

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. S-77 of 2024

Appellant : Zain Atif son of Muhammad Yousif, Solangi
Through Mr. Sheeraz Fazal, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 25.09.2025
Date of Judgment : 25.09.2025
Reasons recorded on : 26.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – In the matter of Zain Atif Solangi versus The State, this Court, in pursuance of the short order dated 25th September, 2025 whereby this appeal was allowed and the conviction and sentence set aside, now proceeds to record the detailed reasons for the said order.

2. The appellant, a young student barely 18 years of age, had been convicted by the learned Sessions Judge, Naushahro Feroze vide judgment dated 20th July 2024 in Sessions Case No.287 of 2024 for offences under Section 23(i)(A) of the Sindh Arms Act, 2013 and sentenced to rigorous imprisonment for seven years along with a fine of Rs.30,000.

3. The foundational narrative of this case originates from FIR No. 623/2023, for offence under Section 23(i)A, Sindh Arms Act-2013, registered at Police Station Moro on 14th December, 2023, wherein ASI Abdul Majeed Dahar alleged that during routine patrolling at about 0930 hours, he received spy information at the old cattle market that wanted accused Zain Atif, already implicated in Crime No.620/2023, for offences under Sections 324, 353, 402, 399, 149 PPC, was available at the irrigation link road. Acting upon this information, the police party proceeded to the indicated location where they purportedly apprehended the appellant who allegedly attempted to flee upon seeing the police. During the personal search conducted at the spot, a 30-bore pistol with magazine containing three live bullets was allegedly recovered from the right fold of the appellant's *shalwar*.

4. The genesis of the trial proceedings commenced when the learned Sessions Judge charged the appellant under Section 23(i)(A) of the Sindh Arms Act, 2013, to which he pleaded not guilty and claimed trial. The prosecution, in its endeavor to substantiate the charges, examined three witnesses including the complainant ASI Abdul Majeed Dahar, mashir PC Zeeshan Ali Siyal, and investigating officer SIP Ali Mardan Lashari. The prosecution produced various documents including the memo of arrest and recovery, FIR, memo of site inspection, roznamcha entries, and the forensic laboratory report confirming that the recovered weapon was in working condition.

5. During the course of arguments before this Court, learned counsel for the appellant advanced multiple contentions that merit careful judicial consideration. The primary argument centered on the appellant's juvenility at the time of the alleged offence, emphasizing that he was born on 02nd January 2009, making him about 14 years and 11 months old at the time of the incident on 14th December 2023. Counsel submitted matriculation certificate and school leaving certificate evidencing the appellant's date of birth, arguing that the trial court erred in not considering the provisions of the Juvenile Justice System Act, 2018 and the special protections accorded to minors under the criminal law. The learned counsel for the appellant further contended that the prosecution case suffers from fundamental procedural violations, particularly the failure to associate any private witness from the admittedly busy place where the arrest was allegedly effected. It was argued that despite the incident occurring at 0930 hours at a public thoroughfare near the irrigation road, the police relied solely on their own personnel as witnesses, creating serious doubts about the credibility of the recovery. Counsel emphasized that this violation of established legal principles undermines the prosecution's case and creates reasonable doubt about the genuineness of the alleged recovery.

6. Moreover, counsel argued that the prosecution failed to establish any specific criminal intent on the part of the appellant, and the recovery, if any, was of a simple firearm without any evidence of intent to use the same for unlawful purposes. It was contended that the prosecution's case lacks the essential ingredients required under Section 23(i)(A) of the Sindh Arms Act, 2013, and the conviction was based on weak and insufficient evidence.

7. On the contrary, learned Deputy Prosecutor General, defending the conviction, argued that the prosecution had successfully established the recovery of an unlicensed firearm from the appellant's possession through consistent testimony of prosecution witnesses. The State counsel contended that all prosecution witnesses corroborated each other's testimony, and the forensic laboratory report confirmed that the weapon was in working condition. It was submitted that the age factor, even if accepted, does not absolve the appellant of criminal responsibility under the existing legal framework.

