

**THE HIGH COURT OF SINDH, CIRCUIT COURT AT
LARKANA**

Criminal Appeal No.S-15 of 2026

(Nisar Ali Sabzoi v. The State)

Appellant: Nisar Ali Sabzoi present in person on bail.

Respondent: The State through Mr. Sardar Ali Solangi,
D.P.G. Sindh.

Date of hearing: 29.06.2026.

Date of Judgment: 29.06.2026.

Date of reasons: 25.07.2026

J U D G M E N T

RIAZAT ALI SAHAR, J. Through this judgment, I propose to dispose of the instant Criminal Appeal preferred by appellant Nisar Ali Sabzoi against the judgment dated 25.03.2026 passed by the learned Additional Sessions Judge, Kashmore, in Sessions Case No.327 of 2023 arising out of Crime No.11 of 2023 registered at Police Station RD-109, District Kashmore at Kandhkot, for offences punishable under Sections 324, 353, 368, 148 and 149, P.P.C.

2. By the impugned judgment, the learned trial Court found the appellant guilty and convicted and sentenced him as follows:-

- a. rigorous imprisonment for two (02) years for the offence punishable under Sections 148 read with 149, P.P.C.;
- b. rigorous imprisonment for two (02) years for the offence punishable under Section 353, P.P.C.;
- c. rigorous imprisonment for five (05) years together with a fine of Rs.50,000/-, and in default whereof to further suffer simple imprisonment for one month, for the offence punishable under Section 368, P.P.C.; and
- d. rigorous imprisonment for five (05) years for the offence punishable under Section 324, P.P.C.

All the substantive sentences were directed to run concurrently. The appellant was, however, extended the benefit of Section 382-B, Cr.P.C.

3. Briefly stated, the prosecution case, as disclosed in the FIR, is that on 31.07.2023 complainant ASI Bakhtiar Khan Domki, while serving as Station House Officer of Police Station RD-109, along with HC Abdul Sattar, HC Attaullah, HC Abdul Karim, PC Imtiaz Ali, PC Altaf Hussain and PC Manthar Ali, left the police station in a private vehicle under Roznamcha Entry No.09 dated 31.07.2023 for routine patrolling within the limits of the police station. It was alleged that upon reaching Wilayat Shah Bridge, the complainant received confidential information that certain accused persons, who had allegedly abducted minor Muhammad Azeem in Crime No.06 of 2023 registered at Police Station Risaldar, were shifting the abducted child from Sindh towards Balochistan. According to the prosecution, the complainant immediately informed his superior officers and sought reinforcement, where after police contingents from Police Station Risaldar, Police Station Bakhshapur, Police Station B-Section Kandhkot, Police Station Ghora Ghat, C-Section Police Post and CIA Staff joined the raiding party. The combined police force proceeded towards the pointed place near Yaro Deenari, where, according to the prosecution, they found eleven accused persons, including the present appellant, all armed with Kalashnikovs, while a minor child was allegedly accompanying them. The prosecution further alleged that upon noticing the police party, the accused persons resorted to indiscriminate firing with the intention of committing the murder of police officials and preventing them from discharging their official duties. The police officials allegedly retaliated in self-defence, where after exchange of firing continued for nearly thirty minutes. Eventually, according to the prosecution, the accused persons succeeded in escaping from the place of occurrence while abandoning the minor child. Upon inquiry, the child disclosed his name as Muhammad Azeem son of Waseem Menik. The complainant thereafter prepared mashirnama of recovery of the child, brought him to the police station and lodged the present F.I.R. against the appellant and other accused persons for offences punishable under Sections 324, 353, 368, 148 and 149, P.P.C.

4. After registration of the crime, investigation was entrusted to SIP Muhammad Iqbal Jakhrani. During the course of investigation, the Investigating Officer inspected the place of occurrence, prepared memo of inspection, collected certain crime empties allegedly secured from the place of incident, recorded statements of prosecution witnesses under Section 161, Cr.P.C., dispatched the recovered empties to the Forensic Science Laboratory for examination and, after completing other formalities of investigation, submitted report under Section 173, Cr.P.C. before the competent Court. Since most of the nominated accused persons remained absconders, proceedings under Sections 87 and 88, Cr.P.C. were undertaken against them and the case remained dormant. Subsequently, after the present appellant was shown arrested on 30.10.2025 while confined in District Prison in another criminal case, a supplementary challan was submitted before the learned trial Court.

