# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

***Criminal Appeal No.D-13 of 2025***

***Before*:**
***Mr. Justice Shamsuddin Abbasi.***
***Mr. Justice Ali Haider 'Ada'.***

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| Appellant | : | Imdad Ali @ Imdad son of Mumtaz Ali Shaikh, *through* Mr. Muhammad Hashim Soomro, Advocate. |
| The State | : | *through* Mr. Nazir Ahmed Bhangwar, Deputy Prosecutor General, Sindh |
| Date of Hearing | : | 17-09-2025. |
| Date of Decision | : | 17-09-2025. |
| Date of Reason | : | 24-09-2025. |

## *JUDGMENT*

***Ali Haider 'Ada';-*** Through the instant Criminal Appeal, the appellant has assailed the judgment dated 26.03.2025, rendered by the learned Sessions Judge/Special Judge, CNS, Shikarpur, in Special Case No. 489 of 2024, arising out of Crime No. 121 of 2024, registered at Police Station Stuart Ganj, District Shikarpur, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the said judgment, the learned trial Court convicted the appellant and sentenced him to undergo rigorous imprisonment for nine (09) years and to pay a fine of Rs.100,000/- (Rupees One Hundred Thousand only), and in case of default in payment of fine, he was directed to suffer simple imprisonment for a further period of four (04) months. The trial Court, however, extended the benefit of Section 382-B, Cr.P.C, whereby the period already undergone by the appellant during investigation and trial was ordered to be counted towards his substantive sentence.

2. The precise facts of the prosecution case are that on 11.09.2024, at about 2000 hours, the complainant party headed by ASI Imtiaz Ali, during routine patrolling, reached near Manchar Shah Graveyard bypass, Larkana Bypas, Shikarpur, where they noticed one person moving in a suspicious manner. Upon apprehension and personal search of the said individual, a black shopper was allegedly recovered from his possession, which, on

inspection, was found to contain three slabs of Charas weighing 1500 grams in total, along with three currency notes of Rs.300/-. After completing the requisite codal formalities of arrest and seizure, the case property was secured, and subsequently, an FIR was lodged against the accused at the concerned Police Station. Thereafter, the investigation of the case was entrusted to the Investigating Officer for further proceedings in accordance with law.

3. After completion of the usual investigation, a challan was submitted before the learned trial Court. Thereafter, in due course, copies of the relevant documents, as required under Section 265-C, Cr.P.C, were supplied to the appellant. On 01.11.2024, a charge was framed against the appellant, to which he pleaded not guilty and claimed to be tried. Consequently, the learned trial Court directed the prosecution to lead its evidence in support of the charge.

4. The prosecution, in order to substantiate its case, commenced evidence by examining the complainant ASI Imtiaz Ali, who reiterated the contents of the FIR and produced on record the copy of the FIR, the memo of arrest and recovery, as well as the relevant Roznamcha entries. Thereafter, the prosecution examined Nazir Ahmed, the mashir of the case, who produced and exhibited the memo of place of occurrence. The prosecution further examined the Incharge Malkhana, who produced the relevant entry recorded in Register No.19 (Form 22.70) regarding deposit of case property. Subsequently, the subsequent Investigating Officer appeared and produced the Chemical Examiner's Repo. Lastly, the first Investigating Officer was examined, who placed on record the relevant Roznamcha entries regarding his movements, the road certificate, and the criminal record of the appellant. Upon completion of the above evidence, the learned District Public Prosecutor filed a statement declaring that the prosecution evidence was closed.

5. Thereafter, the statement of the accused/appellant was recorded under Section 342, Cr.P.C., wherein he professed his innocence, denied the allegations leveled against him, and prayed for his acquittal. The appellant, however, neither examined himself on oath under Section 340(2), Cr.P.C, nor did he produce any defense evidence in his support.

6. Upon completion of the trial and after hearing the learned counsel for the parties, the learned trial Court proceeded to pass the impugned judgment dated 26.03.2025, whereby the appellant was convicted and sentenced as mentioned hereinabove. The said judgment is now under challenge through the instant Criminal Appeal.

7. Learned counsel for the appellant, while addressing the Court, submitted that the prosecution case is fraught with major inconsistencies and contradictions, which strike at the very root of the matter. He contended that the prosecution has miserably failed to establish its case against the present appellant beyond a reasonable doubt. It was argued that there is an unexplained delay of about five (05) days in sending the samples to the Chemical Examiner, which, without any plausible explanation, casts serious doubts upon the veracity of the prosecution case. Learned counsel further submitted that the alleged place of incident is admittedly a thickly populated and busy area, yet no effort was made to associate any independent witness, which omission creates further doubt regarding the prosecution story. On these grounds, learned counsel finally prayed for the acquittal of the appellant.

8. Conversely, the learned Deputy Prosecutor General supported the impugned judgment and submitted that the prosecution had successfully proved its case through cogent oral and documentary evidence. He argued that the contraband was recovered directly from the possession of the appellant, and no mala fide or ill-will on the part of the complainant or prosecution witnesses has been established. He further contended that the learned trial Court, after proper appraisal of the evidence and consideration of all aspects of the matter, rightly convicted the appellant. He, therefore, prayed for the dismissal of the appeal and for maintaining the conviction and sentence awarded by the trial Court

9. Heard the arguments advanced by the learned counsel for the appellant as well as the learned Deputy Prosecutor General. We have also carefully perused the material available on record with their able assistance.

