

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 441 of 2024
[Zaheer Ahmed vs. The State]

Appellant : Zaheer Ahmed
through Mr. Faheem Shah,
advocate

Respondent : The State
through Mumtaz Ali Shah,
Assistant Prosecutor General

Date of hearing : 10-03-2025

Date of short order : 10-03-2025

Date of detailed reasons : 14-03-2025

JUDGMENT

Jan Ali Junejo, J.-- The present Criminal Appeal has been filed by the Appellant (accused), challenging the Judgment dated 31-05-2024 (here-in-after referred to as the *Impugned Judgment*) passed by the Court of learned IVth Additional Sessions Judge, Karachi-East (here-in-after referred to as the learned *Trial Court*) in Sessions Case No.3670 of 2023 (The State vs. Zaheer Ahmed), whereby the learned Trial Court convicted the Appellant under Section 23(1)(a), of the Sindh Arms Act, 2013 and sentenced him to undergo R.I. for seven years and fine of Rs.20,000/-. In case of default of fine amount, the Appellant shall suffer S.I. for two months. The benefit of Section 382-B, Cr.P.C. was extended to the Appellant.

2. According to the prosecution, on 19-02-2023 at 0630 hours, at a Vacant Plot, near Jalal Chowk, Mehran Town, Sector 6/E, KIA, Karachi, the complainant ASI Mazhar Hayat of P.S. K.I.A. Karachi apprehended the appellant Zaheer Ahmed and

recovered one unlicensed 30-bore pistol along with four live bullets and a sum of Rs. 90,000/- from his possession. FIR No. 263/2023 was registered against him under Section 23(i)(A) of the Sindh Arms Act, 2013. After completion of the investigation, the charge sheet was submitted, and the trial commenced. During the trial, the prosecution examined the following witnesses and produced documentary evidence:

PW-1 ASI Mazhar Hayat (complainant and arresting officer)

- **Roznamcha departure entry (Exh-4)**
- **Memo of arrest and recovery (Exh-5)**
- **FIR (Exh-6)**
- **Roznamcha arrival entry (Exh-7)**
- **Memo of place of incident (Exh-8)**

PW-2 PC Hamza Khan (mashir of memos)

- His testimony was recorded as **Exh-9**.

PW-3 SIP Muhammad Moosa (Investigating Officer)

- **Roznamcha entry No. 9 (Exh-10/A)**
- **Roznamcha entry No. 10 (Exh-10/B)**
- **Police forwarding letter (Exh-10/C)**
- **FSL report (Exh-10/D)**
- **Snap of the pistol (Exh-10/E)**

Following the conclusion of the prosecution's case, the Appellant's statement was recorded under Section 342 of the Criminal Procedure Code (Cr.P.C.), during which he refuted all allegations leveled against him and sought a fair resolution. The Appellant chose not to exercise his right to testify under oath pursuant to Section 340(2), Cr.P.C., and declined to present any evidence in his defense. Subsequently, the trial Court, based solely on the prosecution's evidentiary submissions, found the Appellant guilty and issued a conviction through

the Impugned Judgment dated May 31, 2024 followed by sentence.

3. The learned counsel for the Appellant contends that the learned trial Court has erred both on facts and law while recording the judgment, rendering it legally flawed. He further argues that the alleged recovery from the appellant is contradictory, thereby casting grave doubt on the prosecution's case. He asserts that the trial Judge failed to appreciate the mandatory requirement of **Section 103 Cr.P.C.**, which mandates the presence of independent witnesses during recovery, a lapse that vitiates the proceedings. Additionally, he highlights that the trial Judge overlooked major contradictions in the testimonies of prosecution witnesses, including discrepancies between the recovery sketch and the FSL report, which irreparably undermine the prosecution's version. He emphasizes that the trial Judge failed to consider the appellant's acquittal in the main case (Crime No.1714/23 under Sections 395/397 PPC), a critical omission that further weakens the prosecution's credibility. He stresses that all prosecution witnesses (PWs) are police officials, with no private witness associated, violating principles of fairness and corroboration. He contends that the prosecution's case is riddled with material contradictions, rendering it inherently unreliable, yet the trial Judge opted to convict the appellant without addressing these fatal flaws. He further argues that the impugned judgment is non-speaking, lacking cogent reasoning and failing to weigh the absence of independent corroboration for police testimony, a legal necessity in such cases. Cumulatively, he submits that these errors warrant setting aside the conviction and granting the appellant the benefit of doubt.

