this contradiction that either they were not together or they did not leave the PS for patrolling. Both have also contradicted each other regarding the time spent patrolling, as the complainant deposed in cross-examination that he remained for about 7 and a half hours in the private car for patrolling, while the mashir deposed in his cross-examination that they patrolled for about 4 to 5 hours. This contradiction suggests that they did not patrol on the night of

the alleged incident, as they are not aware of the actual time of patrolling. Both have also contradicted each other regarding the distance between the accused and the police party at the time of the encounter, as the complainant deposed in his cross-examination that the encounter took place at a distance of $\frac{1}{2}$ or $\frac{1}{3}$ kilometer, while the mashir deposed in his cross-examination that the encounter took place at a distance of 300 to 400 feet. However, the empties recovered from the scene of the incident reveal that the distance between the empties of the police party and the accused party was 20 to 25 yards, indicating that the versions of the complainant and mashir are not supported by circumstantial evidence in the form of recovered empties. Both have also contradicted each other regarding the preparation of the mashirnama, which is a vital document to prove the alleged encounter as well as the alleged recovery. The complainant deposed in his cross-examination that Nizam Hudio wrote the memo of arrest and recovery on his dictation, but the mashir deposed in his cross-examination that the complainant prepared the memo of arrest and recovery. This contradiction suggests that neither was the accused arrested nor was the memo prepared at the place of the incident.

The above material contradictions have created a serious dent in the prosecution case; therefore, the whole episode has become doubtful.

9. Besides the above material contradictions, it has appeared from the available record that the Medical Officer who allegedly examined the injured has not been examined. In order to prove the description of the injuries, the distance from where the injuries were sustained, as well as the time of the injuries sustained by the appellant, it is necessary to examine the Medical Officer. The non-examination of the doctor renders the medical evidence inadmissible. In firearm cases, the evidence of the Medical Officer is vital to determine if the injuries match the weapon allegedly used; without the doctor, the Court may conclude that the prosecution has failed to prove the nature of the injuries in the presence of the victim at the scene. The record further reveals that the clothes of the injured/appellant were not secured by the complainant, which has raised serious doubt regarding the claim of the prosecution that after receiving injuries, the appellant fell on the ground. Furthermore, no blood was found at the place of the incident, as per the mashirnama produced by the Investigating Officer.

10. Apart from the above contradictions and legal infirmities in the prosecution case, it has come on record that the account of the issuance of fired bullets to the individual police officials and the shots made by them has not been produced. According to the I.O., only seven empties from the police party were recovered, but the complainant and eyewitness have deposed that 8 to 10 shots were fired by them, while the accounts of the other members of the police party have not come on record. The non-production of evidence detailing the issuance of fired bullets to individual police officials and the shots made by them, along with the absence of results regarding the empties recovered from the spot, has created serious doubt in the prosecution case regarding the police encounter. Reliance is placed on the case reported as Jaffar Iqbal and others v. The State (1993 P.Cr.L.J. 1749) [Lahore].

11. As per the prosecution case, it is alleged that the recovery from the appellant was effected on 08.05.2024, while the recovered weapon was subsequently sent to the forensic laboratory for examination and report on 17.05.2024. This means that the crime weapon was sent to the lab after an unexplained delay of nine days, and no explanation has been offered for such delay. No plausible

explanation has been provided for this delay, nor has any malkhana entry been produced to show that the property remained in safe custody during this period. The prosecution also failed to examine the in-charge of the malkhana, who could have explained the manner in which the property was kept in safe custody and then transmitted to the PSL. The law is well-settled by now that the prosecution is under a legal obligation to prove the safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory, as held by the Honourable Supreme Court in the case of Kamal Din alias Kamala v. The State (2018 SCMR). Further reliance is placed on the case of Mehboob Ali Mallah v. The State (2025 P.Cr.L.J. 1179) and Zaffar Ali Abbasi & another v. The State (2024 SCMR 1773). Moreover, no malkhana entries have been produced to show that the property remained in safe custody during this period. The prosecution also failed to examine the in-charge of the malkhana, who could have explained the manner in which the property was kept in safe custody. It is well-settled law that the prosecution is under an obligation to prove the safe custody of the weapon and its safe transmission to the forensic laboratory, as held in the case of Kamal Din alias Kamala v. The State

(2018 SCMR 577). Further reliance is placed upon the case of Zaffar Ali Abbasi and another v. The State (2024 SCMR 1773).

12. The prosecution case is based upon the evidence of police officials, and no independent witness has been cited regarding the allegations of the alleged encounter. In such cases, the standard of proof should be higher compared to other cases, as held by the Honourable High Court in the case of Amanullah v. State (2019 P.Cr.L.J. 96).

13. In the case of Mehboob-ur-Rehman v. The State (2013 SCMR 106), the Apex Court set aside the conviction and sentence of the accused/convict by holding that the accused, while raising a defense plea, was only required to show that there was a reasonable possibility of his innocence, and the standard of proof was not the same as that expected of the prosecution, which had to prove its case beyond any reasonable doubt. In the cases of Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Akram v. The State (2009 SCMR 230), and Tariq Pervaiz v. The State (1995 SCMR 134), it has been held that to grant the benefit of the doubt, it is not necessary for there to be many circumstances creating doubt; rather, a single circumstance

creating reasonable doubt in a prudent mind regarding the guilt of the accused entitles him to that benefit not as a grace or concession, but as a matter of right.

14. For the foregoing facts and reasons, I am of the view that the prosecution has failed to prove its case against the appellants/accused beyond any reasonable doubt to sustain a conviction.

15. These are the reasons for my short order dated 20.08.2025, whereby the instant appeal was allowed by setting aside the impugned judgment dated 29.08.2024.

J U D G E

6. It is contended by the appellants in person that they being innocent have been involved in this case falsely by the complainant and they have been convicted by learned trial Court on the basis of sole evidence of the complainant which is not supported by any one. By contending so, they sought for their acquittal.

7. Learned Additional PG for the State recorded no objection to the acquittal of the appellants by contending that their involvement in the case is not free from doubt.

8. We have considered the above arguments and perused the record.

9. No doubt, complainant Mst. Kouri during course of her examination has supported the case of prosecution to some extent but there could be made no denial to the fact that the FIR of the incident which she lodged with the police was with delay of 13 ½ hours, such delay could not be lost sight of as it reflects consultation and deliberation and it has made the version of the complainant to be doubtful one.

10. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it has been observed by Hon'ble Apex Court that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

11. PWs Soomar and Moula Bux, the prosecution could not be able to examine, on account of their death while PW Akam alias Bakhshan when was examined, on account of his failure to support the case of the prosecution was declared hostile to the prosecution. No proof is brought on record by the complainant which may prove her ownership over the property allegedly taken away by the appellants. There is no recovery of any sort from any of the appellants. The enmity between the parties is admitted. In that situation, it would be safe to maintain conviction and sentence against the appellants on the basis of sole evidence of the complainant which is found to be doubtful in its character.

In case of Mahboob-ur-Rehman v. the State (2013 SCMR 106)