

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. S-10 of 2023

Appellant: The State through Syed Sardar Ali Shah
Additional Prosecutor General, Sindh

Respondent: Saddam Hussain through Mr. Naeuddin
Chachar,

Date of hearing: 27.02.2025

Date of Judgment: 28.04.2025

J U D G M E N T

Riazat Ali Sahar, J. Being aggrieved and dissatisfied with the judgment dated 23.09.2022 passed by the learned 1st Additional Sessions Judge (MCTC), Ghotki, in Sessions Case No. 152 of 2019 arising out of FIR bearing Crime No. 199 of 2019, registered at Police Station A-Section Ghotki, for an offence punishable under Section 24 of the Sindh Arms Act, 2013, whereby the respondent, Saddam Hussain, was acquitted of the charge, the State through Prosecutor General Sindh has preferred the present Criminal Acquittal Appeal.

2. Succinctly stated, the allegation levelled against the respondent is that on 24.08.2019, while in police custody in connection with Crime No. 187 of 2019 registered under Sections 302 and 324 of the Pakistan Penal Code at Police Station A-Section Ghotki, the respondent, during interrogation conducted by Investigating Officer SIP Ali Nawaz Dayo, purportedly confessed

Riazat Ali Sahar

to the commission of the crime and expressed willingness to produce the weapon allegedly used therein. Pursuant to this, the respondent voluntarily led the Investigating Officer and his subordinates near his residence, and at approximately 12:30 hours, retrieved and produced an unlicensed Kalashnikov (Pakistani origin), bearing No. 25631 along with its magazine, from a cotton crop in the presence of mashirs. Thereafter, the police party returned to the police station along with the respondent and the recovered weapon, and the subject FIR was lodged against him on the same day.

3. After the usual investigation, the case was challaned and proceeded to trial. Upon conclusion of the trial, the learned trial Court, through the impugned judgment, acquitted the respondent/accused of the charge.

4. During the course of the trial, the following prosecution witnesses were examined:

1. **PW/Mashir Allah Bux Jiskani**, who produced an attested police station copy of the memo of arrest and recovery;

2. **PW/Complainant SIP Ali Nawaz Dayo**, who produced the following documentary evidence:

- o Attested police station copy of entries No. 19 and 20 (comprising one sheet);
- o First Information Report (FIR);
- o Attested police station copy of the letter addressed to the Senior Superintendent of Police (SSP), Ghotki at Mirpur Mathelo, seeking permission to send the recovered property for chemical analysis;



- Copy of the letter issued by the SSP addressed to the Forensic Science Laboratory, Larkana, regarding the dispatch of the recovered property;
- Attested police station copy of RC No. 465;
- Attested police station copy of the chemical analysis report issued by the Forensic Science Laboratory;

3. **PW/PC Allah Bux**, who was the property carrier in the case.

Subsequently, the learned Deputy District Public Prosecutor closed the prosecution's side by recording a formal statement to that effect.

5. The learned Additional Prosecutor General submitted that the learned appellate Court failed to give due regard to the heinous nature of the offence and neglected to properly assess the material evidence brought on record, which, according to the prosecution, was sufficient to substantiate the charges against the respondents. He contended that the respondents were unable to create any reasonable doubt in the prosecution's case or point out any material discrepancies in the ocular or documentary evidence. Despite this, the learned trial Court, without assigning any plausible legal justification, proceeded to acquit the respondents. It was further argued that the impugned judgment lacks cogent reasoning and does not reflect a judicious evaluation of the evidence, thereby rendering the acquittal perverse and legally unsustainable.

6. Conversely, the learned counsel representing the respondent contended that the impugned judgment does not suffer from any legal infirmity, having been rendered after a thorough appraisal of the facts and evidence on record. He further submitted that the respondent has been maliciously implicated in the instant case with ulterior motives, and there exists no credible or

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substantiated material connecting the respondent with the alleged offence.

7. Heard. Record perused.

8. In its endeavour to substantiate the alleged recovery, the prosecution has primarily relied upon the ocular account of the complainant, both police constables who acted as mashirs, the Investigating Officer (SIP), and the purported property carrier. However, upon scrutiny of the depositions, it becomes abundantly clear that their testimonies are riddled with contradictions, exaggerations, and inconsistencies, which materially impair the prosecution's version. SIP Ali Nawaz, in his evidence, stated that during the course of interrogation, the accused allegedly expressed willingness to lead the police party to a banana orchard, from where an unlicensed weapon was recovered and sealed on the spot through a memo. However, significant discrepancies emerge when his statement is juxtaposed with that of the mashirs. For instance, SIP Ali Nawaz named PC Fayaz and PC Mir Muhammad as the mashirs, whereas PC Allah Bux, who acted as a mashir, identified his co-mashir as PC Manjhi, thereby introducing uncertainty regarding the identity of official witnesses. Further contradictions arise concerning the location of the recovery. SIP Ali Nawaz deposed that the weapon was recovered from a banana garden, while the mashir stated that the site was a cotton field. SIP failed to disclose the specific time of the alleged interrogation and omitted to produce the relevant roznamcha entry on record, which casts further doubt upon the credibility of the claimed recovery.