4. Per contra, the learned Additional Prosecutor General (APG) has argued that the prosecution had successfully established the accused's guilt beyond any shadow of doubt through credible and corroborative evidence. The testimonies of the complainant, mashir, and Investigating Officer were consistent, confidence-inspiring, and remained unshaken during cross-examination. The FSL report confirmed that the recovered weapon was in working condition, further strengthening the prosecution's case. The APG contended that police witnesses are as reliable as independent witnesses unless proven to have acted with malice, and the absence of private witnesses did not weaken the case. The prompt registration of the FIR, proper documentation, and absence of major contradictions reinforced the prosecution's stance. Additionally, the APG emphasized that illegal possession of firearms contributes to crime, and the accused failed to present any defense evidence or testify under oath, further undermining his plea of false implication. Citing legal precedents, the APG asserted that minor discrepancies do not invalidate a prosecution case and, therefore, urged this Court to dismiss the appeal and uphold the conviction and sentence.

5. Upon a detailed examination of the submissions presented by the appellant's counsel and the State's Additional Prosecutor General (APG), coupled with a rigorous scrutiny of the case record, the following critical findings and rational conclusions emerge: The Complainant, ASI Mazhar Hayat, explicitly identified "six individuals" (Abdullah, Salman, Ubaidullah, Umar, Kashif, and Adnan) as having been arrested. Notably, "Zaheer Ahmed" – the appellant in this case – was "never mentioned" in the complainant's testimony. Similarly, PC Hamza Khan's testimony referenced only "three arrestees" (Ubaidullah, Umar, and Kamran) and also omitted the

appellant's name. This glaring inconsistency in identifying the accused—coupled with the complainant's failure to name Zaheer Ahmed—casts significant doubt on the appellant's alleged involvement or presence at the scene. The prosecution's case is further weakened by a direct contradiction between the two primary witnesses: ASI Mazhar Hayat claimed "six arrests", while PC Hamza Khan cited "five arrests". Such a material inconsistency undermines the credibility of the prosecution's narrative and raises questions about the accuracy of the entire account. The "FSL report" highlighted that the recovered pistol bore a "rubbed serial number". However, this critical detail was "never documented" in the official arrest/recovery memo, nor corroborated by any witness testimony. The absence of this information in the foundational records suggests either procedural negligence or potential fabrication, further eroding trust in the prosecution's evidence. "ASI Mazhar Hayat" asserted that the police team arrived at the scene at "0630 hours" and left the station on "19-02-2023 at 0210 hours". In contrast, "PC Hamza Khan" stated the team arrived at "0625 hours" and departed the station at "2000 hours on 19-02-2023", implying an arrival on "20-02-2023" due to the midnight date transition. These irreconcilable timelines create confusion about the sequence of events and the reliability of witness accounts. The totality of these contradictions—"failure to name the appellant", "conflicting arrest figures", "unreported tampering of evidence", and "chronological inconsistencies"—collectively dismantle the prosecution's version of events. Such material discrepancies in core aspects of the case render the evidence untrustworthy and insufficient to meet the burden of proof required for conviction. The prosecution's failure to present a coherent, consistent narrative founded on verifiable facts fatally undermines its credibility, thereby warranting serious doubt about the appellant's

culpability. Moreover, although the incident occurred in a densely populated area during morning hours, the Complainant/Assistant Sub-Inspector (ASI) made no attempt to involve independent witnesses to observe the arrest or the recovery process. This failure to associate independent witnesses, despite the public setting, raises questions about procedural compliance, as such steps are typically critical to ensuring transparency in law enforcement actions. The inconsistencies identified are not minor or peripheral but strike at the heart of the prosecution's claims. Moreover, the Appellant has already been acquitted in main Crime No.1714/23 under Sections 395/397 PPC. In light of these rational findings, the case against Zaheer Ahmed cannot withstand judicial scrutiny, and the charges lack the evidentiary foundation necessary to sustain a conviction.

6. It is a foundational principle of criminal law that the prosecution must establish guilt *beyond a reasonable doubt*, with even the slightest uncertainty favoring the accused. In a parallel scenario, as observed in *Muhammad Hamdani v. The State* (2018 YLR 2687), this Court acquitted the accused by extending the benefit of doubt in a case under **Section 23(1)(a)** of the Sindh Arms Act, 2013. This position is further corroborated by the Honourable Supreme Court of Pakistan's ruling in *Sajjan Solangi v. The State* (2019 SCMR 844), which underscores the imperative of adhering to this standard.

7. For the foregoing reasons, the Impugned Judgment dated 31-05-2024, rendered by the Trial Court, is deemed legally untenable and is hereby set-aside. Consequently, the conviction and sentence imposed on the appellant, Zaheer Ahmed, under Section 23(1)(a) of the Sindh Arms Act, 2013, are overturned. He is acquitted of the charges and shall

be released immediately, unless lawfully detained in connection with any other pending case.

8. Above are the reasons for the short dated 10.03.2025 in terms of which, the appeal was allowed and sentence awarded to the appellant was set aside.

JUDGE