

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No.S - 90 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

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.466/2024 Re. State v. Tarique whereby the appellant was convicted and sentenced for offence under section 24 of Arms Act to suffer R.I for seven years and fine for s. 20,000/-. However, the benefit of section 382-B Cr.P.C was extended to appellant.

2. Concisely, the facts leading to the instant appeal, as depicted in the FIR, are that on 09.05.2024, the complainant ASI Ghulam Hyder registered an FIR on behalf of the State, alleging that the accused was arrested in Crime No. 245/2024 under Sections 324,

353, and 34 of the PPC at approximately 2300 hours, and an unlicensed .30 bore pistol along with three live bullets was recovered from his possession. Therefore, the FIR was lodged on behalf of the State.

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. Thereafter, the prosecution witnesses were examined by the learned trial court, and 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 him via the impugned judgment. The appellant is not satisfied with the impugned judgment; hence, this criminal appeal.

4. 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 misappreciation of 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.

5. It is contended by the appellants in person that they, being innocent, have been falsely implicated in this case by the complainant and that they have been convicted by the learned trial court on the basis of the sole evidence of the complainant, which is not supported by anyone else. By making this contention, they seek their acquittal.

6. Learned Deputy P.G. for the State recorded no objection to the acquittal of the appellants, contending that their involvement in the case is not free from doubt.

7. I have considered the above arguments and perused the record.

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 were 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, while 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 witnesses also contradicted each other regarding the time spent patrolling, as the complainant deposed in cross-examination that he remained in the private car for about 7 and a half hours 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. Furthermore, both witnesses contradicted each other regarding the distance between the

accused and the police party at the time of the encounter. 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 occurred 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 witnesses 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 Hulo wrote the memo of arrest and recovery on his dictation, while the mashir deposed in his cross-examination that the complainant prepared the memo of arrest and recovery. This contradiction suggests that neither the accused was 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. 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].

10. 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 indicates 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 subsequently transmitted to the forensic science laboratory. 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 577). 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).

11. The prosecution case is based on 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).

12. 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 many circumstances to create 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.

13. 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.

14. 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

Irfan/P.A