5. Upon receipt of the supplementary challan, supply of copies of the police papers a formal charge was framed against the appellant, to which he pleaded not guilty and claimed trial, thereby putting the prosecution to strict proof of the allegations. In support of the charge, the prosecution examined only three witnesses.

PW-1, complainant Bakhtiar Khan Domki, reiterated the allegations contained in the F.I.R. He deposed regarding receipt of spy information, constitution of the raiding party, the alleged encounter with the accused persons, exchange of firing, recovery of minor Muhammad Azeem, registration of the F.I.R. and production of documentary evidence including Roznamcha entries, mashirnama of recovery of the child, copy of the F.I.R. and receipt showing handing over custody of the minor to his legal heirs.

PW-2, PC Imtiaz Ali, who was cited as mashir as well as an eyewitness, substantially supported the testimony of the complainant. He further deposed regarding preparation of memo of inspection of the place of occurrence, recovery of crime empties and subsequent arrest of the appellant through an imaginary arrest memo while he was already confined in prison in another criminal case.

PW-3, SIP Muhammad Iqbal Jakhrani, the Investigating Officer, deposed regarding the investigation conducted by him, inspection of the place of occurrence, preparation of mashirnama of inspection, collection and sealing of crime empties, recording statements of witnesses under Section 161, Cr.P.C.,

dispatch of the recovered empties to the Forensic Science Laboratory, receipt of the forensic report and submission of challan before the competent Court.

6. After examining the above witnesses and producing the documentary evidence, the learned ADPP closed the prosecution side. It is significant to note that although the entire prosecution case rested upon the alleged recovery of minor Muhammad Azeem from the custody of the accused persons, the said minor was neither examined by the Investigating Officer during investigation nor produced before the learned trial Court as a prosecution witness. Likewise, no independent witness from the locality was associated with the alleged encounter, recovery proceedings or investigation, despite the admitted position that the place of occurrence was situated in a populated area. It is also an admitted position that no weapon, incriminating article or other case property was recovered from the possession of the present appellant in connection with the instant crime.

7. After closure of the prosecution evidence, the statement of the appellant was recorded under Section 342, Cr.P.C., wherein every incriminating piece of evidence appearing against him was put to him. The appellant denied each and every allegation levelled by the prosecution and professed complete innocence. He asserted that he had been falsely implicated in the present case due to *mala fide* on the part of the police officials and that no such occurrence had ever taken place in the manner alleged by the prosecution. He specifically denied having made any firing upon the police party, denied that any minor child had ever been recovered from his custody and further denied his alleged involvement in the commission of the offences. The appellant neither examined himself on oath under Section 340 (2), Cr.P.C. nor did he produce any witness in defence.

8. Upon appraisal of the evidence and after hearing the learned ADPP for the State and the defence counsel, the learned trial Court, through judgment dated 25.03.2026, found the appellant guilty of the offences charged against him, convicted and sentenced him in the manner as stated above.

9. The appellant, appearing in person, contended that he has falsely been implicated in the present case and that the learned

trial Court failed to properly appreciate the facts and evidence available on the record. He submitted that the prosecution case is based solely upon the statements of police officials and that no independent witness from the locality was associated with the alleged occurrence despite the place being a populated area. He further submitted that neither the alleged recovered minor Muhammad Azeem nor the driver of the private vehicle was produced before the trial Court, while no weapon or any other incriminating article was recovered from his possession. He also pointed out that although the prosecution alleged an exchange of firing for about thirty minutes, no person from either side sustained any injury and even the vehicle of the police party remained undamaged. The appellant further maintained that he had already been acquitted in the principal kidnapping case relating to the same minor and that the learned trial Court wrongly relied upon his alleged previous criminal involvement while recording the conviction. He lastly prayed that, as the prosecution had failed to prove the charge against him beyond reasonable doubt, the impugned judgment be set aside and he be acquitted of the charges.

10. Conversely, learned Deputy Prosecutor General, Sindh, supported the impugned judgment and contended that the learned trial Court has appreciated the evidence in accordance with law. He submitted that the complainant and the other prosecution witnesses have consistently supported the prosecution case on all material particulars and nothing favourable to the appellant could be elicited during their cross-examination so as to discredit their testimony. According to the learned Deputy Prosecutor General, mere non-association of private witnesses is not sufficient to discard the otherwise confidence-inspiring testimony of official witnesses, particularly when no enmity or ulterior motive has been established against them. He further contended that the evidence available on record sufficiently establishes that the appellant, along with his co-accused, formed an unlawful assembly, resisted the police party in discharge of official duty, attempted to commit their murder by resorting to indiscriminate firing and was found in the company of the abducted minor child. He contended that the prosecution has succeeded in proving all essential ingredients of the offences beyond

reasonable doubt and that the impugned judgment calls for no interference by this Court. He accordingly prayed for dismissal of the appeal.