8. Upon meticulous examination of the evidence, legal precedents, and the applicable statutory framework, several fundamental issues emerge that require comprehensive judicial determination. The foremost question pertains to the appellant's age at the time of the alleged offence and its implications under the juvenile justice system. The documentary evidence conclusively establishes that the appellant was born on 02nd January 2009, making him 14 years and 11 months old at the time of the incident on 14th December 2023. This places him squarely within the definition of a "child" under Section 2(b) of the Juvenile Justice System Act, 2018, which defines a child as "a person who has not attained the age of eighteen years". The legal framework governing juvenile offenders in Pakistan is governed by the Juvenile Justice System Act, 2018, read with Sections 82 and 83 of the Pakistan Penal Code, 1860. Section 82 of the PPC provides that "nothing is an offence which is done by a child under seven years of age," while Section 83 creates a rebuttable presumption for children

between seven and twelve years that they lack sufficient maturity to understand the nature and consequences of their conduct. However, the Criminal Law (Second Amendment) Act, 2016 has raised the upper limit of this presumption from twelve to fourteen years, meaning that children between ten and fourteen years enjoy a presumption of incapacity unless proven otherwise.

9. The Supreme Court of Pakistan in numerous pronouncements has emphasized that the determination of age is a statutory obligation of the court, and failure to conduct such inquiry constitutes a fundamental error that vitiates the entire proceedings. In *Saleem Khan v. The State*, the Superior Court held that "the determination of age by the court is a statutory obligation; hence, the time spent in obtaining the said finding or declaration by the court cannot possibly be termed as a delay caused in the trial by the accused". The Court further observed that the determination of the age of the accused who appears to be or claims to be a juvenile is initially the responsibility of the police, but in the absence of inquiry by the police, the trial court has the power and duty to determine the age.

10. The evidence concerning the procedural violations creates additional grounds for reasonable doubt. The prosecution admittedly failed to associate any independent witness from the locality despite the arrest allegedly taking place at a busy public place at 0930 hours. Both the complainant and the mashir witness acknowledged during cross-examination that "*we did not take private mashir from the place of spy information nor associated any person from the place of arrest and recovery*" and that the "*place of arrest and recovery is busy place*". This admission is fatal to the prosecution's case as it violates the established principles of fair investigation and creates doubt about the genuineness of the alleged recovery. The Supreme Court of Pakistan in *Muhammad Azam v. The State* (PLD 1996 SC 67) has clarified the scope and application of Section 103 Cr.P.C, holding that while the provision primarily

relates to search of places, the spirit of the law requires that recoveries be conducted in a manner that ensures transparency and prevents fabrication. The Court observed that "*the main object behind section 103, Cr.P.C. is to guard against possible chicanery and concoction and for that reason witnesses from the locality are to be joined in the investigation*". The failure to associate independent witnesses, particularly in a populated area during daylight hours, raises serious questions about the credibility of the alleged recovery. The forensic evidence, while confirming that the recovered weapon was in working condition, fails to establish the crucial link between the appellant and the firearm beyond the testimony of witnesses whose credibility has been seriously compromised. The prosecution's case rests entirely on the testimony of police officials who admittedly failed to follow established procedures for ensuring transparency in recovery proceedings. While police officials are competent witnesses, their testimony must be scrutinized more carefully when they are the sole witnesses to a recovery, particularly when independent witnesses could have been easily procured.

11. The legal precedent established by this Court in *Ayaz Ali v. The State* (PLD 2014 Sindh 282) provides important guidance regarding the interpretation of Section 23(i)(A) of the Sindh Arms Act, 2013. The Court held that this provision "*deals with situations where one acquires, possesses, carries or controls any firearm or ammunition in contravention of Section 3 of the Act (i.e. license for acquisition and possession of firearms and ammunition)*". The maximum punishment under this provision extends to fourteen years, making it a serious offence that requires strict adherence to procedural safeguards and proof beyond reasonable doubt. The principle of reasonable doubt, fundamental to criminal jurisprudence, has been consistently upheld by the Superior Courts. The Honorable Supreme Court in *Tariq Pervez v. The State* (1995 SCMR 1345) established that "*for giving benefit of doubt to an accused person, it is not*

necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right". This principle assumes even greater significance when the accused is a juvenile who enjoys additional protections under the law. The examination of the appellant's personal circumstances reveals factors that further support the grant of benefit of doubt. The appellant was a student at the time of the alleged incident, with no prior criminal record, as evidenced by his educational certificates. The prosecution failed to establish any motive for the appellant to possess an unlicensed weapon, and there was no evidence of any criminal activity or association with criminal elements. The appellant's profile as a young student from a respectable family contradicts the prosecution's narrative of criminal possession of a firearm.

