

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. D-17 of 2026

**PRESENT: Mr. Justice Riazat Ali Sahar
Mr. Justice Ali Haider 'Ada'**

Appellant Mitha Khan son of Ghulam Sarwar alias Pahlwan Mahar	:	Through Mr. Razi Khan N.B. Chandio, Advocate
The State	:	Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Date of Hearing	:	29.06.2026
Date of Judgment	:	29.06.2026

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through this judgment, we propose to dispose of the instant Criminal Appeal preferred by the appellant, Mitha Khan son of Ghulam Sarwar @ Pahlwan Mahar, against the judgment dated 25.03.2026, passed by the learned Judge, Anti-Terrorism Court, Larkana, in Special Case No.45 of 2025 (Re: State versus Mitha Khan), arising out of Crime No.147 of 2025 registered at Police Station Ratodero, District Larkana, for offences punishable under Section 4 (b) of the Explosive Substances Act, 1908 read with Section 7 (ff) of the Anti-Terrorism Act, 1997. By the impugned judgment, the learned trial Court convicted the appellant and sentenced him to suffer rigorous imprisonment for seven (07) years for the offence punishable under Section 4 (b) of the Explosive Substances Act, 1908 and further rigorous imprisonment for seven (07) years for the offence punishable under Section 7 (ff) of the Anti-Terrorism Act, 1997. Both substantive sentences were ordered to run concurrently and the appellant was extended the benefit of Section 382-B, Cr.P.C.

2. Brief facts of the prosecution case are that on 15.09.2025, complainant ASI Naveed Ali Bapar, while posted at Police Station Ratodero, left the police station at about 0430 hours along with HC Muhammad Hafeez Pathan, PC Asif Ali and DPC Badaruddin in an official police vehicle for routine patrolling under Roznamcha Entry No.23. After patrolling at different places, when the police party reached Allah Waro Chowk, the complainant allegedly received spy information that one terrorist intended to destroy a Micro Tower by means of a hand grenade. On such information, the police party immediately proceeded towards the pointed place near Taluka Hospital, Ratodero, where they allegedly noticed one person coming from Naudero Road towards the Micro Tower. Upon seeing the police party, the said person allegedly attempted to flee but was apprehended after a short chase. On inquiry, he disclosed his identity as Mitha Khan son of Ghulam Sarwar Mahar, resident of Village Wada Mahar, Taluka Bakrani, District Larkana. During his personal search, one silver-coloured box containing a grey-coloured hand grenade was allegedly recovered from the right pocket of his qameez, whereas cash amounting to Rs.200/- was recovered from another pocket. The recovered property was allegedly sealed on the spot, the appellant was arrested and thereafter brought to the police station where the complainant lodged the present F.I.R. against him.

3. After registration of the crime, investigation was entrusted to Inspector Shabir Ahmed Bhutto. During the course of investigation, the Investigating Officer visited the place of occurrence, prepared the memo of inspection, recorded statements of witnesses under Section 161, Cr.P.C., completed the necessary formalities regarding the alleged explosive material, obtained permission for its disposal through the Bomb Disposal Team and, after concluding the investigation, submitted report under Section 173, Cr.P.C. before the competent Court, whereupon the appellant was sent up to face trial.

4. A formal charge was framed against the appellant for offences punishable under Section 4 (b) of the Explosive Substances Act, 1908 read with Section 7 (ff) of the Anti-Terrorism Act, 1997, to which he pleaded not

guilty and claimed trial. In support of its case, the prosecution examined five witnesses as:

PW-1, complainant ASI Naveed Ali Bapar, reiterated the prosecution story and produced the carbon copy of Roznamcha Entry No.23, memo of arrest and recovery, and copy of the F.I.R.

PW-2, HC Muhammad Hafeez Pathan, appeared as the alleged mashir and eyewitness and produced the memo of site inspection.

PW-3, WHC Waseem Raja Soomro, produced the relevant Malkhana entry pertaining to the deposit of the alleged case property.

