

In the High Court of Sindh at Karachi.

Criminal Appeal No. <sup>484</sup> of 2022.

Sohaib Azhar Butt son of  
Azharul Haq Butt, Muslim,  
adult, resident of Saima Fine Tower,  
Shaheed-e-Millat Road, Karachi,  
now confined in Central Prison,  
Karachi.....Appellant.

Versus

The State.....Respondent.

Appeal under section 410, Criminal Procedure Code, 1889

PRESENTED ON  
18-07-2020

Deputy Registrar (Judl.)

3633



THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 464 of 2022

Appellant : Sohaib Azhar Butt  
through Mr. Zulfiqar Ali  
Langah, advocate a/w  
appellant

Respondent : The State  
through Mr. Mumtaz Ali  
Shah, Assistant Prosecutor  
General

Date of hearing : 04-03-2025

Date of Judgment : 04-03-2025

JUDGMENT

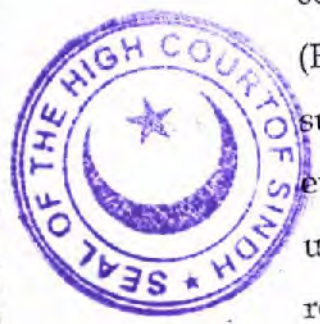
Jan Ali Junejo, J.- The present Criminal Appeal has been filed by the Appellant (accused), challenging the Judgment dated 22.07.2022 (here-in-after referred to as the *Impugned Judgment*) passed by the Court of learned IVth Additional Sessions Judge, Karachi-South at Judicial Complex, Central Prison, Karachi (here-in-after referred to as the learned *Trial Court*) in Sessions Case No. 666 of 2018 (The State vs. Sohaib Azhar), whereby the learned Trial Court convicted the Appellant under Section 25, of the Sindh Arms Act, 2013 and sentenced him to undergo for five years as rigorous imprisonment with fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in case of default of fine, the Appellant shall suffer simple imprisonment for 03 months.

2. The prosecution's case revolves around the recovery of a licensed 9mm pistol (bearing No. ZSA 10970) from a Honda City Car (Registration No. AMS 481) parked at the appellant's showroom, SB Motors, Defence Phase-II, Karachi. The recovery was made on 21.01.2018 during the investigation of Crime No.





15/2018 (murder of Ali Gul). The appellant, while in custody for the murder case, allegedly confessed to using this licensed pistol in the crime and led the police to recover it. The prosecution established its case through four witnesses: PW-01 (SIP Muhammad Umer Khattak) testified to the Appellant's disclosure leading to the recovery of a licensed 9mm pistol and vehicle from his showroom, corroborated by documentary evidence including departure/arrival entries (Ex 4/A-B), recovery memo (Ex 4/C), FIR copy (Ex 4/E), and FSL report (Ex 4/I); PW-02 (Retired IO/ASI Anwar Khattak) confirmed procedural compliance via entries (Ex 5/A-B); PW-03 (Hassan Khan) verified the recovery memo (Ex 4/C) as a *mashir*; and PW-04 (ASI Muhammad Hanif), added under Section 540 Cr.P.C., produced entries (Ex 7/A-C) reinforcing the timeline. The prosecution closed its evidence with a formal statement (Ex 08), while the Appellant, in his Section 342 Cr.P.C. statement (Ex 09), denied allegations, alleging a police grudge and submitting a missing report (Ex 9/A) but offering no defense evidence. The trial Court convicted the Appellant under Section 25 of the Sindh Arms Act, 2013, relying on the recovery memo (Ex 4/C), FSL report (Ex 4/I), and consistent testimonies, which confirmed the Appellant's ownership of the weapon, its operability, and exclusive possession of the vehicle from his showroom. Procedural compliance under Article 40 of Qanun-e-Shahadat, 1984, and the presumption of possession under Section 32 of the Sindh Arms Act outweighed defense claims of irregularities, leading to a sentence of five years' rigorous imprisonment with a fine.



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3. The learned counsel for the Appellant contends that the prosecution's case is riddled with material irregularities, including the Appellant's illegal arrest (evidenced by Ex 9/A) and jurisdictional violations, as the investigation was



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conducted by P.S. KIA despite the recovery falling under P.S. Defence. He further argues that the delayed FIR registration, non-compliance with Section 103 Cr.P.C. due to the absence of independent witnesses, and the vehicle's alleged recovery *outside* the Appellant's showroom undermine the claim of "exclusive possession". He contends that the prosecution failed to establish safe custody of the weapon, creating risks of tampering, and highlights discrepancies between the weapon's description in records and the FSL report, coupled with delays in forensic analysis. He asserts that the recovery was staged to implicate the Appellant and emphasizes the lack of fingerprint evidence to directly link the Appellant to the weapon. Citing flawed investigation, contradictions in witness testimonies, and procedural lapses, he invokes the principle of benefit of doubt under criminal jurisprudence. The learned counsel prays for acquittal, urging this Court to set aside the impugned judgment as the prosecution failed to prove guilt beyond reasonable doubt, and the conviction rests on unreliable evidence marred by procedural illegality, contradictions, and insufficient corroboration.



