

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-03 of 2026
[Haji Mevo v The State]

Counsel of Appellant : Mr. Ahmed Ali Jarwar, Advocate.

Counsel of Respondents : Mr. Dhani Bakhsh Mari, A.P.G Sindh.

Date of Hearing : 01.10.2026

Date of Judgment : 07.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through this criminal appeal, Haji Mevo son of Ghulam Abbas Lekhee has called in question the judgment dated 13-12-2025, passed by the learned Additional Sessions Judge, Shahdadpur, in Sessions Case No.544 of 2020, arising out of Crime No.41 of 2020 of Police Station Sarhari. By that judgment, the appellant was convicted under section 25 of the Sindh Arms Act, 2013, and sentenced to ten years' rigorous imprisonment and a fine of Rs.20,000/-, with two months' simple imprisonment in default of payment. The benefit of section 382-B Cr.P.C. was extended to him for the periods of custody specified in the judgment.

2. The prosecution originated in the investigation of Crime No.37 of 2020, registered at Police Station Sarhari on 05-10-2020 concerning the death of Ghulam Abbas alias Allah Bachayo, the appellant's father. The charge in the present case and the eventual compromise order describe the principal prosecution as one under sections 302 and 201 PPC. The appellant was initially the complainant in that matter. According to the police account, information obtained during investigation led the police to suspect him and to call him to the police station on 18-10-2020.

3. It was alleged that, during interrogation, the appellant admitted killing his father and offered to produce the weapon. SIP Ghulam Nabi Thaheem stated that the police party left the station at about 1530 hours and, on the appellant's lead, proceeded to the cotton crop of Ghulam Kerio beside the appellant's house in Deh Paboro, Taluka Shahdadpur. At about 1600 hours, the appellant allegedly took out a black polythene shopper containing a .30 bore pistol and a magazine with three live

cartridges. The recovery was reduced to writing, the property was sealed and the separate Arms Act case was registered. These allegations must be distinguished from what is admissible and proved.

4. The formal charge was framed on 26-01-2021 at Exh.02. Although the case headings mention sections 24/25 of the Act, the charge expressly alleged an offence punishable under section 25. The appellant pleaded not guilty at Exh.03. The prosecution examined SIP Ghulam Nabi Thaheem at Exh.04, PC Arbab Ali at Exh.05 and ASI Ameer Ahmed Dahri at Exh.06, their evidence being recorded on 04-10-2021. PW-1 produced the departure and arrival entries Nos.10 and 15 at Exh.4/A, the arrest and recovery memorandum at Exh.4/B, the FIR at Exh.4/C and the request addressed to the Magistrate for recording a confessional statement at Exh.4/D. PW-2 produced the memorandum of the place at Exh.5/A. PW-3 produced entries Nos.16 and 18 at Exh.6/A, the forensic forwarding material at Exh.6/B, the forensic report at Exh.6/C and the courier's movement entries at Exh.6/D.

5. The prosecution subsequently examined PC Niaz Hussain, the carrier of the parcels, at Exh.10 on 12-10-2024. WHC Abdul Khalique Mallah was called under section 540 Cr.P.C. and examined at Exh.12 on 16-11-2024; he produced entry No.32 of Register No.19 at Exh.12/A. The State's statement at Exh.09 gave up Ghulam Raza and Sabir Hussain in view of the compromise in the main case and its assertion that those witnesses had been won over. Their unrecorded testimony cannot be supplied by that assertion.

6. The appellant's statement under section 342 Cr.P.C. was recorded on 22-11-2024 at Exh.14. He denied the recovery, alleged that the property had been foisted upon him and attributed the prosecution version to police officials acting under their superior. He also referred to disposal of the principal case. He neither examined himself on oath nor led defence evidence. These choices did not relieve the prosecution of its burden. The judgment further records that he was released on bail on 21-05-2021, remained absent from 26-04-2025 to 25-10-2025 and was rearrested on the latter date. The process server's evidence is at Exh.15; proceedings under sections 87 and 88 Cr.P.C. were directed on 23-08-2025.