PW-4, ASI Muhammad Ismail Gilal of the Bomb Disposal Team, deposed regarding the alleged disposal of the hand grenade and produced the technical report.

PW-5, Inspector Shabir Ahmed Bhutto, the Investigating Officer, deposed regarding the investigation conducted by him and produced the relevant Roznamcha entries, permission letters, and memo relating to the demolition of the alleged explosive material.

After examining the above witnesses and producing documentary evidence, the learned A.P.G. closed the prosecution side.

5. After the prosecution closed its side, the statement of the appellant was recorded under Section 342, Cr.P.C., wherein every incriminating circumstance appearing in the prosecution evidence was put to him. The appellant denied each and every allegation levelled against him and professed complete innocence. He maintained that he had been falsely implicated by the police due to *mala fide* and that no such occurrence had taken place in the manner alleged by the prosecution. In support of his defence, he produced certified true copies of Criminal Miscellaneous Application No.325 of 2025 filed under Section 491, Cr.P.C. by his paternal aunt, namely, Mst. Mukhtiar Khatoon, together with the order dated 09.09.2025 passed by the learned Sessions Judge, Larkana, regarding his alleged illegal detention prior to the occurrence in question. However, he

neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any witness in defence.

6. Upon conclusion of the trial and after hearing the learned Prosecutor for the State as well as the learned defence counsel, the learned trial Court, vide judgment dated 25.03.2026, held that the prosecution had successfully proved its case beyond reasonable doubt. Consequently, the appellant was convicted and sentenced in the manner as stated above. Hence, the appellant has preferred the instant appeal before this Court.

7. Learned counsel for the appellant contended that the prosecution had miserably failed to establish the charge beyond reasonable doubt and that the learned trial Court fell into serious error while relying upon evidence which was neither confidence-inspiring nor free from material contradictions. He contended that the entire prosecution case rests solely upon the testimony of police officials belonging to the same police station, without any independent corroboration whatsoever, despite the admitted fact that the police party had allegedly received prior spy information and had sufficient opportunity to associate private mashirs from the locality. Learned counsel further contended that the evidence of the prosecution witnesses is replete with material contradictions regarding the mode of recovery, preparation of mashirnama, source of light used at the place of incident, place where signatures of mashirs were obtained, custody of the alleged explosive material, and other material particulars, which strike at the root of the prosecution case. He further contended that the alleged hand grenade remained in police custody for about one month before being forwarded to the Bomb Disposal Team without any plausible explanation, thereby rendering the chain of safe custody wholly doubtful. Learned counsel also contended that neither the Incharge of the Bomb Disposal Team nor any Explosive Expert was examined to establish that the alleged recovered article was, in fact, an explosive substance capable of causing an explosion within the contemplation of law. Lastly, he contended that the defence had produced certified copies of proceedings under Section 491, Cr.P.C., which clearly demonstrated that the appellant had allegedly been in illegal police detention several days before the alleged occurrence, thereby lending substantial support to the plea of false

implication. He, therefore, prayed that the prosecution having failed to prove its case beyond reasonable doubt, the impugned judgment be set aside and the appellant be acquitted of the charge.

8. Conversely, learned Deputy Prosecutor General, Sindh, supported the impugned judgment and contended that the learned trial Court had appreciated the evidence strictly in accordance with law. He contended that the complainant and other prosecution witnesses consistently supported the prosecution case on all material particulars and successfully established the recovery of the hand grenade from the possession of the appellant. According to the learned Deputy Prosecutor General, mere non-association of private witnesses does not by itself render the testimony of official witnesses unreliable, particularly when no convincing evidence of animosity or ulterior motive has been brought on record against them. He further contended that minor discrepancies occurring in the statements of prosecution witnesses are natural with the passage of time and do not affect the core of the prosecution case. He lastly contended that the evidence available on record was sufficient to sustain the conviction recorded by the learned trial Court and, therefore, the instant appeal merits dismissal.

9. We have heard the learned counsel for the appellant as well as the learned Deputy Prosecutor General, Sindh, at considerable length. We have also carefully re-appraised the entire oral and documentary evidence available on the record, examined the impugned judgment with anxious consideration and considered the relevant statutory provisions as well as the settled principles governing appreciation of evidence in criminal cases.