4. Per contra, the learned Additional Prosecutor General (APG) has argued that the recovery of the licensed 9mm pistol (Ex 4/I) and vehicle (Ex 4/C) from the Appellant's showroom, based on his voluntary disclosure during custodial interrogation, fully complies with Article 40. The Appellant's confession leading to the discovery of incriminating evidence is admissible and forms a credible chain of circumstantial evidence. The APG contends that the investigation by P.S. KIA officers was lawful, as the recovery stemmed from disclosures made in the main murder case (Crime No. 15/2018), which was already under their jurisdiction. Procedural entries (Ex 4/A,



[4]

4/B, 5/A-B, 7/A-C) meticulously documented the police party's movements, negating claims of jurisdictional impropriety. He further argued that PW-1 (SIP Umer Khattak) and PW-4 (ASI Hanif) provided consistent, unchallenged testimonies about the recovery process, corroborated by documentary evidence (Ex 4/C, 4/I). PW-3 (Hassan Khan), a private complainant in the connected murder case, verified the recovery memo (Ex 4/C) as a mashir, lending impartiality to the proceedings. The APG emphasizes that police officials are competent witnesses under law, and their testimonies cannot be discarded merely for being official. The APG asserts that the vehicle (Honda City) and pistol were recovered from the Appellant's showroom, which was under his exclusive control. Even if the vehicle was parked outside, the Appellant's ownership of the showroom and his voluntary disclosure establish conscious possession, satisfying Section 32 of the Sindh Arms Act, 2013. The pistol's license in the Appellant's name (undisputed by the defense) further cements his culpability. The APG relies on the FSL report (Ex 4/I), which confirmed the weapon's operability, to rebut claims of tampering. He argues that fingerprint analysis was unnecessary since the pistol's ownership was admitted, and the FSL report conclusively linked it to the crime. Minor delays in depositing the weapon with the FSL do not vitiate the prosecution's case. The APG highlights the memo of recovery (Ex 4/C), signed by PW-3 and police officials, as proof of procedural compliance. Entries (Ex 4/A-B, 7/A-C) corroborate the timeline, disproving allegations of delayed FIR registration or mala fide intent. Lastly, Learned APG urges this Court to dismiss the appeal and uphold the conviction, arguing that the trial Court correctly applied the law, the evidence is conclusive, and the defense's objections are technical, unsubstantiated, and insufficient to overturn a lawful judgment.



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5. After thoroughly evaluating the arguments advanced by the learned counsel for the appellant and the learned Additional Prosecutor General (APG) for the State, as well as meticulously reviewing the case record, the following observations emerge: PW-1 (SIP Muhammad Umer Khattak): Deposed that the recovered pistol bore the serial number "ZSA 109770". PW-2 (IO Anwar Khattak): Similarly affirmed the pistol's serial number as "ZSA 109770" in his testimony. The forensic examination report lists the pistol's serial number as "ZSA 10970" (omitting one digit: "ZSA 10970" instead of "ZSA 109770"). The discrepancy in the serial number creates doubt about whether the weapon tested by the FSL is the same as the one allegedly recovered from the Appellant. This breaks the chain of custody, rendering the FSL report inadmissible. The prosecution relied on the same weapon (licensed 9mm pistol, No: ZSA 10970) in both Sessions Case No. 666/2018 (current case) and Criminal Appeal No.663 of 2019 (prior case). In Appeal No.663/2019, the present Appellant was acquitted by this Court by extending the "benefit of doubt" and this Court disbelieved the recovery of the pistol, holding that the prosecution failed to prove its main case under Section 302, P.P.C. The prosecution's reliance on the same weapon (with identical registration details) in the present case, despite its recovery being invalidated in a prior judgment, creates a fatal inconsistency. The weapon number's continuity cannot salvage a recovery already deemed unreliable. Recovery Memo (Ex 4/C): Attested only by police officials and PW-3 (Hassan Khan), a complainant in the connected murder case (Crime No.15/2018). It is a matter of record that Arrival Entry No.19 (dated 21-01-2018 at 1900 hours) at P.S. Defence, Karachi, conspicuously omits the presence of the private witness, Mr. Hassan Khan Akakhail. The Complainant's statement recorded under Section 154 of the Criminal Procedure Code (Cr.P.C.)