7. In Sessions Case No.543 of 2020, arising out of Crime No.37 of 2020, the learned Additional Sessions Judge, Shahdadpur, passed an order on 29-05-2024 under section 345 Cr.P.C. The order identifies Qamber Ali,

son, Mst. Fatima, widow, and Mst. Seema Batool and Mst. Masooma Batool, daughters, as the deceased's legal heirs. After verification and recording their statements, the Court accepted that they were adults, had acted without pressure or coercion, had forgiven the appellant and had no objection to his acquittal. The appellant was consequently acquitted in that case. Thus, the compromise was subsequent to the alleged occurrence and recovery, but preceded the conviction now under appeal. While the principal case also included section 201 PPC, that section is not made compoundable by section 345. The wording of the connected order cannot enlarge the statutory table; its correctness is not directly under challenge in this appeal.

8. The learned trial Court accepted the police witnesses as consistent, treated the recovery and positive forensic report as corroboration and rejected the plea of foisting. It also relied upon the appellant's alleged admission before the police and reasoned that, as the principal case had been compromised, the absence of a judicial confession had lost significance. It found the charge proved, imposed the maximum substantive term and ordered confiscation of the pistol, magazine and ammunition. Those findings require independent examination; the compromise neither dispenses with proof nor renders an otherwise inadmissible confession admissible.

9. Learned counsel for the appellant argued that the prosecution had failed to prove the particular charge beyond reasonable doubt. He questioned the recovery from another person's cotton field, the absence of private mashirs, the difference between the recovery timings, the absence of individual identifying marks on the ammunition and the inconsistencies regarding who wrote the particulars on the parcel. He referred to the lack of a documented handover entry, the omissions in Register No.19, the absence of a road certificate and acknowledgment by the courier, and the sending of the weapon and alleged crime empties together. He further questioned the discrepancy between the three cartridges allegedly recovered and references to four bullets when the property was opened in Court, the proof of the source and custody of the empties, the admissibility of the police confession, and the failure distinctly to put the ballistic matching circumstance to the appellant. In the alternative, he relied upon the verified compromise, actual custody and the discretionary sentencing range to seek reduction to one year.

10. Conversely, learned APG supported the impugned judgment and contended that the prosecution had succeeded in establishing its case beyond reasonable doubt through the consistent and confidence-inspiring evidence of the police witnesses. He submitted that the pistol was recovered at the pointation of the appellant from the place where it had been concealed by him and that such recovery constituted a material circumstance connecting him with the weapon. According to him, the recovery stood further corroborated by the contemporaneous police entries, the evidence relating to its deposit in the malkhana and subsequent transmission to the forensic laboratory, where the parcels were received with their seals intact. He particularly relied upon the positive forensic report showing that the pistol was functional and that the crime empties had been fired from the same weapon. Learned APG argued that merely because the mashirs of recovery were police officials, their testimony could not be discarded, particularly when section 34 of the Sindh Arms Act, 2013 excludes the application of section 103 Cr.P.C. He further contended that minor discrepancies regarding timings, custody entries or description of the ammunition were natural in character and did not go to the root of the prosecution case. As regards the compromise effected in the connected murder case, learned APG submitted that the offence under the Sindh Arms Act was distinct and independent and could not be wiped away merely because the legal heirs of the deceased had compounded the offence in the principal case. He, therefore, maintained that the conviction recorded by the learned trial Court was based upon sufficient evidence and called for no interference in appeal, and prayed for dismissal of the appeal.

11. I have heard learned counsel for the parties and have perused the record with their able assistance. The questions are whether the charge under section 25 was independently proved by admissible evidence and, only if that question is answered affirmatively, whether the maximum term should be retained. The compromise bears differently upon those two questions. A defect which leaves an ingredient of the offence unproved cannot be answered by reducing the punishment.