11. I have heard the appellant appearing in person as well as the learned Deputy Prosecutor General, Sindh, at considerable length. I have also minutely re-appraised the entire oral as well as documentary evidence available on the record, carefully examined the impugned judgment and considered the relevant provisions of law governing appreciation of evidence in criminal cases.

12. Before advertent to the respective contentions, it is considered advantageous to observe that the burden to establish the charge in a criminal case always rests upon the prosecution, which is under a legal obligation to prove its case against the accused beyond reasonable doubt through cogent, reliable and confidence-inspiring evidence. It is equally well settled that the prosecution must stand on the strength of its own evidence and cannot derive any benefit from the weakness of the defence. Likewise, an accused is presumed to be innocent unless his guilt is affirmatively established through legally admissible evidence. If a single circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of an accused, such doubt must invariably be resolved in favour of the accused as of right and not as a matter of concession. Keeping the above settled principles in view, the prosecution evidence has been examined with utmost care. The prosecution has produced only three witnesses, namely the complainant ASI Bakhtiar Khan Domki, PW Imtiaz Ali and the Investigating Officer SIP Muhammad Iqbal. Admittedly, all the three witnesses are police officials. It is by now well settled that conviction can legally be based upon the testimony of official witnesses if their evidence inspires confidence and is found to be wholly trustworthy. However, where the entire prosecution case rests exclusively upon official witnesses and no independent corroboration is forthcoming despite its availability, such evidence must be scrutinized with greater care and caution.

13. The prosecution case is that upon receiving secret information, a large police contingent comprising officials of several police stations proceeded towards the pointed place, where they allegedly found eleven heavily armed accused persons. According to the prosecution itself, the accused persons immediately opened

indiscriminate firing upon the police party with Kalashnikov rifles, which was retaliated by the police officials. The exchange of firing allegedly continued for nearly thirty minutes. Surprisingly, despite such prolonged encounter between two heavily armed groups, admittedly not a single person from either side sustained even the slightest injury. It is also surprising to note that admittedly not even the private vehicle allegedly used by the police party received any bullet mark or damage whatsoever. These admissions have been made by the complainant himself as well as PW Imtiaz Ali during their cross-examination. In ordinary human conduct and keeping in view the normal course of natural events, it appears highly improbable that a fierce exchange of firing with automatic weapons would continue uninterrupted for about half an hour without causing any injury to any person or any damage to any vehicle present at the place of occurrence. Such an unusual circumstance undoubtedly casts serious doubt upon the prosecution story and renders the alleged encounter highly improbable.

14. Another circumstance of considerable significance is that, according to the prosecution, the police party had proceeded in a private vehicle for patrolling. However, neither the registration number nor even the make or description of the said vehicle finds mention either in the F.I.R. or in the mashirnama. More importantly, the driver of the said vehicle, who was admittedly an independent person and the most natural witness of the entire occurrence, was neither associated during investigation nor produced before the learned trial Court. No explanation worth the name has been furnished by the prosecution for withholding such an important witness. Had the occurrence taken place in the manner alleged by the prosecution, the driver would have been the most natural witness to corroborate the prosecution version. It is also an admitted position that the alleged place of occurrence is situated in a populated locality. The complainant, PW Imtiaz Ali and even the Investigating Officer admitted during their cross-examination that the place of incident is a busy area. Despite such admitted position, not a single private person from the locality was associated either during the alleged encounter, the recovery proceedings or the investigation. No effort appears to have been made by the Investigating Officer to record the statement of any independent inhabitant of the locality

under Section 161, Cr.P.C. The prosecution has also failed to furnish any plausible explanation for such omission. Although non-association of private witnesses is not invariably fatal to every prosecution case, yet where independent witnesses are admittedly available and are deliberately withheld without lawful justification, the Court is justified in drawing an adverse inference against the prosecution while appreciating the overall evidence.

