

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT
HYDERABAD**

Criminal Jail Appeal No.S-137 of 2022

Present:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo

For Appellant: Mr. Om Parkash H. Karmani, Advocate.

For the Respondent/State: Mr. Shahwak Rathore, D.P.G.

Date of hearing: 27-08-2025

Date of Judgment: 08-10-2025

JUDGMENT

Jan Ali Junejo, J. --- Through this Criminal Jail Appeal filed under Section 410 of the Code of Criminal Procedure, 1898, the appellant challenges the judgment of conviction and order of sentence dated 26.08.2022 passed by the learned 1st Additional Sessions Judge, Tando Allahyar, in Sessions Case No.90/2019 (Crime No. 99/2019, P.S. A-Section Tando Allahyar). The appellant was convicted for an offence punishable under Section 25 of the Sindh Arms Act, 2013 and sentenced to undergo Rigorous Imprisonment for five years with a fine of Rs. 10,000/- (in default thereof to undergo Simple Imprisonment for one month), with the benefit of Section 382-B Cr.P.C. extended.

2. On 20-08-2019 the appellant, who was in custody in Crime No. 98/2019 (u/s 302 & 504 PPC), allegedly during interrogation disclosed that the weapon used in the murder had been concealed by him in a mango garden near Dargah Juman Shah and he would produce it. The police accompanied by private mashirs (Khalil Ahmed and Muhammad Zaffar) proceeded to the

pointed place. On the appellant's pointation a black shopper was taken out from under a mango tree in which a 9-mm pistol (marked MP-446 / No.0944600790), a magazine and five live 9-mm rounds and a photocopy of a license (JNA-269) were found; these were sealed on spot, brought to PS, entered in malkhana and ultimately sent to FSL Hyderabad. FIR No.99/2019 (u/s 25 Sindh Arms Act) was registered.

3. Following the investigation, the challan was submitted before the Judicial Magistrate, who after taking cognizance sent up the R&Ps to the Court of Sessions, who further referred the case to the Trial Court. Prior to the commencement of the trial, copies of the relevant police papers, in compliance with Section 265-C, Cr.P.C., were duly supplied to the appellant under proper receipt. Thereafter, a formal charge was framed against him, to which he pleaded not guilty and claimed to be tried. In order to discharge its burden of proof, the prosecution examined the following witnesses and produced documentary evidence as under:

PW-01: Khalil Ahmed (Ex.03): The prosecution examined PW-01 Khalil Ahmed, who acted as a mashir of recovery. He deposed that on 20.08.2019, upon receiving a telephonic call from SIP Allah Bachayo regarding the disclosure made by accused Akram alias Akka, he along with co-mashir Zaffar Arain proceeded to the Police Station, from where the accused in custody was taken to the pointed place. The accused led the police party and mashirs to the Dargah of Jumman Shah, wherefrom beneath the branches of a mango tree he produced a black shopper. On opening the shopper, a pistol bearing marking "MP-446" with engraving "Made in Russia," a magazine containing five live rounds, and a photocopy of a license in the name of the accused were recovered. The I.O. sealed the case property at the spot and prepared the mashirnama, which was duly signed by PW-01 and the co-mashir. PW-01 identified the accused produced in court as the same person, and the recovered pistol, magazine, and bullets produced in court as the same articles secured from the spot. He produced the carbon copy of the recovery memo dated 20.08.2019 at Ex.3/A, which bore his signatures. During cross-examination, PW-01 admitted that he had not checked the arrival entry at the Police Station and could not recall the

complete serial number of the pistol, but denied the defense suggestions that no recovery took place or that the memo was fabricated at the Police Station.

PW-02: SIP Allah Bachayo (Ex.04): PW-02 SIP Allah Bachayo, the Investigating Officer, supported the recovery and proved the chain of custody. He stated that on 20.08.2019, during interrogation of the accused in Crime No.98/2019, the accused confessed to having concealed the weapon used in the crime near the Dargah of Jumman Shah. The accused was taken out of lockup vide entry No.13 at 1200 hours (Ex.4/A), and after recording his disclosure, PW-02 made further entries No.15 and 17 (Ex.4/B & Ex.4/C). Thereafter, in the presence of mashirs Khalil Ahmed and Muhammad Zaffar, the accused led the police party and produced a pistol from a black shopper buried near a mango tree. The weapon was a 9mm pistol marked “MP-446” with serial No.0944600790, loaded with five live bullets, along with a photocopy of the license in the name of the accused. PW-02 prepared the recovery memo (Ex.3/A), a sketch of the pistol (Ex.4/D), and produced the license copy (Ex.4/E). He further proved subsequent entries (Ex.4/F), FIR No.99/2019 (Ex.4/G), malkhana entry No.57 of Register No.19 (Ex.4/H), forwarding letter to the FSL Hyderabad (Ex.4/I), FSL report (Ex.4/J), correspondence with the Deputy Commissioner Sanghar (Ex.4/K & Ex.4/L), and the CRO of the accused reflecting 11 registered cases (Ex.4/M). The FSL Report confirmed that the recovered pistol was in working condition and matched with the empties recovered in Crime No.98/2019. In cross-examination, PW-02 admitted that the license bore purchase receipts and official stamps, but he did not verify the purchase from Shah Armory or confirm the renewal from the post office. He denied the defense suggestions that the weapon was seized from the accused at the time of his arrest or that the recovery proceedings were fabricated.