10. Before adverting to the evidence produced by the prosecution, it would be advantageous to reiterate the settled principles governing criminal jurisprudence. It is by now a firmly established principle that the burden to prove the guilt of an accused always rests upon the prosecution, which must establish its case through cogent, reliable and confidence-inspiring evidence beyond reasonable doubt. The prosecution must stand on the strength of its own evidence and cannot derive any benefit from the weakness of the defence. Equally it is well settled principle that an accused

carries with him the presumption of innocence throughout the trial and even after conviction by the trial Court, which presumption continues unless displaced by unimpeachable evidence. It is also trite that where a single circumstance creates a reasonable doubt in the mind of a prudent person regarding the guilt of the accused, such doubt must necessarily be resolved in his favour as of right and not as a matter of grace. Keeping these settled principles in view, we have independently examined the entire prosecution evidence with utmost care.

11. The prosecution case essentially rests upon the testimony of five official witnesses, the complainant ASI Naveed Ali Bapar (PW-1), mashir HC Muhammad Hafeez Pathan (PW-2), Malkhana Moharrir WHC Waseem Raja Soomro (PW-3), Bomb Disposal official ASI Muhammad Ismail Gilal (PW-4), and the Investigating Officer Inspector Shabir Ahmed Bhutto (PW-5). Admittedly, not a single independent witness was associated either at the time of the alleged recovery, during the investigation, or at any subsequent stage. Although it is settled that conviction can legally be based upon the testimony of police officials if their evidence inspires confidence, yet where the entire prosecution case rests exclusively upon official witnesses and independent corroboration was readily available but deliberately withheld, the evidence of such witnesses is required to be scrutinized with greater caution and circumspection. In the present case, the prosecution itself alleges that prior spy information had been received regarding the movement of the appellant. Thus, the police had sufficient opportunity to associate respectable persons from the locality to witness the alleged recovery. The unexplained omission to do so assumes considerable significance, particularly when the alleged place of arrest was situated near Taluka Hospital and the Micro Tower, locations which cannot reasonably be described as secluded or inaccessible.

12. A careful examination of the evidence further reveals material contradictions among the prosecution witnesses on important aspects of the prosecution story. PW-1 ASI Naveed Ali deposed that the mashirnama of arrest and recovery was prepared with the help of torchlight while resting upon the bonnet of the police mobile, whereas PW-2 HC Muhammad

Hafeez Pathan categorically stated that the memo was prepared with the help of mobile phone lights held by the police officials. More importantly, PW-1 asserted during cross-examination that the signatures of the mashirs were obtained at the place of occurrence and even the crime number was mentioned there, whereas PW-2 unequivocally admitted that the signatures of the mashirs as well as the crime number were entered at the police station. Likewise, PW-1 stated that the spy information was received while the police party was present at Allah Waro Chowk after patrolling several places, whereas PW-2 narrated an altogether different route followed by the police party before the receipt of such information. These discrepancies are not merely peripheral in nature but strike at the very manner in which the alleged recovery was effected and the documentary evidence was prepared. Such contradictions materially impair the credibility of the prosecution witnesses and render their testimony unsafe for maintaining a conviction.

13. An equally serious infirmity relates to the handling and safe custody of the alleged explosive material. The alleged hand grenade was admittedly recovered on 15.09.2025, yet the prosecution itself acknowledges that it remained in the police Malkhana until 15.10.2025, when it was allegedly handed over to the Bomb Disposal Team for demolition after about one month. Neither the Investigating Officer nor the Malkhana Moharrir furnished any satisfactory explanation as to why the alleged explosive material remained in police custody for such an unusually long period before being forwarded for technical examination. In cases involving explosive substances, strict adherence to the chain of custody is indispensable, for any unexplained break therein casts a serious doubt upon the identity, integrity and sanctity of the alleged case property. The unexplained delay of approximately one month in transmitting the alleged hand grenade, coupled with the absence of satisfactory evidence regarding its safe custody during the intervening period, constitutes a glaring defect which has remained wholly unexplained by the prosecution. The prosecution has further failed to produce the best available evidence concerning the alleged explosive material. Although PW-4, ASI Muhammad Ismail Gilal, deposed that he examined and demolished the hand grenade and subsequently prepared a technical report, it is