15. The prosecution case further proceeds on the premise that minor Muhammad Azeem was recovered from the custody of the accused persons after the alleged encounter. Interestingly enough, the prosecution neither recorded the statement of the said minor during investigation nor produced him before the learned trial Court. The alleged recovered child was undoubtedly the most material, natural and independent witness of the entire prosecution case. Had he been produced before the Court, he alone could have deposed whether he was actually recovered from the custody of the accused persons and whether the appellant was amongst those allegedly accompanying him. The unexplained withholding of such a vital witness creates a serious dent in the prosecution case and cannot lightly be ignored. Furthermore, the omission on the part of the prosecution to examine minor Muhammad Azeem, who is alleged to have been recovered from the custody of the accused persons, assumes considerable significance. The entire structure of the prosecution case rests upon the assertion that the appellant and his co-accused were found transporting the abducted child and that after an exchange of firing they fled away leaving the child behind. Therefore, the alleged recovered child was not merely another witness but the star witness of the prosecution. His testimony would have been the best available evidence to establish whether he had in fact been recovered from the custody of the appellant, whether the appellant was present at the place of occurrence and whether the prosecution story reflected the true sequence of events. Surprisingly, neither was his statement recorded under Section 161, Cr.P.C. during investigation nor was he produced before the learned trial Court. No explanation whatsoever has been furnished by the prosecution for withholding such an important witness. It is settled law that where the prosecution withholds the best available evidence without any plausible explanation, the Court is justified in drawing an adverse inference

that had such evidence been produced, it would have been unfavourable to the prosecution.

16. It is also not without significance that the appellant had already been acquitted in Sessions Case arising out of Crime No.06 of 2023 registered at Police Station Risaldar, pertaining to the alleged abduction of the same minor Muhammad Azeem. Although each criminal case has to be decided upon its own evidence and such acquittal may not by itself conclude the present proceedings, nevertheless the fact remains that the prosecution has failed to produce the very victim of the alleged kidnapping in the instant case. In these circumstances, the allegation that the appellant was found concealing or wrongfully confining the same minor under Section 368, P.P.C. becomes highly doubtful, particularly when there is no independent evidence establishing that the child was ever in his custody. The prosecution was under a legal obligation to remove such doubt by producing the victim himself, but it failed to discharge that burden.

17. The learned trial Court appears to have attached considerable importance to the circumstance that the appellant had allegedly remained absconding for some period and was involved in several other criminal cases. With utmost respect, such reasoning cannot legally sustain the conviction. Mere registration of criminal cases, howsoever numerous they may be, does not constitute evidence of guilt. Likewise, pendency of criminal proceedings or even previous involvement in criminal cases cannot be treated as substantive evidence to establish commission of the offence under trial. Every criminal case has to be decided exclusively on the evidence adduced therein. A person cannot be convicted because of his alleged criminal antecedents, but only because the prosecution has independently proved the charge against him beyond reasonable doubt. The presumption of innocence accompanies every accused in every trial irrespective of allegations levelled against him in other cases. Equally erroneous is the observation of the learned trial Court that since the appellant could not satisfactorily explain the prosecution evidence while making his statement under Section 342, Cr.P.C., the prosecution case stood corroborated. Such an approach is contrary to the settled principles of criminal jurisprudence. The statement recorded under Section 342, Cr.P.C. is intended to provide

an opportunity to the accused to explain the circumstances appearing against him. It cannot be treated as substantive evidence for the prosecution nor can the failure of an accused to furnish a satisfactory explanation be utilized to fill up the glaring lacunae left by the prosecution. Unless the prosecution first establishes its case through independent and reliable evidence, no adverse inference can legally be drawn from the answers given by an accused under Section 342, Cr.P.C.

18. I have also carefully examined the testimony of the three prosecution witnesses. Their evidence, when read as a whole, does not inspire that degree of confidence which is required for maintaining a conviction in a criminal case. They admittedly belong to the same police party and their evidence receives no corroboration from any independent source. Their admissions during cross-examination that no person sustained injuries despite an alleged exchange of firing lasting about thirty minutes; that no bullet hit the vehicle; that the driver of the vehicle was neither associated nor examined; that no private witness was associated despite availability; and that the appellant already stood acquitted in the principal kidnapping case, materially weaken the prosecution version. These are not minor discrepancies but circumstances going to the very root of the prosecution case.