12. Section 25, as applicable to the alleged offence on 18-10-2020, concerns use or attempted use of a licensed or unlicensed firearm, or an imitation firearm, for the unlawful purposes specified therein. The prescribed imprisonment may extend to ten years and is accompanied by fine; no minimum term is prescribed. One year's imprisonment is therefore

within the statutory range. Nevertheless, recovery, functionality or want of a licence does not, without more, establish the charged use or attempted use. Sections 23 and 24 address different statutory ingredients; their mention in a heading cannot substitute a finding upon the charge actually tried.

13. The alleged confession to SIP Ghulam Nabi was a confession to a police officer. Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984 exclude its use as a confession proving guilt. Article 40 admits only so much of information received from an accused in custody as distinctly relates to a fact thereby discovered. The appellant's alleged knowledge of the hiding place and any proved discovery may be assessed within that limit; the accompanying admission of murder cannot be carried into the evidentiary scale. Exh.4/D proves a request for a judicial confession, not the recording of one. The witness's admission that no judicial confession was recorded is not displaced by the compromise in the homicide case.

14. The police status of the recovery witnesses does not itself make them incompetent or their evidence unworthy of belief. In *Zafar v The State 2008 SCMR 1254*, the Supreme Court recognised that official witnesses are not disqualified merely because of their employment. Its application here is confined to that evidentiary principle. Section 34 of the Sindh Arms Act itself excludes section 103 Cr.P.C. and permits the persons specified there to witness the search and recovery. The want of private mashirs is therefore not, by itself, a statutory nullity. It remains relevant when testing credibility alongside the disputed location, the claimed but undocumented effort to associate local persons and the other omissions.

15. PW-1 placed departure at 1530 hours and recovery at about 1600 hours, whereas PW-2 referred to reaching the place at about 1630 hours. A difference in estimated time may be explained without defeating an otherwise proved recovery; it cannot simply be ignored when the chronology is contested. More significantly, PW-2 attributed writing on the parcel to ASI Ameer Ahmed at the place of recovery, while the prosecution narrative placed sealing before transfer of investigation. The absence of individual marks on the cartridges and omission of the principal crime number from the recovery parcel must also be considered. Recovery from a cotton field is not automatically recovery from premises exclusively possessed by the appellant; the alleged act of his producing the concealed shopper is the material circumstance requiring proof.

16. It would be inaccurate to say that no custody evidence was produced. PW-3 described receiving the property and depositing it in the malkhana. PW-5 spoke to receipt on 18-10-2020 and removal on 20-10-2020 for dispatch through PW-4. Register No.19, its entry No.32, movement entries and the laboratory acknowledgment were produced. The laboratory noted intact seals. Against this evidence stand the absence of a separate receiving entry on initial transfer, the missing signatures or acknowledgments in the register, PW-5's admission concerning its prescribed form, and PW-4's admission that no road certificate or written authority was supplied. These matters call for a finding on the reliability of the actual links. Intact seals at the destination are corroborative but do not, by themselves, prove each earlier disputed transfer. *Kamal Din alias Kamala v The State 2018 SCMR 577* requires proof of safe custody and transmission of the recovered weapon before the ballistic result can assist the prosecution. Unlike a case with no custody witnesses, the present prosecution examined both the storekeeper and courier; their actual admissions and supporting entries must therefore be evaluated, rather than treating their absence as a fact.

17. The forensic report at Exh.6/C, bearing No.FD/HYD/FA/1627/2020, records receipt on 20-10-2020 of two parcels with three seals apiece. It describes a 7.63 mm (.30 bore) pistol with its number rubbed, a magazine and three live cartridges in one parcel, and two crime empties C1 and C2 with test cartridges in the other. It gives an opinion that the pistol was functional and that the two empties had been fired from it on comparison of the relevant marks. The report can establish that mechanical relationship if its evidentiary foundations are proved. It does not identify the shooter. Nor does it itself prove where C1 and C2 were recovered or how they remained in safe custody before dispatch. Evidence recorded in the parent prosecution does not automatically become evidence in this separate trial merely because the cases are connected.