12. Moreover, the appellant's statement under Section 342 Cr.P.C consistently maintained his innocence, alleging false implication by the police. While such statements alone cannot exonerate an accused, when viewed in conjunction with the procedural violations and evidentiary weaknesses in the prosecution case, they contribute to the overall assessment of reasonable doubt. The appellant specifically stated that he was "innocent and not committed the alleged offence and falsely implicated".

13. The legal framework governing juvenile justice in Pakistan reflects the international consensus that children should be treated differently from adult offenders. The United Nations Convention on the Rights of the Child, which Pakistan ratified in 1990, emphasizes the need for special protections for children in conflict with the law. The Juvenile Justice System Act, 2018 incorporates these principles by providing for specialized procedures, alternative sentencing options, and rehabilitative rather than punitive approaches for juvenile offenders. The failure of the trial court to conduct an

inquiry into the appellant's age constitutes a fundamental error that vitiates the conviction. Section 8 of the Juvenile Justice System Act, 2018 mandates that "*where a person alleged to have committed an offence physically appears or claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer shall hold an inquiry to determine the age*". In the absence of such inquiry by the police, it becomes the statutory obligation of the court to determine the age of the accused. The documentary evidence conclusively establishes the appellant's juvenility, including his matriculation certificate showing his date of birth as 2nd January 2009 and his school leaving certificate corroborating the same. These documents, being official records maintained by educational institutions, carry strong presumption of accuracy and have not been challenged by the prosecution. The trial court's failure to consider these documents and conduct the mandatory age determination inquiry constitutes a serious procedural lapse. Furthermore, the principle established in *Mumtaz Hussain v. Dr. Nasir Khan and others* (2010 SCMR 1254) emphasizes that while the burden is on the prosecution to prove guilt beyond reasonable doubt, this burden becomes even more stringent when dealing with juvenile offenders. The Court must ensure that all procedural safeguards are strictly followed and that the evidence meets the highest standards of credibility and reliability.

14. The cumulative effect of the procedural violations, evidentiary weaknesses, and the appellant's juvenility creates a constellation of doubts that cannot be reconciled with the standard of proof required in criminal law. The prosecution's case, built primarily on the testimony of police officials who admittedly failed to follow established procedures, falls short of the exacting standard of proof beyond reasonable doubt required for conviction.

15. The present case illuminates critical deficiencies in the investigation and trial of cases involving juvenile offenders. The failure of the

investigating agency to conduct the mandatory age determination inquiry under Section 8 of the Juvenile Justice System Act, 2018 reflects a systemic disregard for the special protections accorded to minors under the law. Law enforcement agencies must be sensitized to the requirements of juvenile justice legislation to ensure that young offenders receive the protections envisioned by the legislature. Second, the practice of conducting recoveries without associating independent witnesses, particularly in populated areas during daylight hours, undermines the credibility of the criminal justice system and creates opportunities for fabrication of evidence. Courts must insist on strict adherence to procedural safeguards to maintain public confidence in the administration of justice and protect the rights of accused persons. Third, the present case demonstrates the need for specialized training of judicial officers in handling juvenile cases. The mandatory nature of age determination under the Juvenile Justice System Act, 2018 requires courts to proactively inquire into the age of accused persons who appear to be minors, regardless of whether such an application is made by the defence.

16. Being entrusted with the solemn duty of ensuring that justice is not only done but seen to be done, this Court observes that the present case exemplifies the critical importance of balancing the State's interest in prosecuting crime with the individual's right to fair trial and due process, particularly when the accused is a juvenile. The criminal justice system must recognize that children are different from adults in their cognitive development, decision-making capacity, and potential for rehabilitation. The present case also highlights the evolution of criminal jurisprudence toward greater recognition of children's rights and the need for specialized approaches in dealing with juvenile offenders. The traditional model of adult criminal justice, with its emphasis on punishment and deterrence, must be tempered with rehabilitative and restorative approaches when dealing with young offenders who are still developing their

moral and cognitive capacities. Furthermore, this case underscores the fundamental principle that the burden of proof in criminal cases is not merely a technical requirement but a constitutional safeguard designed to protect individual liberty against the overwhelming power of the State. When this burden is not discharged with the requisite degree of certainty, particularly in cases involving juveniles, courts must err on the side of protecting individual rights rather than satisfying societal demands for conviction. The present case contributes to the evolving jurisprudence on juvenile justice by establishing that age determination is not merely a procedural formality but a fundamental right that goes to the very jurisdiction of the court to try a juvenile as an adult. The failure to conduct this inquiry vitiates the entire proceedings and cannot be cured by subsequent determination or waiver by the accused.