19. It is also pertinent to observe that no firearm, spent cartridge, bloodstained article or any other incriminating material was recovered from the possession of the appellant connecting him with the commission of the alleged offences. The prosecution has also failed to establish any forensic or scientific evidence linking the appellant with the alleged occurrence. The forensic report merely indicates examination of crime empties allegedly secured from the place of incident; however, in the absence of recovery of any weapon from the appellant, such report does not advance the prosecution case against him. Scientific evidence, unless connected with the accused through independent evidence, has little evidentiary value.

20. The cumulative effect of the above discussed circumstances leaves no manner of doubt that the prosecution has failed to establish an unbroken chain of reliable evidence pointing unmistakably towards the guilt of the appellant. On the contrary, the

evidence available on the record creates several serious and reasonable doubts regarding the truthfulness of the prosecution story. The learned trial Court, with respect, failed to appreciate these material infirmities and instead proceeded on assumptions and circumstances which are legally irrelevant for determining the guilt of an accused. It is a cardinal principle of criminal jurisprudence that the prosecution is required to prove its case beyond reasonable doubt. It is equally well settled that the burden of proof never shifts upon the accused and the prosecution must stand on its own legs. Where the evidence produced by the prosecution suffers from material contradictions, inherent improbabilities or creates a reasonable doubt regarding the guilt of an accused, the benefit of such doubt must invariably go to the accused. It is now firmly settled that for extending benefit of doubt, it is not necessary that there should be several infirmities in the prosecution case. Even a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to entitle an accused to acquittal as a matter of right and not as a matter of grace or concession. In the reported case of **Tariq Pervez v. The State (PLD 1995 SC 1345)**, the Honourable Supreme Court of Pakistan held that if there is a circumstance creating reasonable doubt in the mind of a prudent person regarding the guilt of an accused, then the accused is entitled to the benefit of that doubt, not as a matter of concession but as of right. The said principle has consistently been reaffirmed in the reported cases of **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Mansha v. The State (2018 SCMR 772)**.

21. Applying the above settled principles to the facts of the present case, I have no hesitation in holding that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. The circumstances, when considered cumulatively, create serious doubt regarding the veracity of the prosecution case: (i) the entire prosecution case rests solely upon the testimony of police officials without any independent corroboration; (ii) despite the admitted availability of independent persons at the place of occurrence, no private witness was associated either at the time of the alleged encounter, the recovery proceedings or during investigation; (iii) although the prosecution alleged exchange of firing for about thirty minutes between heavily armed accused persons and

several police parties, admittedly no injury whatsoever was caused to any person from either side and even the alleged private vehicle remained undamaged; (iv) the driver of the private vehicle, who was the most natural and independent witness of the occurrence, was deliberately withheld without any explanation; (v) the alleged recovered minor Muhammad Azeem, being the most material witness of the prosecution case, was neither examined during investigation nor produced before the learned trial Court; (vi) admittedly no weapon, no incriminating article and no other case property was recovered from the possession of the appellant; (vii) the appellant had already been acquitted in the principal kidnapping case relating to the same alleged victim, thereby rendering the allegation under Section 368, P.P.C. highly doubtful in the absence of any independent evidence; and (viii) the learned trial Court, while recording conviction, appears to have been influenced by the alleged criminal history of the appellant, which, in law, could not constitute substantive evidence of his guilt in the present case. Each one of the above circumstances independently creates reasonable doubt in the prosecution case. Collectively, they completely demolish the prosecution version and render it wholly unsafe to maintain the conviction of the appellant. The learned trial Court, with utmost respect, appears to have misread the evidence available on the record and overlooked material admissions made by the prosecution witnesses during their cross-examination. It also failed to appreciate the legal consequences arising from the non-production of the alleged recovered child, the complete absence of independent corroboration and the inherent improbabilities attending the prosecution story. The impugned judgment, therefore, cannot be sustained in the eye of law.

22. For whatever has been discussed above, this appeal was **allowed** through my short order announced in open Court on 29.06.2026, whereby the conviction and sentences recorded against the appellant vide judgment dated 25.03.2026 passed by the learned Additional Sessions Judge, Kashmore, in Sessions Case No.327 of 2023 arising out of Crime No.11 of 2023 registered at Police Station RD-109, District Kashmore at Kandhkot, were **set-aside** and the appellant was acquitted of the charges by extending him the benefit of doubt. Since the appellant was already confined in jail, the

Superintendent concerned was directed to release him forthwith if his custody was not required in any other criminal case.

23. These are the detailed reasons in support of the short order dated 29.06.2026.

JUDGE