

IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Appeal No.S-48 of 2025

Appellant : Rajab @ Raju son of Mooso @ Manik
Rind through Mr. Irfan Ali Khashkheli,
Advocate

The State : Through Mr. Ghulam Murtaza Mallah,
Assistant Prosecutor General, Sindh

Date of Hearing : 18.09.2025

Date of Judgment : 18.09.2025

J U D G M E N T

Jan Ali Junejo, J.- This appeal is directed against the judgment and conviction dated 30.07.2025 (hereinafter referred to as the “***Impugned Judgment***”), passed by the learned Additional Sessions Judge, Shahdadpur (hereinafter referred to as the “***Trial Court***”), in Sessions Case No. 109 of 2025, arising from Crime No.54/2024 of Police Station Lundo, under Section 25 of the Sindh Arms Act, 2013. By the impugned judgment, the appellant was convicted and sentenced to undergo Rigorous Imprisonment for five years with a fine of Rs. 10,000/-, and in default thereof, to suffer further Simple Imprisonment for six months, extending him benefit of Section 382-B, Cr.P.C. The appellant, being aggrieved, has approached this Court praying for the setting aside of the conviction and his consequent acquittal.

2. The prosecution case, as per the FIR, is that on 14.10.2024, the appellant was already in police lock-up in a main case bearing Crime No. 46/2024 under Section 395 PPC. The complainant, SIP Qurban Ali Rajpar, took him out for interrogation. During this interrogation, the appellant allegedly agreed to point out and produce the crime weapon used in the main dacoity case. He then led the police party to a place called “Ojanao Shakh ji mori” and from the bushes of 'SAR', produced an unlicensed 30-bore pistol loaded with two live bullets. A recovery memo (mashirnama) was prepared at the spot in the presence of two police officials, PC Manthar and PC Muhammad Zaman, who signed as mashirs. The case property was sealed, and the present case under the Sindh Arms Act was registered. Upon completion of the investigation, a challan was submitted

before the learned Judicial Magistrate, who transmitted the R&Ps to the learned Sessions Court, wherefrom the matter was assigned to the trial Court for adjudication.

3. Prior to commencement of the trial, copies of all relevant documents and statements were duly supplied to the appellant in compliance with Section 265-C, Cr.P.C. Thereafter, a formal charge was framed against him, to which he pleaded not guilty and claimed to be tried. In order to substantiate its case, the prosecution examined the following witnesses:

PW-1: SIP Qurban Ali Rajpar (Complainant / Investigating Officer of main case): PW-1 deposed that on 14.10.2024, he was posted as Station House Officer, Police Station Lundo. On that day, he interrogated accused Rajab @ Raju S/o Mooso @ Manik in connection with Crime No.46/2024 (main case). During interrogation, the accused allegedly volunteered to produce the pistol used in the offence. He then, along with the police party, proceeded to Ojano Shakh-ji-Mori where the accused pointed towards a bush and produced a 0.30 bore pistol with one magazine and two live bullets.

PW-1 stated that he prepared a mashirnama of recovery on the spot in presence of mashirs PC Manthar Ali and PC Muhammad Zaman, and sealed the weapon on the spot. He brought the accused and recovered property to the police station and registered Crime No.54/2024 under Section 25 of the Sindh Arms Act, 2013. He further stated that he sent the recovered weapon to the Forensic Science Laboratory, Karachi, for ballistic examination, and subsequently received the FSL report, which confirmed that the weapon was in working condition and test-fired successfully.

Exhibits Produced through PW-1:

- **Exh.P-4/C to E** — Mashirnama of arrest and recovery of pistol, magazine, and two live bullets.
- **Exh.P-4/E** — FIR of Crime No.54/2024, PS Lundo.
- **Exh.P-4/D** — Copies of Roznamcha entries showing departure and arrival of police party.
- Entry regarding registration of present case.

Cross-Examination Highlights: PW-1 admitted that the accused was already in police custody in another case when the recovery was made. He also admitted that no private person was joined as mashir, claiming none was available at the place of recovery. He conceded that the recovery place was an open area near a public passage. He did not record any distinguishing marks of the bullets on the memo.

PW-2: PC Manthar Ali (Mashir of Recovery): PW-2 confirmed that on 14.10.2024, he accompanied SIP Qurban Ali Rajpar during interrogation of accused Rajab @ Raju. He stated that after the accused agreed to produce the weapon, the police party proceeded to Ojano Shakh-ji-Mori where the accused pointed out the spot and produced a pistol with two live bullets. He signed the mashirnama of recovery as mashir, which was prepared on the spot.

