

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Jail Appeal No.S-170 of 2024

Appellant : Meer Hazar son of Juman Shahani
through Mr. Shoban Ali Pahore,
Advocate

The State : Through Ms. Sana Memon, Assistant
Prosecutor General, Sindh

Date of Hearing : 28.08.2025

Date of Judgment : 28.08.2025

J U D G M E N T

Jan Ali Junejo, J.- This appeal, at the instance of the convict-appellant, Meer Hazar, is directed against the judgment dated 19.12.2024 (hereinafter referred to as the "***Impugned Judgment***"), passed by the learned Additional Sessions Judge-II, Dadu (hereinafter referred to as the "***Trial Court***"), in Sessions Case No.692 of 2024, whereby the appellant was convicted for an offence under Section 23(i)(a) of the Sindh Arms Act, 2013, and sentenced to undergo rigorous imprisonment for four years with a fine of Rs.50,000/-, in default whereof to suffer simple imprisonment for six months.

2. The concise prosecution case, as emanating from the FIR (Ex.3-C) lodged by ASI Manzoor Ali Panhwar (PW-1) of P.S. Khudabad, is that on 06.10.2024 at about 1810 hours, he along with other police officials left the police station for patrolling. At about 1900 hours, near the Railway Crossing Khudabad, they allegedly saw the appellant who, upon seeing the police mobile, tried to slip away. He was apprehended, and upon personal search, a 30-bore pistol with one live bullet in its magazine was recovered from the right fold of his shalwar (trousers). The Appellant stated to have failed to produce a license. The recovery memo (Ex.3-B) was prepared in the presence of police *mashirs*. The Appellant alongwith the recovered property was brought at P.S. where F.I.R. was lodged.

3. The usual investigation followed, leading to the submission of a charge-sheet. 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-1: Complainant ASI Manzoor Ali Panhwar (Ex.3): PW-1 ASI Manzoor Ali Panhwar deposed that on 06.10.2024 while posted at P.S Khudabad, he along with PCs Ali Nawaz, Sohail Raja and driver DPC Muhammad Saleem Lund, duly armed with official weapons, left the police station at 1810 hours for patrolling in government vehicle SPC-745 vide departure entry No.14 (Ex.3/A). During patrolling on Indus Highway, when they reached near the railway crossing of Khudabad at about 1900 hours, they noticed one person who, on seeing the police mobile, tried to escape but was apprehended. On personal search, he recovered one 30 bore pistol from the right fold of the accused's shalwar with one live bullet in its magazine. On enquiry, the accused disclosed his name as Meer Hazar son of Juman Shahani. The recovered weapon and bullet were sealed at the spot, and a memo of arrest and recovery (Ex.3/B) was prepared in presence of mashirs PC Ali Nawaz and PC Sohail Raja. Thereafter, the accused and property were brought to police station, where he registered the FIR (Ex.3/C) against the accused at 2000 hours and made arrival entry No.16 (Ex.3/D). He deposited the property in Malkhana and handed over case papers to ASI Riaz Ali for investigation. On 07.10.2024, he pointed out the place of incident to I.O, and on 09.10.2024, he obtained the property from WHC and deposited it in FSL through road certificate (Ex.3/E). He produced all above documents which bear his signatures and identified the accused and case property in Court. In cross-examination, he admitted no independent mashir was joined despite requests, acknowledged that property later contained one empty bullet (received from FSL), and denied the defence suggestion of false implication or foisting of weapon.

PW-2: Mashir PC Ali Nawaz (Ex.4): PW-2 PC Ali Nawaz testified that on 06.10.2024 he was posted at P.S Khudabad and during patrolling with ASI Manzoor Ali, PC Sohail Raja and DPC Muhammad Saleem, when they reached at the railway crossing of Khudabad, one person attempted to slip away but was caught by the police. On personal search, a 30 bore pistol with one live bullet in its magazine was recovered from the fold of the accused's shalwar, who disclosed his name as Meer Hazar son of Juman Shahani. The complainant sealed the weapon and bullet, prepared memo of arrest and recovery (Ex.3/A) in his presence and in presence of co-mashir PC Sohail Raja, read over its contents to them, and obtained their signatures. The accused was brought to P.S where FIR was lodged. On the following day 07.10.2024, he accompanied I.O ASI Riaz Ali to the place of incident where site inspection memo (Ex.4/A) was prepared and signed by him and co-mashir. He confirmed that the accused and case property produced in Court were the same. In cross-examination, he admitted signatures on recovery memo and site memo differed, accepted that houses of Leghari community and a railway crossing gatekeeper were present nearby though none was joined as witness, and acknowledged that 2/3 persons were asked to act as mashir but they refused. He denied the defence suggestion that no recovery took place and that he had falsely deposed at the instance of complainant.