Signature

Moreover, although the alleged recovery occurred in an area where locals were present, no private individuals were associated as mashirs. The SIP claimed he approached several local residents who declined to act as mashirs but admitted to taking no legal action against their refusal. Conversely, the mashir stated that the SIP did not make any effort to involve private persons. Disparities also exist in their account of the distance and surroundings. The mashir claimed they had to walk 40–50 paces into the field from the road, whereas SIP described the site as only 10–12 feet away. As for the recovery itself, SIP stated the weapon was lying openly in a sack on the surface, which he discarded on the spot without presenting it as case property, while the mashir claimed the weapon was buried in the soil, required excavation by hand, and appeared rusted and encrusted with mud, with no sack or cloth found. Even the chronology and procedure of the memo's preparation are inconsistent. The mashir testified that they took 15–20 minutes inside the crop field to prepare the materials for sealing, with the memo having commenced at 1:00 PM and completed within 5–10 minutes. In contrast, SIP deposed that PC Mubarak authored the memo on the bonnet of the police vehicle, taking approximately 35–40 minutes, and the weapon was also sealed thereon. The prosecution failed to examine PC Mubarak, the alleged scribe of the memo, which constitutes a material omission. Further doubt is cast upon the prosecution's case by the inconsistency regarding the location. SIP referred to the place of recovery as situated in village Amir Bux Sanghar, while the mashir



mentioned village Piral Sanghar. Most significantly, the prosecution failed to establish the safe custody and preservation of the case property in the police station's malkhana, which is a foundational requirement for the admissibility and reliability of the positive Forensic Science Laboratory (FSL) report. In the absence of proof regarding safe transmission and storage, the positive FSL report loses legal efficacy and becomes inconsequential. Accordingly, the prosecution has miserably failed to discharge its burden of proof regarding the recovery of the weapon and to inspire confidence in the overall case narrative.

9. Our legal system recognizes that **even a single reasonable doubt** entitles an accused to acquittal. The Hon'ble Supreme Court famously expounded in *Muhammad Hassan and Another v. The State (2024 SCMR 1427)*¹ that it is not necessary for there to be multiple glaring defects in the prosecution's case; **if one circumstance creates a reasonable doubt in a prudent mind about the guilt of the accused, the accused must be**


¹ "According to these principles, once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused." See also, Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

Tariq Pervez v. The State (1995 SCMR 1345: For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."

given the benefit of that doubt as of right.² In the present case, we have identified more than one reason to doubt the prosecution's story – in fact, the case is replete with uncertainties at every critical step. Therefore, it would be wholly unsafe to allow the conviction to stand.

10. It is a firmly entrenched principle in criminal jurisprudence that the scope of an appeal against acquittal is inherently narrow and is to be exercised with considerable caution. The jurisprudential approach to such appeals must be clearly distinguished from that applied in appeals against conviction, as a conviction carries with it no presumption of correctness, while an acquittal benefits from a heightened threshold of judicial deference. This principle finds its foundation in the doctrine of the *double presumption of innocence*—firstly, that the accused is presumed innocent until proven guilty, and secondly, that once acquitted by a competent court of law, the presumption of innocence is fortified. In this regard, the Honourable Supreme Court of Pakistan, in the landmark case of *Zaheer Din v. The State (1993 SCMR 1628)*, enunciated the following guiding principles which must govern the adjudication of appeals challenging an acquittal:

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly


² *Tariq Pervez v. The State (1995 SCMR 1345)*, *Riaz Masih alias Mithoo v. The State (1995 SCMR 1730)*, *Muhammad Akram v. The State (2009 SCMR 230)*, and *Hashim Qasim and another v. The State (2017 SCMR 986)*.

visualized from the cited and other cases-law on, the question of setting aside an acquittal by this Court. They are as follows:-

(1) *In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than that in an appeal against conviction when leave is granted only for re-appraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well accepted presumptions: One initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence.*

(2) *The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.*

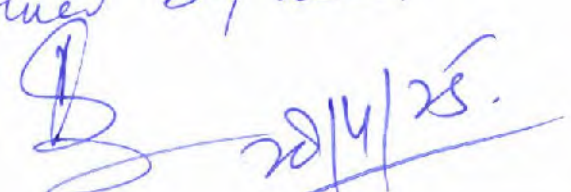
(3) *In either case the well-known principles of re-appraisal of evidence will have to be kept in view while examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observations of some higher principle as noted above and for no other reason.*

(4) *The Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous".*



11. In light of the circumstances discussed hereinabove, I am of the firm and considered view that the prosecution has failed to prove its case against the private respondents beyond the shadow of a reasonable doubt. It is a cardinal principle of criminal law that the benefit of doubt must always be extended to the accused, and in the present case, the prosecution has not produced such cogent and convincing evidence as would displace the presumption of innocence in favour of the respondents. The learned trial Court, having undertaken a comprehensive evaluation of the material on record and having meticulously addressed both the legal and factual aspects involved, has justifiably acquitted the private respondents. The impugned judgment is well-reasoned, supported by sound legal reasoning, and does not suffer from any apparent illegality, perversity, misreading, or non-reading of evidence which would invite interference by this Court in the exercise of appellate jurisdiction. In view of the foregoing, the instant Criminal Acquittal Appeal is found to be devoid of merit and substance, and is, therefore, *dismissed* accordingly.


JUDGE

Answered by me,

28/4/25.