

HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No.506 of 2023

Present:

Justice Tasneem Sultana

Justice Syed Fiaz Ul Hassan Shah

Appellants : 1. Mst. Shireen @ Samina
2. Rasheed through M/s. Abdul Jalil
and Sajeel Rehman Advocates

Respondent : The State through Mr. Mumtaz Ali
Shah APG Sindh

Date of hearing : 03 07.2025

Date of judgment : 23 08.2025

JUDGMENT

TASNEEM SULTANA, J: Through this criminal appeal, appellants namely Mst. Shireen Samina and Rasheed have assailed the judgment dated 19.09.2023, passed by learned IVth Additional Sessions Judge / Special Court (CNS) Malir. Karachi (Trial Court) in Special Case No 1390 of 2023 arisen out of FIR No 200 of 2023, registered at PS. Sukhan, Karachi, under Sections 6, 9(1)(3)(c) of Control of Narcotic Substances Act, 1997 ('Act of 1997') whereby the appellants Mst. Shireen @ Samina and Rasheed were convicted and sentenced to suffer RI for 14 years each for an offence punishable under Sections 6, 9(1)(3)(c) of the Act of 1997 and to pay fine of Rs 4.00.000/- each and in default of payment of fine, they shall suffer simple imprisonment for four months more. However, the appellants were extended the benefit of Section 382-B Cr.PC by the trial Court.

2. It is alleged that on 28.04.2023 at about 0330 hours police party headed by SIP Riaz Ahmad Sanjnai of PS Sukhan arrested the appellants namely Shireen @ Samina and Rasheed from Muhallah Rehari Goth, Landhi Malir Karachi on being found in possession of 1580 grams and 1130 grams of charas, respectively, under a memo of arrest and recovery prepared in presence of mashirs PC. Waheed Shah and DPC Zubair for that they were booked in the aforesaid FIR.

3. After usual investigation, police submitted the charge-sheet under section 173, CrPC against them. Having been supplied requisite documents as provided under section 265-C Cr. P.C. the Trial Court

framed a formal charge against the accused namely Shireen @ Samina and Rasheed to which they pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined five witnesses. PW-1 complainant, SI-Riaz Ahmed was examined at Ex.3, he produced entry at Ex.3/A, memo of arrest, recovery and personal search at Ex.3/B, FIR at Ex.3/C, entry No.63 at Ex.3/D. entry No. 107/2023 of register No 19 at Ex.3/E and memo of inspection at Ex.3/F: PW-2 P.C. Waheed Shahid at Ex.4; PW-3 SIP Ali Murad at Ex.5, he produced report/entry No. 15 at Ex.5/A, report/entry No.18 at Ex.5/B, letter dated 29.04.2023 for CRO at Ex.5/C. FIR at Ex.5/D, letter dated 29.04.2023 for inspection at Ex.5/E, sample receipt at 5/F, chemical report at Ex.5/G, entries No.51 and 46 at Ex.5/H and 5/1; PW-4 H.C. Ansar Abbas at Ex.6, he produced original register No.19, entry No.107/2023; and PW-5 LPC Nabeela Shah at Ex.10.

5. The statement of appellants under section 342, Cr. P.C. was recorded at Ex. 12 & 13 respectively, wherein they have denied the allegations levelled against them by the prosecution and claimed to be innocent. Appellants deposed that they have falsely been implicated in this case and nothing was recovered from their possession. They, however, neither examined themselves on oath to disprove prosecution's allegations nor they opted to produce any witness in their defence. The Trial Court after hearing the learned counsel for the appellants as well as ADPP for the State convicted the appellants and sentenced them, vide impugned judgment.

6. Arguments heard. Record perused.

7. The prosecution's case rests on the alleged recovery of 1580 grams of charas from the possession of appellant Shireen alias Samina and 1130 grams of charas from the possession of appellant Rasheed, effected by complainant SIP Riaz Ahmed. Both appellants were subsequently arrested under a memo of arrest and recovery.

8. At this juncture, it is pertinent to observe that in cases under the Control of Narcotic Substances Act, 1997, where stringent punishments are prescribed, the superior Courts have repeatedly emphasized that the standard of proof required from the prosecution must be of the highest degree. It is a settled proposition of criminal jurisprudence that the prosecution is duty bound to prove its case beyond reasonable doubt, and any material deficiency must operate in favour of the accused.

9. In narcotics cases, the most crucial consideration is the safe custody of the recovered substance and the safe and secure transmission

of its representative samples from the time of recovery until their production before the trial Court. The rationale is that the report of the Chemical Examiner attains conclusiveness only when the sanctity of the chain of custody remains intact and free from suspicion. Therefore, the pivotal question that falls for determination in this appeal is:

"Whether the prosecution has succeeded in proving an unbroken chain of safe custody and safe transmission of the narcotics from the time of seizure up to their production in Court, as required by law?"

10. In the present case, the complainant PW-1 SIP Riaz Ahmed deposed that the narcotic substances recovered from the appellants were seized, sealed into two separate parcels under memo of arrest (Exh.-B), and thereafter handed over to PW-4 HC Ansar Abbas, Head Moharrar, as reflected from the entry No. 107 of 2023 dated 28.04.2023 (Exh.-3/E). PW-3 SIP Ali Murad, who was entrusted with the investigation, stated that on the same day, I.e., 28.04.2023, he proceeded to the place of incident (Exh.-3/F), and later on 03.05.2023 deposited the sample parcels in the office of the Chemical Examiner (Exh.-5/E. Exh.-5/G). PW-4 HC Ansar Abbas asserted that on 02.05.2023, the said parcels were delivered by him to SIP Ali Murad.