Exhibit Produced through PW-2:

- Signed **Mashirnama of recovery (Exh.4/C)** — already produced through PW-1.

Cross-Examination Highlights: PW-2 admitted that no private person was joined as mashir and that the area of recovery was not far from a populated village. He also admitted that both mashirs were police personnel and subordinates of SIP Qurban.

PW-3: WHC Allah Bux (Malkhana Incharge, PS Lundo): PW-3 stated that on 14.10.2024, he was posted as WHC and malkhana in-charge at Police Station Lundo. On that day, I.O. Abdul Wahab deposited one sealed parcel containing a 0.30 bore pistol, one magazine, and two live bullets. He made an entry in the malkhana register and later handed over the sealed parcel to I.O. for onward transmission to the Forensic Science Laboratory, Karachi under proper receipt through PC Asghar Ali.

Exhibits Produced through PW-3:

- **Exh.6/B** — Malkhana register entry showing receipt of sealed parcel.
- **Exh.6/C** — Receipt for handing over parcel to PC Asghar Khan for onward dispatch to FSL.

Cross-Examination Highlights: PW-3 confirmed that he did not produce entry regarding his daily duty at Police Station.

PW-4: PC Asghar Khan (Carrier of Case Property to FSL): PW-4 deposed that on 14.10.2024, he was directed to carry a sealed parcel containing a 0.30 bore pistol with magazine and two bullets from PS Lundo to the Ballistic Section, Forensic Science Laboratory. He delivered it on same day and received a receipt confirming delivery, which he returned to the I.O.

Exhibits Produced through PW-4:

- **Exh.7/A** — Produced receipt to deposit the case property

Cross-Examination Highlights: PW-4 admitted that he travelled via public transport and did not retain any bus or travel ticket.

PW-5: ASI Abdul Wahab: PW-5 deposed that after registration of Crime No.54/2024, the investigation was handed over to him. He recorded statements of witnesses under Section 161 Cr.P.C., collected the FSL report, and submitted the final challan before the Court. He confirmed that the recovered weapon was the same as described in the recovery memo and that it was sent to the FSL through PC Asghar Khan.

Exhibits Produced through PW-5:

- **Exh.8/A** — Produced FSL report

Cross-Examination Highlights: PW-5 admitted that he did not personally verify the place of recovery nor did he record statements of any private person from the vicinity.

4. Upon closure of the prosecution evidence, the appellant's statement was recorded under Section 342, Cr.P.C., wherein he

categorically denied all allegations and claimed false implication in the case. He neither chose to examine himself on oath under Section 340(2), Cr.P.C., nor produced any defence evidence in support of his stance. The learned trial Judge, after hearing the arguments of both sides and evaluating the material available on record, convicted and sentenced the appellant in the manner detailed above.

5. Learned counsel for the appellant assailed the impugned judgment as being perverse, arbitrary, and contrary to the evidence on record. He contended that the entire case rests on the alleged recovery of the weapon, which is highly doubtful as the appellant was already in police custody at the relevant time, making the so-called discovery or pointation involuntary and inadmissible. It was argued that no private mashir was associated at the time of recovery, and all witnesses are police officials, thereby rendering the prosecution story unworthy of credence. Learned counsel further submitted that the mashirnama and other documents suffer from serious procedural defects, the chain of custody is not satisfactorily established, and the FSL report, though confirming the weapon's functionality, does not connect it with the appellant. He emphasized that the prosecution failed to prove the charge beyond reasonable doubt, as required by law, and that the benefit of every doubt must go to the accused. He, therefore, prayed that the appeal be allowed, the impugned conviction and sentence be set aside, and the appellant be acquitted of the charge.

6. Conversely, the learned Assistant Prosecutor General supported the impugned judgment and contended that the conviction recorded by the learned trial Court was based on cogent, consistent, and confidence-inspiring evidence. It was argued that the recovery of the unlicensed pistol was effected on the voluntary pointation of the appellant while in lawful custody, duly witnessed and supported by the mashirnama and official mashirs, and further corroborated by the Forensic Science Laboratory report, which confirmed the weapon to be in working condition. The learned A.P.G. submitted that minor discrepancies in the evidence were of no material consequence and that the non-association of private mashirs was satisfactorily explained, as no independent person was available or willing to act as mashir at the time. He further argued that the chain of custody of the recovered weapon remained unbroken, and the FSL report fully supports the prosecution case. It was thus prayed that the appeal be dismissed, and the impugned conviction and sentence be maintained.