18. The initial description, the charge and the laboratory receipt refer to three live cartridges, whereas parts of the depositions describing the opening of the property refer to four bullets. The laboratory also recorded returning a test-fired empty. That return provides a possible matter for reconciliation, not a proved explanation that a fourth live cartridge was recovered. The original inventories and the nature of the articles actually produced must be checked before this discrepancy is

characterised as immaterial. The two-day interval from recovery to laboratory receipt is not, standing alone, an extraordinary delay. The more substantial issue is whether the identity and custody of both sets of exhibits were established, particularly the empties said to relate to the earlier occurrence.

19. Question No.4 in Exh.14 put a positive forensic report showing that the pistol was in working condition. It did not expressly put the separate opinion that C1 and C2 had been fired from that pistol. Question No.1 described recovery of the weapon said to have been used in the offence; that general description is not a substitute for confronting the appellant with the particular expert matching circumstance relied upon against him. *Muhammad Shah v The State* 2010 SCMR 1009 and *Muhammad Nawaz and others v The State and others* 2016 SCMR 267 require material incriminating circumstances to be put under section 342 and prohibit use of an unput circumstance for conviction. Applied here, the matching opinion cannot silently be used to bridge the proof of unlawful use while the recorded questioning is confined to functionality.

20. In *Habibullah alias Bhutto and others v The State* (PLD 2007 Karachi 68, a defect in examination under section 342 was addressed by remand from that stage. Such a procedural course does not authorise filling substantive gaps in the prosecution case. Before selecting it, the Court must distinguish an omitted question about otherwise proved evidence from absence of admissible proof of the appellant's use of the weapon. Equally, the appellant's denial and decision not to enter the witness box cannot supply that missing proof. The settlement of the homicide prosecution is neither a confession nor an adjudication that he fired the pistol. The judgment of this Court in *Criminal Appeal No.S-98 of 2016, decided on 04-11-2016 at Hyderabad (unreported)* likewise rejects an inference of personal guilt merely from a compromised parent case and a weapon's alleged connection with it. Its differing recovery and licence facts do not dispense with independent proof here.

21. Excluding the inadmissible confession and the ballistic matching circumstance not distinctly put to the appellant, the remaining evidence does not prove that the appellant used or attempted to use the pistol for the purpose alleged in the charge. Even treating recovery and functionality as proved for this purpose, knowledge of a hiding place and subsequent possession do not complete that ingredient. The compromise in

the principal case proves neither use nor guilt. The given-up witnesses' statements cannot substitute testimony tested in this trial. The infirmity therefore concerns proof of the offence, rather than a circumstance which can be answered by leniency in sentence.

22. The burden remained upon the prosecution throughout. The appellant's absence and failure to lead defence evidence cannot repair its failure to establish an essential ingredient. Nor is this a proper basis for substituting a conviction under sections 23 or 24 without examining their distinct ingredients and the requirements governing alteration of charge and prejudice. A remand merely to repeat examination under section 342 would not itself create evidence identifying the appellant as the user or supply the missing origin and custody of the alleged crime empties. *Muhammad Mansha v The State* 2018 SCMR 772 recognises entitlement to benefit of a reasonable doubt as a right. The doubt here concerns the very act charged under section 25; on the evidence now under consideration, the conviction cannot be sustained.

23. Consequently, the appeal is allowed. The conviction and sentences, including the fine and default imprisonment, imposed by judgment dated 13-12-2025 in Sessions Case No.544 of 2020 are set aside, and Haji Mevo son of Ghulam Abbas Lekhee is acquitted of the charge under section 25 of the Sindh Arms Act, 2013. He shall be released forthwith in this case, if not required to be detained in any other case. The section 29 confiscation direction dependent upon that conviction is set aside; disposal of the weapon and ammunition shall be undertaken by the competent Court in accordance with law, after considering any subsisting case-property requirement and lawful entitlement. No direction to return an unlicensed firearm to the appellant is made. The appeal and pending applications, if any, stand disposed of accordingly.

JUDGE

FAISAL