PW-3: Investigating Officer ASI Syed Riaz Ali (Ex.6): PW-3 ASI Syed Riaz Ali deposed that on 06.10.2024, he was handed over the investigation of the present case along with case property and custody of accused on verbal orders of SHO by complainant ASI Manzoor Ali. On the next morning, vide departure entry No.26 (Ex.6/A), he left P.S to visit the place of incident on pointation of complainant. In presence of mashirs PC Ali Nawaz and PC Sohail Raja, he conducted inspection and prepared site memo (Ex.4/A), read over its contents to mashirs and obtained their signatures, and returned back to P.S vide arrival entry No.8 (Ex.6/A). He recorded statements of witnesses u/s 161 Cr.P.C. He further stated that the recovered pistol and bullet were sent to FSL through ASI Manzoor Ali, from where he received FSL report dated 10.10.2024 (Ex.6/B) confirming that the weapon was

in working condition. After completing investigation, he submitted final report (challan) before Court. In cross-examination, he admitted that no Roznamcha entry was made regarding handing over of investigation to him, that no written SHO order was produced, and that the FSL report mentioned the name of complainant ASI Manzoor as I.O. instead of his own. He further admitted he did not verify from licensing authority whether the weapon was licensed or unlicensed, nor did he record statements of residents of nearby Leghari community. He denied the defence suggestion that site memo was prepared at P.S, or that he had not conducted a fair investigation, and maintained that his deposition was true.

4. After closure of prosecution side, the statement of the accused Meer Hazar son of Juman Shahani was recorded under Section 342, Cr.P.C. He denied the allegations leveled against him, professed innocence, and stated that nothing was recovered from his possession. He further alleged that the weapon had been foisted upon him by the police, who had falsely implicated him in this case. He termed all prosecution witnesses as "interested" being police officials and claimed that no independent or respectable person was associated as mashir to lend credibility to the alleged recovery proceedings. He did not admit genuineness of the prosecution documents and raised plea that he has been victimized. The accused was specifically asked whether he wished to examine himself on oath in disproof of the allegations or in support of his defence, but he declined to be examined under Section 340(2), Cr.P.C. and opted to rely upon his denial under Section 342, Cr.P.C. The accused was also given an opportunity to lead defence evidence, but he neither examined himself as a witness nor produced any witness in defence. Thus, the defence side was closed. After hearing the arguments of the learned Assistant District Public Prosecutor for the State and defence counsel for the accused, and upon appraisal of the evidence available on record, the learned Additional Sessions Judge-II, Dadu vide judgment dated 19.12.2024, held that the prosecution had successfully established the charge against the accused beyond reasonable doubt. The Court found that recovery of the 30 bore pistol along with one live bullet was proved through consistent depositions of official witnesses, which were duly corroborated by the documentary evidence and FSL report confirming the weapon to be in working order. The Court observed that non-association of private mashirs was not fatal, since Section 103, Cr.P.C. was not applicable to cases under the Sindh Arms Act, 2013, and the testimony of police officials could not be discarded merely on account of their official status. Minor contradictions pointed out by defence were held to be immaterial and not sufficient to shake the veracity of the prosecution case. Consequently, the learned trial Court convicted the accused under Section 23(i)(a) of the Sindh Arms Act, 2013 and sentenced him to four (04) years' rigorous imprisonment along with a fine of Rs.20,000/-, and in default of payment of fine, to suffer six (06) months'

simple imprisonment more. Benefit of Section 382-B, Cr.P.C. was extended to the accused. The learned trial court, after conducting a trial, convicted and sentenced the appellant as aforementioned.