7. I have carefully considered the arguments advanced by the learned counsel for the Appellant as well as those of the learned Assistant

Prosecutor General Sindh, and have minutely examined the material available on record with utmost circumspection. The perusal of the record reveals that this is a case where the entire edifice of the prosecution rests upon the testimonies of police officials. There is not a single independent witness to corroborate the alleged recovery. PW-1 and PW-2 admitted in their cross-examination that they did not make any effort to call upon private persons from the nearby villages of Shar and Zardari to witness the recovery. PW-1's voluntary statement that he "tried his level best but none was available" is a stereotypical and unconvincing explanation that has been consistently rejected by superior courts. The mandate of Section 103 Cr.P.C. is not a mere formality but a vital safeguard against the planting of evidence. While it is true that in cases of a "pointation" or a led-to recovery, the strict application of a 'search' may be relaxed, the necessity for independent witnesses to attest to the voluntariness of the accused's action and the authenticity of the recovery remains paramount. The complete absence of such witnesses in this case creates a serious doubt about the prosecution's version.

8. The prosecution heavily relied on the fact that this recovery was connected to the main dacoity case (Crime No. 46/204). However, the appellant has since been acquitted in that very case. This fact, admitted by PW-1, fundamentally undermines the prosecution's narrative. If the appellant was not involved in the dacoity, the entire premise of his "voluntarily" leading the police to the weapon used in that crime becomes highly suspect and illogical. The trial court's reasoning that the acquittal was due to witnesses turning hostile does not absolve the prosecution of proving the present case on its own merits. The connection to the main case, now extinguished, casts a long shadow of doubt over the recovery story.

9. The evidence is not without material contradictions. While PW-1 stated the place of recovery was "Ojanao Shakh ji mori", PW-2 referred to it as "Rajar Ji Mori". This inconsistency regarding a crucial detail—the location of recovery—creates ambiguity. Furthermore, PW-1 admitted that the identifying marks on the recovered bullets were not mentioned in the recovery memo, which is a significant procedural lapse. The explanation by PW-5, the I.O., for not joining private witnesses—that "no one is ready to join"—is insufficient and reflects a casual approach to a mandatory legal requirement. The chain of custody, while documented through police entries, remains within the exclusive control of the police force. PW-4 traveled to Hyderabad by public transport to deposit the case property but could not produce any ticket, raising questions about the security and

integrity of the evidence during transit. While the FSL report (Exh.P-8/A) states the pistol was in working condition, its probative value is contingent upon a foolproof chain of custody. The links in this chain, being exclusively policed, and coupled with the other infirmities, render the FSL report insufficient to conclusively prove the prosecution's case beyond a reasonable doubt.

10. The law is well-settled that in criminal cases, the burden of proof lies squarely on the prosecution, and the standard is “proof beyond a reasonable doubt”. Any benefit of doubt must be accorded to the accused. The testimony of police officials, while not inherently unreliable, must be scrutinized with greater care when there is no independent corroboration. The failure to comply with the spirit of Section 103 Cr.P.C. and the presence of material contradictions are fatal to the prosecution's case. The principle of “falsus in uno, falsus in omnibus” may not strictly apply, but when the core of the prosecution story is riddled with doubt, the court cannot sustain a conviction.

11. It is held that the prosecution has failed to establish the alleged recovery of the unlicensed pistol from the appellant beyond reasonable doubt. The evidence brought on record does not inspire confidence, as the recovery is unsupported by any independent or private witness, the appellant has already been acquitted in the parent/main case, and the proceedings are marred by material procedural lapses. The learned trial Court fell into error both in law and fact by overlooking these material contradictions and legal infirmities, and by placing undue reliance on the testimonies of police officials, who were interested and partisan witnesses. The cumulative effect of these contradictions and discrepancies in the prosecution evidence seriously undermines the credibility and integrity of the case, rendering the entire prosecution story highly doubtful. It is a settled principle of criminal jurisprudence that when the prosecution fails to prove its case beyond reasonable doubt, the benefit of such doubt must always be extended to the accused, regardless of the gravity of the charge. In support of this settled principle, reference may be made to authoritative precedents wherein the superior Courts have consistently held that a single reasonable doubt in the prosecution case is sufficient to entitle the accused to acquittal, 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.

12. For the reasons recorded above, this appeal is allowed. The impugned judgment of conviction and sentence dated 30.07.2025 passed by the learned Additional Sessions Judge, Shahdadpur, in Sessions Case No. 109 of 2025 is hereby set aside. The appellant, Rajab @ Raju S/o. Mooso @ Manik, is acquitted of the charge under Section 25 of the Sindh Arms Act, 2013. He shall be released forthwith from custody, if not required in any other case. These are the detailed reasons for the short order announced on 18.09.2025.

JUDGE