4. At the close of the prosecution’s evidence, the statement of the accused under Section 342 Cr.P.C. was recorded, wherein he denied the allegations leveled against him and professed innocence. He asserted that he had been falsely implicated in the case and that the weapon allegedly recovered was in fact his licensed pistol, which had been taken by the police from his house and later used to fabricate evidence against him. The accused chose to examine himself on oath under Section 340(2) Cr.P.C. and also produced defence witnesses. DW-1 Dilawar Khan, Manager Shah Armoury Tando Allahyar, testified that the recovered pistol (model MP-446) was licensed and

registered to the accused. The summary of the evidence of accused and defence witness is as under:-

Statement of Accused on Oath U/S 340(2) Cr.P.C. (Ex.07): The accused Muhammad Akram alias Akka, when examined on oath under Section 340(2) Cr.P.C., denied the prosecution allegations and put forward his defence version. He asserted that on 18.08.2019 at about 3:00 a.m., he was arrested by the police from his house situated at Station Road, Tando Allahyar. During the house search, his licensed 9mm pistol, valid arms license, and some bullets were allegedly seized by the police. He stated that thereafter he was taken to Police Station A-Section, where the SHO fired from his pistol and subsequently sealed it as case property in this matter. According to him, he has been falsely implicated in the present case and had no concern with the alleged recovery from the mango orchard as deposed by the prosecution witnesses. He further denied being present at the Fiza Garden Marriage Hall at the time of the main incident. During cross-examination, the accused admitted that the pistol and bullets produced in court were the same that belonged to him under a valid license. He, however, insisted that these were taken away from his house and not recovered on his pointing. He also admitted that neither he nor his relatives made any complaint to higher police authorities about the alleged seizure from his house, nor did he produce any independent witness to support his plea. He further volunteered that a CDR record was available with the police, but did not produce the same in his defence. The prosecution suggestion that he falsely deposed to save himself from the charge of murder was denied.

Deposition of DW-01: Dilawar Khan (Ex.08): The defence examined DW-01 Dilawar Khan, Manager of Shah Armoury, Tando Allahyar, to substantiate the plea that the recovered pistol was a licensed weapon lawfully purchased. He deposed that accused Muhammad Akram purchased a 9mm pistol from Shah Armoury, and he (DW-01) had issued the receipt of purchase. He identified the said receipt produced in the record at Ex.4/E, which bore his signature dated 14.07.2019. He further confirmed that the same pistol bearing serial No.0944600790 "Made in Russia", already produced in court, was entered in the arms license of the accused by him, with his signature and official stamp. During cross-examination by the learned ADPP, no questions were put to the witness despite opportunity.

5. In conclusion, the learned 1st Additional Sessions Judge, Tando Allahyar (MCTC), vide judgment dated 26.08.2022, held that the prosecution had successfully proved its case beyond reasonable doubt against accused Akram alias Akka S/o. Peer Bux alias Peeru Makrani for the recovery of an 9mm

pistol along with a magazine containing five live bullets. The Court found that the recovered weapon was the same used in Crime No.98/2019 under Section 302 PPC and was matched through the forensic report. Consequently, the accused was convicted under Section 25 of the Sindh Arms Act, 2013, and sentenced to undergo Rigorous Imprisonment (R.I.) for five years and to pay a fine of Rs.10,000/-, and in default of payment of fine, to further suffer Simple Imprisonment (S.I.) for one month. The Court also extended the benefit of Section 382-B Cr.P.C. to the accused, directing that his detention as under-trial prisoner be counted towards the substantive sentence. As the accused had already been convicted in Sessions Case No.89 of 2019 (Crime No.98/2019 under Section 302(b) PPC), the Court ordered that the sentences in both cases shall run concurrently.