noteworthy that no Explosive Expert or competent forensic expert was examined to establish the exact nature, condition and explosive capability of the alleged recovered article. The so-called technical report merely records that the article was examined and demolished but does not constitute expert evidence within the meaning of the law establishing, beyond doubt, that the alleged article answered the legal description of an explosive substance attracting the penal provisions invoked against the appellant. In prosecutions under the Explosive Substances Act, the prosecution is under a heightened obligation to prove not merely the recovery of an object but also that the object was, in fact, an explosive substance capable of causing the mischief contemplated by the statute. The failure to produce proper expert evidence creates a serious lacuna in the prosecution case.

14. We have also noticed that another circumstance which materially weakens the prosecution case is the defence evidence produced during the statement of the appellant under Section 342, Cr.P.C. The appellant placed on record certified copies of Criminal Miscellaneous Application No.325 of 2025 filed under Section 491, Cr.P.C. by his paternal aunt, Mst. Mukhtiar Khatoon, alleging his illegal detention by the police prior to the alleged occurrence. The order passed by the learned Sessions Judge, Larkana, demonstrates that a raid had already been conducted through a Judicial Magistrate on 08.09.2025, followed by an order dated 09.09.2025, both dates preceding the alleged recovery dated 15.09.2025. Although those proceedings may not conclusively establish the innocence of the appellant, they undeniably introduce a significant circumstance raising a legitimate question regarding the prosecution version that the appellant was apprehended for the first time on 15.09.2025. The learned trial Court failed to assign due weight to this important defence material and brushed it aside without proper judicial examination, thereby rendering its conclusions vulnerable.

15. It is also pertinent to observe that the learned trial Court failed to appreciate the aforesaid infirmities in their proper legal perspective. While recording the conviction, the learned trial Court brushed aside the material contradictions appearing in the evidence of the prosecution

witnesses by observing that the same were minor discrepancies not affecting the merits of the case. We are unable to subscribe to such a view. The contradictions highlighted hereinabove do not relate to insignificant details occurring due to lapse of time or normal errors of observation; rather, they concern the very genesis of the prosecution story, the preparation of the recovery memo, the place where the formalities were completed, the custody and transmission of the alleged explosive material, and the manner in which the investigation was conducted. These are material discrepancies which substantially impair the credibility of the prosecution evidence and cannot be ignored while determining the guilt of an accused in a criminal trial.

16. Equally disturbing is the failure of the prosecution to establish an unbroken chain of custody of the alleged hand grenade. The evidence on record unmistakably shows that the alleged explosive remained in the Malkhana for approximately one month before it was handed over to the Bomb Disposal Team. During this intervening period, the prosecution has failed to produce satisfactory evidence demonstrating the manner in which the case property was preserved, safeguarded and protected against tampering. Although PW-3 WHC Waseem Raja Soomro merely deposed regarding the relevant Malkhana entry, neither his testimony nor the documentary evidence satisfactorily explains why such an unusually dangerous article remained unattended for such a considerable period before being subjected to technical examination. The prosecution has also failed to examine the Incharge of the Bomb Disposal Team or any other competent authority who could have independently proved receipt of the sealed parcel, its condition at the time of receipt, and the integrity of its seals. These omissions assume greater significance because the conviction rests exclusively upon the alleged recovery of the explosive substance. Once the identity and safe custody of the case property become doubtful, the entire edifice of the prosecution case collapses.