11. A serious infirmity, however, is manifest from the perusal of the extract of Register No.XIX. In column No.2, the name of SIP Riaz Ahmed along with the date of occurrence has been incorporated, but in columns No.6 and 7, it is recorded that the entire case property was handed over to SIP Ali Murad on 02.04.2023. This date precedes the alleged occurrence of the offence, which, according to the prosecution itself, took place on 28.04.2023. No explanation whatsoever has been furnished by the prosecution as to how the case property could have been handed over or received on a date anterior to the incident. Such a glaring contradiction shakes the very foundation of the prosecution's claim of safe custody and transmission of the narcotics.

12. This infirmity is further aggravated by the fact that the Chemical Examiner's report records that two sample parcels were received in the said office on 03.05.2023 under memorandum No.122/2023 (02.05.2023), bearing date 29.04.2023, through SIP Ali Murad. The inconsistency in dates and absence of any cogent explanation casts serious doubt upon the integrity of the chain of custody, which is a condition precedent for the report of the Chemical Examiner to be treated as reliable evidence.

13. It is further observed that, according to the prosecution's own stance, the entire case property was forwarded to the office of the Chemical Examiner for analysis. However, the record is conspicuously

silent as to who subsequently brought back the case property from the said office and when it was returned for its production before the trial Court during the course of evidence. The prosecution has not examined any official or produced any documentary proof to establish this crucial link. The safe return and production of case property in Court is as essential as its safe transmission to the Chemical Examiner, because unless this chain is shown to be complete and free from suspicion, the sanctity of the case property stands compromised. In narcotics cases, where the conviction primarily rests upon the report of the Chemical Examiner, any gap in the chain of custody vitiates the evidentiary value of such a report and renders it incapable of sustaining conviction.

14. It is by now a settled principle of law that the prosecution is under a bounden duty to establish not only the recovery of narcotics, but also the separation of samples and their onward transmission through safe and secure hands, any lapse or violation in this regard strikes at the very root of the prosecution's case. Reliance may be placed upon the authoritative pronouncement of the Hon'ble Supreme Court in *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039), wherein it was held that:

*9. We have noted above that in Criminal Appeals Nos.523 to 525/2017 and No. 22/2018, safe custody and safe transmission of the alleged drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory are not satisfactorily established. The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. This Court has already held in *Amjad Ali v. State* (2012 SCMR 577) and *Ikramullah v. State* (2015 SCMR 1002) that where safe custody or safe transmission of the alleged drug is not established, the Report of the Government Analyst becomes doubtful and unreliable ”*

Reliance is also placed on case of *Mst. Sakina Ramzan Vs. The State* (2021 SCMR 451), wherein it has been held that:-

"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug storage

of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e. in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner."

15. Since the prosecution has failed to establish the safe custody and secure transmission of the parcels of case property from the police station to the office of the Chemical Examiner, Government of Sindh, Karachi, and thereafter to the Court, the report of the Chemical Examiner (Exh.-5/G) has consequently lost its conclusiveness and cannot be relied upon as the basis for conviction. It is by now well settled that where the safe custody of the allegedly recovered substance or case property is not proved, there is no necessity to examine the other merits of the case, as such deficiency straightaway entitles the accused to acquittal. In this regard, guidance is sought from the dictum laid down by the Hon'ble Supreme Court of Pakistan in *The State through Regional Director ANF v. Imam Bakhsh* (supra).

16. It is also a cardinal principle of criminal jurisprudence that every accused person is to be presumed innocent unless proven guilty through evidence of unimpeachable character. The prosecution bears the bounden duty to prove its case beyond any shadow of doubt, and if a reasonable doubt arises, its benefit must be extended to the accused, not as a matter of concession, but as a matter of right. The law does not countenance conviction on the basis of presumptions or conjectures, particularly in cases carrying severe punishments under the CNSA.

17. It has been repeatedly held by the superior Courts that even the slightest doubt surfacing on the record is sufficient to discredit the prosecution's case and entitles the accused to acquittal. Further, there can be no second opinion that the emphasis of justice is upon the quality of evidence, which must be free from suspicion and strong enough to dispel any apprehension of false implication of innocent persons along with the guilty.

18. In this regard, reliance is placed upon the celebrated dictum of the Hon'ble Supreme Court in *Tariq Pervez v. The State* (1995 SCMR 1345),

wherein it was held that the benefit of doubt, however slight, must always go to the accused. The principle has been reiterated in *Muhammad Akram v. The State* (2009 SCMR 230), where it was categorically observed that even the possibility of a single reasonable doubt is sufficient to discredit the prosecution's case. The same principle was earlier echoed in *Muhammad Akram v. The State* (2001 SCMR 23), thereby firmly establishing this rule as a cornerstone of criminal justice in Pakistan.

19. The nutshell of the foregoing discussion is that the prosecution has miserably failed to prove its case against the appellants beyond the shadow of doubt. The material contradictions regarding the chain of custody, the unexplained discrepancies in dates, and the absence of evidence establishing safe return and production of the case property before the trial Court, all combine to render the prosecution's version unreliable. Once the prosecution's case collapses on such fundamental grounds, there remains no necessity to advert or scrutinize the defence version, as the same becomes inconsequential in the face of prosecution's failure to discharge its primary burden of proof.

20. Resultantly, the instant appeal is allowed. The impugned judgment dated 19.09.2023, passed by the learned Trial Court, is hereby set aside. The appellants, namely Mst. Shireen alias Samina and Rasheed, are acquitted of the charge by extending to them the benefit of doubt. They shall be released forthwith, if not required in connection with any other case.

21. These are the reasons of our short order dated 03.07.2025.

JUDGE

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