6. Learned counsel for the appellant contended that the impugned judgment of conviction and sentence is illegal, misconceived, and based on misappreciation of evidence. It was argued that the pistol in question was a duly licensed weapon of the appellant, lawfully purchased from Shah Armory, and its recovery as alleged by the prosecution is a fabricated story. The appellant was arrested from his house, and his licensed pistol along with valid license and bullets were forcibly taken away by the police, which was later foisted upon him to strengthen the prosecution case in the connected murder matter. It was further submitted that no independent or reliable witness supported the recovery proceedings, and the mashirs were interested witnesses. The learned counsel emphasized that the defence plea was plausible and supported by the testimony of DW-01, the Manager of Shah Armory, who confirmed that the pistol was lawfully purchased by the

appellant. In these circumstances, the learned counsel prayed that the conviction and sentence awarded by the trial Court be set aside, the Criminal Jail Appeal be allowed, and the appellant be acquitted of the charge by extending him the benefit of doubt.

7. Conversely, learned Deputy Prosecutor General appearing for the State strongly opposed the appeal and fully supported the impugned judgment. He contended that the prosecution had successfully proved its case through reliable ocular evidence of the mashir and the Investigating Officer, which stood corroborated by unimpeached documentary evidence and the ballistic report. The recovery of the pistol was made on the pointation of the appellant, and the same weapon was forensically matched with the empties recovered from the connected murder case, thereby conclusively establishing its use by the appellant. The mere fact that the pistol was licensed did not absolve the appellant of criminal liability under Section 25 of the Sindh Arms Act, 2013, once it was proved that the weapon was used in a cognizable offence. The learned D.P.G. further argued that the defence version was a mere afterthought, unsupported by any independent witness or documentary material, and rightly disbelieved by the trial Court. He thus prayed for dismissal of the Criminal Jail Appeal, maintaining the conviction and sentence awarded by the trial Court.

8. We have carefully considered the submissions advanced by the learned counsel for the Appellant, and the learned Deputy Prosecutor General for the State. With their valuable assistance, we have meticulously examined the evidence available on record, applying due care and caution. It is a well-settled principle of appellate jurisprudence that the High Court, while hearing

a criminal appeal, is duty-bound to reappraise the entire evidence to ensure the correctness, legality, and propriety of the findings recorded by the trial Court. We have accordingly undertaken such a comprehensive re-evaluation. Upon such careful scrutiny, it transpires that the learned trial Court undertook a thorough assessment of the prosecution's evidence and found it both consistent and corroborated. Although PW-01 Khalil Ahmed was called by the police to act as mashir, his testimony has not been shown to be tainted by animus or prior connection with the police. His evidence therefore may be treated as reliable despite his being police-summoned, but with the usual caution. This independent mashir also narrated in detail how the accused Akram alias Akka, while in custody, led the police party to the mango orchard near Dargah Jumman Shah and himself produced a black shopper buried under a tree containing the incriminating articles. We are mindful that PW-01 admitted not knowing where the pistol was kept after recovery; however, this gap is adequately bridged by the official station diary entries and the malkhana register (Ex.4/H), which ensure continuity of custody up to dispatch for forensic examination. His evidence was also reinforced by PW-02 SIP Allah Bachayo, the complainant and Investigating Officer, who documented the recovery in official station diary entries and prepared the mashirnama of arrest and recovery (Ex.3/A). The evidence of both witnesses dovetailed on all material particulars: the place of recovery, the description of the pistol (bearing "MP-446" and "Made in Russia"), the magazine with five live rounds, and the photocopy of the license in the name of the accused. Their accounts further found strong corroboration from the ballistic report (Ex.4/J), which categorically confirmed that the 9mm empties marked as C/1 to C/9, secured from the scene of Crime No.98/2019 under Section 302 PPC,

had been fired from the very 9mm pistol bearing No.0944600790 recovered on the accused's pointation. The report specifically noted that the major forensic characteristics, including striker pin impressions, breech face marks, and ejector marks, were found to be similar, thereby establishing a definite link between the recovered weapon and the crime empties. The Forensic Science Laboratory further opined in its report dated 27.08.2019 that the said 9mm pistol bearing No.0944600790 was in proper working condition at the time of examination, thus removing any doubt as to its operability or evidentiary value. The trial Court observed that such corroboration by scientific evidence excluded the possibility of fabrication or false implication. The defence could not discredit these witnesses in cross-examination; they remained consistent, and their testimonies were supported by documentary exhibits (Ex.4/A to 4/H), thereby lending reliability to the prosecution case.