17. We have also noticed that the prosecution failed to adduce convincing scientific evidence establishing that the alleged recovered article fulfilled the legal requirements of an explosive substance within the meaning of the Explosive Substances Act, 1908. Although a technical report

was produced through PW-4 ASI Muhammad Ismail Gilal, the prosecution neither examined an Explosive Expert nor placed before the Court any comprehensive forensic opinion demonstrating the composition, explosive capability or operational condition of the alleged hand grenade. In criminal prosecutions involving specialized scientific matters, particularly those carrying severe penal consequences under anti-terrorism laws, the Courts are required to insist upon the best available evidence. The omission to produce such evidence creates a substantial gap in the prosecution case, which cannot be supplied by mere assumptions or conjectures.

18. Another aspect which further strengthens the defence plea relates to the proceedings initiated under Section 491, Cr.P.C. The certified copies produced by the appellant reveal that an application alleging his illegal detention had been filed prior to the date of the alleged occurrence and that a raid had been conducted through the learned Magistrate before the alleged recovery was shown by the prosecution. Although the prosecution denied the defence version, it failed to produce any convincing evidence explaining this unusual circumstance. The learned trial Court also omitted to properly examine the legal implications arising from these proceedings. While these proceedings may not, by themselves, conclusively establish false implication, they undoubtedly create a serious dent in the prosecution story and lend considerable support to the defence plea that the appellant had already come into police custody prior to the alleged date of recovery. This circumstance, when considered cumulatively with the other infirmities discussed above, cannot be ignored.

19. It is a settled proposition of criminal law that the prosecution is required to establish its case beyond reasonable doubt through evidence which is natural, consistent, trustworthy and confidence-inspiring. Suspicion, however strong, cannot take the place of legal proof. Likewise, where two views are reasonably possible from the evidence available on record, the one favourable to the accused must invariably prevail. It is equally well settled that the benefit of doubt is not a concession but a substantive right flowing from the presumption of innocence guaranteed to every accused person. For extending such benefit, it is not necessary that there should be several circumstances creating doubt; rather, even a single

circumstance giving rise to reasonable doubt is sufficient to entitle an accused to acquittal as a matter of right. In this regard, reference may beneficially be made to the celebrated judgment of the august Supreme Court in the case of **Tariq Pervez v. The State (PLD 1995 SC 1345)**, wherein it has been held that a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to extend the benefit of doubt to an accused. The same principle has consistently been reaffirmed in the cases of **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Mansha v. The State (2018 SCMR 772)**.

20. Reverting to the facts of the present case, we find that the prosecution has failed to establish an unimpeachable chain of evidence connecting the appellant with the commission of the alleged offences. The unexplained delay of about one month in transmitting the alleged explosive material, the failure to establish its safe custody, the absence of proper expert evidence, the non-examination of material witnesses, the material contradictions appearing in the testimony of official witnesses, the unexplained omission to associate independent witnesses despite prior spy information, and the defence material relating to the earlier proceedings under Section 491, Cr.P.C., when viewed collectively, create serious and substantial doubts regarding the veracity of the prosecution version. Unfortunately, the learned trial Court failed to appreciate these material infirmities and proceeded to record conviction upon evidence which, in our considered opinion, falls far short of the standard required in criminal jurisprudence. He is also extended benefit of doubt as enshrined in **Muhammad Hassan and Another v. The State (2024 SCMR 1427)**¹.

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."

21. For what has been discussed above, we are of the considered opinion that the prosecution has miserably failed to prove the guilt of the appellant beyond reasonable doubt. Consequently, this Criminal Appeal is **allowed**. The judgment dated 25.03.2026, passed by the learned Judge, Anti-Terrorism Court, Larkana, in Special Case No.45 of 2025 arising out of Crime No.147 of 2025 registered at Police Station Ratodero, District Larkana, under Section 4(b) of the Explosive Substances Act, 1908 read with Section 7(ff) of the Anti-Terrorism Act, 1997, is hereby **set aside**. The appellant Mitha Khan son of Ghulam Sarwar @ Pahlwan Mahar is acquitted of the charge by extending to him the benefit of doubt. He shall be released forthwith, if his custody is not required in any other criminal case.

22. These are the detailed reasons in support of our short order dated 29.06.2026 whereby the instant appeal was allowed and the appellant was acquitted of the charge.

JUDGE

JUDGE