5. The learned counsel for the appellant, fervently argued for acquittal and made the following salient submissions: a) Interested Witnesses: The entire prosecution case rests on the testimonies of police officials, namely the complainant (PW-1), his subordinate (PW-2), and the Investigating Officer (PW-3). They are highly interested witnesses, being the architects of the case, and their testimony requires independent corroboration, which is wholly absent. b) Absence of Independent Witnesses: The alleged recovery took place at a public place near a railway crossing with houses nearby. Both PW-1 and PW-2 admitted in cross-examination that they asked 2-3 persons to act as *mashirs* but they refused. The prosecution made no serious effort to join independent witnesses, and the failure to examine the railway gatekeeper, who is routinely present, is a fatal omission. c) Material Contradictions: He highlighted the material contradiction in the testimony of PW-1, who in examination-in-chief stated the accused "tried to escape", but in cross-examination stated, "the accused tried to run but he did not run". This goes to the very root of the story of apprehension. d) Failure to Prove License Status: He vehemently stressed that the most fundamental element of the offence, that the weapon was unlicensed, was never proved. The IO (PW-3) categorically admitted in cross-examination that he "did not get verification of the pistol from concerned authorities whether same licensed or unlicensed". Thus, a key ingredient of the offence remains unproven. e) Lax and Biased Investigation: The investigation was tainted. There was no written order for the transfer of investigation to the IO (PW-3). The delay of three days in sending the weapon to the FSL was unexplained, creating a possibility of tampering. The IO also admitted he did not record statements of any residents from the nearby Leghari community. f) Benefit of Doubt: He prayed that the cumulative effect of these glaring lacunas, contradictions, and procedural illegalities creates a strong cloud of reasonable doubt over the prosecution's version, entitling the appellant to the benefit of the doubt and a consequent acquittal.

6. The learned A.P.G., supported the impugned judgment and argued that the testimonies of the official witnesses are consistent on material points—the time, place, and factum of recovery. Minor contradictions are natural and do not corrode the core of the prosecution case. The court rightly relied upon them. She referred to the second proviso of Section 34 of the Sindh Arms Act, 2013, arguing that it expressly permits any police

officer present on the spot to be a witness. Therefore, the non-joining of public witnesses is not fatal in this specific law. It is further argued that the recovery memos and documents were prepared in the regular course of duty and carry a presumption of genuineness under Article 92 of the Qanoon-e-Shahadat Order, 1984. The defence failed to prove any mala fides or a reason for the police to falsely implicate the appellant. It is argued that once the prosecution established a prima facie case of possession, the burden shifted to the accused under Article 122 of the Qanoon-e-Shahadat, which he failed to discharge by not leading any evidence in defence. Lastly, the learned A.P.G. prayed for the dismissal of the appeal and the upholding of the conviction.

7. I have considered the arguments advanced by the learned counsel for the Appellant as well as the learned A.P.G. for the State. This court has undertaken a thorough, microscopic examination of the entire evidence on record and the reasoning contained in the impugned judgment. The learned trial Court, in the impugned judgment, fell into a grave error by applying the principles of evidence superficially and ignoring the cavernous voids in the prosecution's case. The conviction is based on an uncritical acceptance of the police version without subjecting it to the required degree of scrutiny mandated in cases where the entire case is in the hands of the officials. This is the most critical lacuna, completely overlooked by the trial court.

8. The offence under Section 23(i)(a) of the Sindh Arms Act is not mere possession, but possession of an *unlicensed* firearm. The sole evidence on this point is the self-serving statement of the police officials. The IO's admission that he did not verify the license status from the licensing authority is a fatal blow to the prosecution. The FSL report only confirms it is a firearm, not its legal status. The trial court convicted the appellant without a shred of evidence on this essential ingredient of the offence. This alone is sufficient to quash the conviction. The trial Court's reliance on Section 34 of the Sindh Arms Act to excuse the absence of independent witnesses is mechanically applied and legally flawed. While the proviso allows police officials to be witnesses, it does not negate the fundamental principle of justice that requires the prosecution to offer a reasonable explanation for their absence, especially when available. The spot was a railway crossing with a resident gatekeeper and houses nearby (as admitted by PW-2 and PW-3). The prosecution's claim that people refused is facile and unconvincing. The failure to even attempt to record the statement of the gatekeeper or any local resident demonstrates a lack of bonafides and renders the recovery highly suspect.