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notably fails to document the presence of witnesses Hassan Khan Akakhail and PC-Muhammad Shahid during the alleged recovery of the weapon, live bullet, and empty shell. This omission raises critical questions about the procedural adherence and evidentiary reliability of the recovery process, as the absence of witness corroboration undermines the authenticity of the reported findings. Furthermore, the prosecution, represented by Complainant SIP Umar Khatak, has failed to produce any departure entry from P.S. Defence to substantiate the alleged recovery process or confirm that the complainant and witnesses departed from the police station after the purported recovery. The recovery of an empty bullet shell under the jurisdiction of P.S. Defence has sparked serious questions about procedural irregularities. The investigative sketch allegedly drawn by SIP Muhammad Umer Khatak meticulously shows a pistol, a magazine, and live bullet but notably excluded the empty shell. The sketch of the pistol, magazine and live bullet was only signed by the Complainant and it was not attested by the witnesses with their signatures. These omissions undermine the credibility of the shell's recovery, raising suspicions that its inclusion in the evidence may have been fabricated. Adding to these irregularities, Complainant SIP Muhammad Umer Khattak unlawfully retained custody of the case property – including the pistol, live cartridge, and purported empty cartridge – for a prolonged period of three days, from January 21, 2018, to January 24, 2018, before finally depositing it at the Forensic and Science Laboratory. This undue delay in forwarding the case property and his decision to keep it in his personal custody critically undermines the prosecution's case. During course of cross-examination, the Complainant has failed to assign reason for such inordinate delay in sending the case property for FSL examination and retaining the case property in his own



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possession not depositing the same in Police Malkhara at P.S. Equally problematic is the inordinate delay in FIR registration. The alleged recovery occurred on 21.01.2018 at 1930 hours, but the FIR was lodged on 22-01-2018 at 2040 hours—a lapse exceeding 24 hours, which too was lodged on the basis of statement under Section 154, Cr.P.C. sent by the Complainant SIP Muhammad Umer Khatak through police official and at that time the Complainant was not present at P.S. Defence. Despite the prosecution's claim that the complainant, witnesses, and accused were present at P.S. Defence during this period, Complainant SIP Umar Khatak failed to provide a plausible explanation for this unjustified delay during his testimony. In criminal jurisprudence, unexplained delays in FIR registration are viewed as a critical weakness, often indicative of fabrication or procedural impropriety. It is pertinent to explicitly outline the critical admissions made by Complainant SIP Umer Khatak during his cross-examination, which significantly undermine the prosecution's case. These admissions are reproduced as follows:



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*"It is fact that in the arrival entry of P.S. Defence available at Ex 4/B it does not mention the name of both mashirs of recovery. It is correct to suggest that I have not produced arrival entry of P.S. KIA regarding recovery proceedings. It is fact that in my 154 Cr.P.C. statement nothing regarding presence of mashirs of recovery is mentioned... .. It is correct to suggest that I had recorded my 154 Cr.P.C. statement with delay of 26 hours from the time of recovery... .. It is correct to suggest that I had not snapped the photographs or captured video of alleged recovery proceedings... .. It is fact that FSL Report so produced by me at Ex 4/1 date of receiving of Pistol by FSL is dated. 24.01.2018 whilst it was allegedly recovered*



on 21.01.2018... .. It is correct to suggest that for 04 days case property/crime weapon had remained with me. It is fact that I have not produced Maalkhana Register Entry regarding depositing the crime weapon in safe custody. It is correct to suggest that the place of alleged recovery of crime weapon is populated and commercial area. It is correct to suggest that at the time of alleged recovery proceedings people of the area had gathered at spot. It is fact that I had not associated by local of the area as mashir of recovery proceedings. It is correct to suggest that the Pistol present in the court with the case property since date of the alleged recovery had remained with me and even today I brought it in court. It is fact that I had not deposited the Pistol with Maalkhaane of City Courts... .. It is fact that sketch of the recovered empty shell had not been drawn up over the backside of the recovery memo... .."



6. It is a foundational principle of criminal law that the prosecution must establish guilt *beyond a reasonable doubt*, with even the slightest uncertainty favoring the accused. In a parallel scenario, as observed in *Muhammad Hamdani v. The State* (2018 YLR 2687), this Court acquitted the accused by extending the benefit of doubt in a case under Section 23(1)(a) of the Sindh Arms Act, 2013. This position is further corroborated by the Honourable Supreme Court of Pakistan's ruling in *Sajjan Solangi v. The State* (2019 SCMR 844), which underscores the imperative of adhering to this standard.

7. In light of the foregoing discussion, it is evident that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. The impugned judgment is not sustainable under the law. In these circumstances, Criminal



Appeal filed on behalf of the appellant stands allowed, and the conviction and sentence passed by the learned trial court, by virtue of the impugned judgment, are hereby set-aside. The Appellant shall be released forthwith if not required to be detained in any other pending case.

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JUDGE



THE HIGH COURT OF SINDH, KARACHI  
CERTIFIED TO BE TRUE COPY

*[Signature]*  
(MUHAMMAD SARFARAZ)  
J.C. ASSISTANT REGISTRAR (COPYING)

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