9. The defence plea was carefully considered but found unconvincing. The accused, when examined on oath under Section 340(2) Cr.P.C., asserted that the pistol was lawfully licensed in his name and was forcibly taken by the police from his house during a night raid, after which false proceedings were concocted. However, this claim remained wholly unsubstantiated. Neither the accused nor his family lodged any contemporaneous complaint before higher police authorities, nor did he produce any independent witness to corroborate the alleged illegal seizure from his house. The Court also noted that while DW-01 Dilawar Khan, Manager of Shah Armory, confirmed lawful purchase and licensing of the pistol, this fact by itself did not negate the prosecution's case. On the contrary, it reinforced that the pistol indeed belonged to the accused and was within his exclusive possession. The trial

Court correctly observed that the mere fact of licensing did not absolve the accused of criminal liability, since the weapon stood proved to have been used in the commission of murder and was deliberately concealed by the accused, facts which bring the case squarely within the purview of Section 25 of the Sindh Arms Act, 2013. It is significant that Section 25 of the Sindh Arms Act, 2013 criminalises the use of a firearm, whether licensed or unlicensed, for the commission of an offence. Hence, even accepting the defence claim that the pistol was licensed, this fact alone could not absolve him of liability once its use in the connected murder case was proved through forensic evidence. The allegation that the police had seized the pistol from his house and later fabricated the recovery was not supported by any contemporaneous complaint or independent witness. While absence of complaint is not conclusive, when set against the unimpeached forensic linkage between the pistol and empties from the murder scene, the plea does not create a reasonable doubt.

10. In its final analysis, the trial Court found that the prosecution had discharged its burden of proof by establishing, beyond reasonable doubt, the recovery of the pistol and its use in the cognizable offence. The trial Court relied on Article 40 of the Qanun-e-Shahadat Order, 1984, which makes admissible the discovery of a fact, such as recovery of an incriminating article, as a result of information supplied by the accused while in custody. The accused's admission during interrogation and the subsequent recovery of the pistol at his instance constituted substantive incriminating evidence. It would be expedient to examine and reproduce Article 40, of Qanun-e-Shahadat Order, 1984 as follows:

“40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Under Article 40 of the Qanun-e-Shahadat Order, 1984, that part of the accused's disclosure which led distinctly to the discovery of the pistol is admissible. Here, the recovery of the 9mm pistol No.0944600790 on the accused's pointation squarely falls within Article 40. This discovery, corroborated by the ballistic report, constitutes substantive incriminating evidence. Precedents such as *Mst. Askar Jan v. Muhammad Daud* (2010 SCMR 1604) reinforce this position. In another Case of *Muhammad Bux v. The State* (2015 YLR 519), wherein this Court was pleased to hold that:

“There is also recovery at the pointation of the convict Muhammad Bux. For which the prosecution claimed through Investigating Officer P.W.17 Mahboob Elahi and P.W.Rano Khan Solangi (Exh.19) that convict Muhammad Bux volunteered to produce the rope, used in commission of the offence and also led police to pointed place. Such discovery can well be proved within meaning of the Article 40 of the Qanun-e-Shahadat Order for which the prosecution is required to establish two ingredients i.e. (i) there must be statement/information by accused and (ii) which should lead to discovery/recovery. Reference, if any can be made to the case of Mst. Askar Jan and others v. Muhammad Daud reported in 2010 SCMR 1604”.

11. The ballistic report did not merely confirm that the pistol was operational; it conclusively established that it was *used* in the murder incident (Crime No.98/2019). This element of 'use' is the gravamen of Section 25. Accordingly, the statutory ingredients stand fully satisfied. The trial Court rejected the plea of false implication, finding no evidence of enmity or malafide on part of the police or witnesses that could justify such fabrication. In view of this unimpeachable combination of ocular, documentary, and

scientific evidence, the trial Court rightly convicted the accused under Section 25, of the Sindh Arms Act.

12. In view of the foregoing reasons, we are of the considered opinion that the learned trial Court rightly appreciated the evidence and reached a just conclusion. The prosecution proved its case against the appellant beyond reasonable doubt, while the defence plea failed to create any dent in the prosecution's version. Section 25 of the Sindh Arms Act, 2013 penalises the use of a firearm, whether licensed or unlicensed, for the commission of a crime, and the ballistic report conclusively established that the recovered pistol had been used in the connected murder case. Consequently, the conviction of the appellant Akram alias Akka S/o Peer Bux alias Peeru Makrani under Section 25 of the Sindh Arms Act, 2013, and the sentence of rigorous imprisonment for five years with a fine of Rs.10,000/-, and in default thereof simple imprisonment for one month, as awarded by the learned trial Court, are hereby maintained and upheld. The benefit of Section 382-B Cr.P.C. shall continue to be extended to the appellant. The sentences in the present case and in Sessions Case No.89 of 2019 (The State v. Akram @ Akka) shall run concurrently, in terms of Section 35 Cr.P.C. The period of detention already undergone, both prior to and subsequent to conviction, shall be accounted for, with the benefit of Section 382-B Cr.P.C. duly extended to him. Let copies of this judgment be transmitted to the learned trial Court as well as the Superintendent, Central Prison, Hyderabad, for information and necessary compliance.

JUDGE

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