9. The prosecution evidence is fraught with material contradictions, discrepancies, and lacunas which cast serious doubt on the veracity of the alleged recovery and weaken the entire case against the accused. The arrest and recovery proceedings are shrouded in inconsistencies: ASI Manzoor (Ex.3) claimed that he personally apprehended the accused and recovered a 30-bore pistol with one live bullet from his shalwar, whereas PC Ali Nawaz (Ex.4) described the recovery as a collective act by the police party and admitted that his own signatures on different memos were inconsistent; moreover, ASI Manzoor later conceded that an empty/fired bullet also appeared in court property, though no such fact was mentioned in the recovery memo. The sealing and chain of custody remain doubtful as ASI Manzoor asserted he sealed the property himself, yet the IO (Ex.6) admitted he neither de-sealed nor verified the weapon, did not confirm its licensing status, did not produce Roznamcha entries regarding transfer of investigation, and the FSL report itself bore the name of the complainant/recovering officer, thereby undermining impartiality. The station entries and timings also fail to synchronize, with Ex.3 and Ex.4 claiming patrol departure at 1810 hours, recovery at 1900 hours, and FIR at 2000 hours, yet also describing stops and checks at Mukhtiar Nagar that would make the timeline improbable, while Ex.6 relied on separate entries suggesting the complainant officer himself left for site inspection with the IO the following morning. The preparation of the site memo is similarly doubtful: PC Ali Nawaz (Ex.4) stated it was written on the bonnet of a vehicle, while the IO (Ex.6) claimed to have prepared it at 08:00 a.m. after reaching the spot at 07:10 a.m., and he further admitted not recording the statements of local residents or the railway crossing gatekeeper, both of whom were natural witnesses. Crucially, no independent mashirs were associated despite the availability of civilians at the railway crossing and Leghari community houses nearby, and both Ex.3 and Ex.4 admitted that 2–3 private persons refused to act as mashirs, leaving only police witnesses. These contradictions in narration, discrepancies in documentary evidence, and glaring lacunas in investigation — including non-verification of licence, non-production of natural witnesses, defective chain of custody, and unreliable station entries, cumulatively shake the foundation of the prosecution's case and render the alleged recovery highly doubtful, entitling the accused to the benefit of doubt under settled principles of criminal jurisprudence. It is also an admitted position that the memo of arrest and recovery does not contain the description or colour of the weapon allegedly recovered from the accused. No sketch of the weapon was prepared by the complainant/police officer at the spot, which is a mandatory requirement to

establish proper identification of case property. Furthermore, no specific mark of identification was noted in the recovery memo, making it impossible to establish that the same weapon was later produced before the Court. It is further a matter of record that the bore of the weapon was subsequently found to be 7.63 mm as per FSL examination report; however, this essential fact was neither incorporated in the recovery memo nor in the F.I.R., nor even mentioned by the complainant in his deposition before the trial Court. In the absence of proper description, identification, or corroboration regarding the recovered weapon, the case property loses its evidentiary value, and the prosecution case becomes highly doubtful.

10. The cumulative effect of the foregoing contradictions and lacunae is to create a reasonable and material doubt about the truth, timing and provenance of the alleged recovery. While differences of detail are not always fatal, the conflicts here go to fundamentals, who effected the arrest and recovery, whether the seizure was witnessed by independent persons, whether contemporaneous station entries and signatures are reliable, and whether the chain of custody of the pistol and bullets was properly preserved and transparently recorded. The IO's admissions (failure to de-seal/check the weapon, failure to verify licence status, absence of an order for transfer of investigation and omission to record statements of local residents/gatekeeper) are particularly damaging because they reflect investigational defaults which cannot be cured by after-the-event explanation. On these facts the prosecution has not established beyond reasonable doubt that the recovered pistol found on production in court is the same article recovered contemporaneously from the accused at the place and time narrated, nor has it dispelled the shadow of tampering, substitution or mis-identification. For the purposes of the judgment this Court must therefore treat the prosecution case as afflicted by material infirmities; those infirmities afford the accused the benefit of reasonable doubt and, unless contrary credible evidence (unchallenged by these defects) is placed on record, preclude a conviction based solely on the present evidence. The contradictions and discrepancies in the evidence presented by the prosecution undermine the integrity of its case, rendering it doubtful. Precedents support the principle that benefit of doubt must be extended to the accused when the prosecution fails to establish its case beyond reasonable doubt. In similar cases, such as_