17. This case also reinforces the principle that procedural safeguards in criminal investigations are not mere technicalities but essential protections designed to ensure the reliability of evidence and prevent miscarriage of justice. The systematic violation of these safeguards, particularly in cases involving vulnerable accused persons such as juveniles, warrants the intervention of appellate courts to correct trial court errors.

18. The glance on record further reveals, the alleged recovery of a pistol and three live bullets, purportedly effected on 14.12.2023, was not sent for ballistic expert examination until 26.12.2023, reflecting an unjustified delay of 12 days that undermines the integrity of the evidence. Crucially, the *malkhana* Incharge responsible for safeguarding the recovered property was neither examined nor was a copy of Register No. XIX produced to demonstrate that the items remained under safe custody during this period. Furthermore, the bearer, PC Fida Hussain, was also not examined, leaving the chain of custody and safe transmission of the recovered weapon to the forensic laboratory unsubstantiated. On this basis alone, the prosecution's claim of secure evidence

handling is gravely compromised. Moreover, none of the prosecution witnesses have testified that the applicant was ever inquired of regarding the licensing status of the alleged weapons, an essential element to establish the offense for which the appellant stands charged. It is also highly significant that no case property was produced before the trial court at the time of recording the statement of the appellant under Section 342 Cr.P.C, thus denying him the fundamental right to confront the alleged evidence. Adding further weight to the appellant's defense is the acquittal in the main case by the Additional Sessions Judge, Moro, vide judgment dated 22.08.2025. In light of these incontrovertible facts, this Court is firmly convinced that the prosecution has manifestly failed to discharge its burden of proving the appellant's guilt beyond a reasonable doubt. The case against the appellant must therefore fail.

19. After exhaustive examination of the evidence, legal precedents, and applicable statutory framework, this Court finds that the conviction cannot be sustained for multiple compelling reasons. First, the trial court's failure to conduct the mandatory age determination inquiry under the Juvenile Justice System Act, 2018 constitutes a fundamental jurisdictional error that vitiates the entire proceedings. Second, the procedural violations in the investigation, particularly the failure to associate independent witnesses despite the availability of such witnesses, creates reasonable doubt about the genuineness of the alleged recovery. Third, the prosecution's case, resting entirely on the testimony of police officials whose conduct fell short of established standards, fails to meet the exacting burden of proof required in criminal law. Fourth, unexplained delay of 12 days in sending the alleged recovery for Ballistic Expert Opinion. Fifth, neither malkhana Incharge examined, nor copy of Register No. XIX produced, nor bearer PC Fida Hussain examined, hence, safe custody and safe transmission of the property compromised. Sixth, none of prosecution's witnesses testified that appellant was ever inquired of licensing

status of weapons. Seventh, no case property produced at the time of recording statement of appellant under Section 342 Cr.P.C, as such denying him the right to confront the alleged evidence. The appellant's juvenility, conclusively established through documentary evidence, entitled him to special protections under the Juvenile Justice System Act, 2018, which were completely ignored by the trial court. The combination of these factors creates not just reasonable doubt but a compelling case for acquittal based on fundamental procedural and jurisdictional errors. The doctrine of reasonable doubt, deeply rooted in our criminal jurisprudence and reinforced by constitutional principles, mandates that where the prosecution fails to establish guilt with the requisite degree of certainty, the accused must be acquitted as a matter of right. This principle assumes even greater significance when dealing with juvenile offenders who enjoy additional protections under national and international law.

20. Therefore, in exercise of the appellate jurisdiction vested in this Court, and in furtherance of the constitutional mandate to ensure fair trial and due process, this Criminal Appeal is/was allowed. The conviction and sentence awarded by the learned Sessions Judge, Naushahro Feroze vide judgment dated 20th July 2024 in Sessions Case No.287 of 2024 were set aside. The appellant Zain Atif Solangi was acquitted of all charges with directions to be released forthwith unless required to be detained in connection with any other criminal matter. This detailed judgment serves as the reasons for the short order pronounced on 25th September 2025, whereby this appeal was allowed and the impugned conviction and sentence were set aside.

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