- ***Muhammad Hamdani v. The State (2018 YLR 2687)***, this Court acquitted the accused in the offence under Section 23(1)(a) of the Sindh Arms Act, 2013, citing insufficient and doubtful evidence.

- **Sajjan Solangi v. The State (2019 SCMR 844)**, the Supreme Court of Pakistan reaffirmed this principle.

11. The investigation was perfunctory and biased. The absence of a written order for the transfer of investigation to PW-3 is a procedural illegality that vitiates the process. The unexplained delay of three days in sending the weapon to the FSL and the IO's failure to make any effort to record statements from independent available sources (Leghari community) shows a pre-determined mind to secure a conviction rather than discover the truth. The alleged recovery of the weapon was effected from the appellant on 06.10.2024, whereas the property was dispatched for FSL examination on 09.10.2024, with an inordinate delay of three days. The prosecution has failed to furnish any plausible explanation for such delay. Furthermore, the chain of custody of the recovered weapon during this period has not been established, which is fatal to the prosecution's case. Consequently, the positive FSL report cannot be relied upon to warrant conviction. Reliance is placed on the case of **Iftikhar Hussain and others v. The State (2004 SCMR 1185)**, wherein the Honourable Supreme Court of Pakistan was pleased to hold, with reference to the delay in dispatching the weapon to the FSL, that: *"Similarly the prosecution took a considerable time in dispatching crime empties and the weapon to the Forensic Science Laboratory for which no plausible explanation has been offered therefore, the evidence of recovery of incriminating articles cannot be used as a corroborate evidence to believe the statements of ocular witnesses"*.

12. The trial court incorrectly shifted the burden of proof onto the accused. The initial and ultimate burden to prove the guilt of the accused beyond a reasonable doubt always rests on the prosecution. Given the frail, contradictory, and interested nature of the evidence, the prosecution miserably failed to discharge this initial burden. Therefore, the question of the accused discharging any evidential burden under Qanoon-e-Shahadat Order, 1984 never arose. The presumption of innocence remains intact.

13. For the reasons discussed in detail hereinabove, this Court is of the considered view that the learned trial Court erred in convicting the appellant. The findings recorded by the trial Court are, therefore, not sustainable and are liable to be set aside. Consequently, this appeal merits acceptance on the following conclusive findings:

1. *The testimonies of the police witnesses (PW-1, PW-2, PW-3) are interested and lack independent corroboration. Their evidence is insufficient to sustain a conviction in the absence of any explanation for the non-joining of independent witnesses from a public spot.*

2. *Material contradictions and discrepancies in the prosecution evidence, particularly in the testimony of the complainant (PW-1), create serious doubt about the truthfulness of the occurrence.*
3. *The investigation was conducted in a manner that was lax, biased, and contrary to established procedure, thereby failing to inspire confidence.*
4. *The cumulative effect of the above-discussed lacunas, discrepancies, and contradictions is so profound that it creates a legitimate and reasonable doubt in the judicial mind regarding the veracity of the prosecution's case. In a criminal trial, such doubt must invariably enure to the benefit of the accused.*

14. For the reasons delineated hereinabove, this Criminal Jail Appeal is allowed. Consequently, the impugned judgment of conviction and sentence dated 19.12.2024, passed by the learned Additional Sessions Judge-II, Dadu, is set aside. The appellant, Meer Hazar son of Juman Shahani, stands acquitted of the charge levelled against him and shall be released forthwith, if not required to be detained in any other case. Let a copy of this judgment be transmitted to the learned trial Court as well as to the Superintendent, District Jail Dadu. These are the reasons of short order dated 28.08.2025.

JUDGE