10. It is the prime duty of the prosecution, particularly in cases under the Control of Narcotic Substances Act, to prove each and every aspect of the charge by establishing the offence against the accused beyond reasonable

doubt. In the present case, it is alleged that three slabs of Charas were secured from the possession of the appellant. However, it is noted with concern that the individual weight of each slab was neither ascertained at the time of recovery nor mentioned in the prosecution record. Instead, reliance has been placed only on the collective weight of 1500 grams, which is not a safe or acceptable practice to sustain conviction in narcotics cases. The raiding party failed to weigh each slab separately and also did not provide any explanation for this omission. It is imperative in such matters that the prosecution should segregate and weigh each slab or packet individually, particularly when the entire recovered weight is sought to be attributed to the accused. The failure to do so raises serious doubts about the credibility and transparency of the recovery process. The law does not permit the prosecution to adopt a broad-brush approach by merely stating the cumulative weight and shifting the burden upon the accused. The initial burden lies squarely with the prosecution to conclusively establish the identity, description, weight, and linkage of the contraband with the accused. In view of these deficiencies particularly the failure to weigh each packet individually, the lack of proper documentation, and the absence of any cogent explanation, this Court is of the considered view that the prosecution has not discharged its burden of proof beyond reasonable doubt. In this regard, reliance is placed upon the cases of **Qalandar Shah v. The State and another (2021 YLR 2349), and Ansar Abbas alias Pakori v. The State and another (2021 P.Cr.L.J 138).**

11. So far as the description or identification marks of the contraband are concerned, it is a settled principle of law that if the recovered narcotics bear any distinct mark, stamp, or specific description, the same must be duly documented in the memo of recovery as well as reflected in the chemical examination report, so as to eliminate every possibility of substitution or tampering. In the present case, according to the deposition of the complainant, the recovered Charas allegedly bore a golden-colored stamp mark; however, it is an admitted position that neither the memo of recovery nor the Chemical Examiner's report makes any mention of such a mark. This omission creates a serious dent in the prosecution's story, as the absence of documentation of an admitted distinguishing feature of the case property casts doubt upon the identity of the alleged contraband. In narcotics cases, where stringent punishments are prescribed, such lapses cannot be

overlooked, as the law requires strict adherence to procedural safeguards and complete transparency in handling the case property. In this context, reliance is placed upon the cases of **Bahawal Shaikh v. The State (2025 MLD 840), Muhammad Arif v. The State (2023 YLR 2369), and Ahsan Meerani v. The State (2022 YLR Note 5).**

12. The complainant deposed that after registration of the FIR, he handed over the case property along with the accused to the Investigating Officer Habibullah. The said Investigating Officer also endorsed this version and further stated that after receiving the case property, he handed over case property thereof to Nadeem Hussain (Incharge Malkhana), for its deposit in the Malkhana under proper entry in Register No.19. The Incharge Malkhana likewise affirmed that he received the case property and deposited the same in the Malkhana. However, a close scrutiny of the record reflects a material contradiction. The Register No.19 entry does not show the name of the Incharge Malkhana as the depositor, but instead records the name of the Investigating Officer Habibullah as the depositor. This inconsistency remains unexplained on the record, and the Investigating Officer himself has not supported or clarified this aspect. Such a discrepancy in the chain of custody of the case property creates a serious doubt regarding safe custody and safe transmission of the narcotics, which is a mandatory requirement under law. In this regard, reliance is placed upon the judgment of **Zaheer v. The State (2023 YLR 276),** as well as upon the pronouncements of the Hon'ble Supreme Court in cases of **Muhammad Iqbal v. The State (2025 SCMR 704), Abdul Haq v. The State (2025 SCMR 751), Asif Ali and another v. The State (2024 SCMR 1408), Javed Iqbal v. The State (2023 SCMR 139), Qaiser Khan v. The State (2021 SCMR 363), Mst. Sakina Ramzan v. The State (2021 SCMR 451), and Zubair Khan v. The State (2021 SCMR 492).**

13. No doubt, Section 25 of the CNS Act excludes the applicability of Section 103, Cr.P.C. in narcotics cases; however, the settled principle of law is that where independent witnesses are available, the prosecution must furnish a satisfactory explanation for their non-association. In the present case, even the complainant himself admitted that the alleged place of recovery is surrounded by residential houses belonging to different communities, which demonstrates that the area is a thickly populated locality. Despite such availability, no independent person was joined in the

recovery proceedings. Reliance in this context is placed upon the case of **Danish v. The State (2025 YLR 1355)**, wherein it was held that:

> *11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.*

Further guidance is available from the judgment of this Court in the case of ***Mir Muhammad and others v. The State*** **(2024 PCr.LJ 370)**, wherein a Division Bench of this Court has held that:

> *"…It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses."*

14. In the instant matter, the prosecution has completely failed to produce any such independent source or witness to corroborate the recovery and arrest, thereby creating a serious lacuna in the chain of evidence. Support is also drawn from the case of **Arshad Ali and another v. The State (2024 P.Cr.L.J 1183)**, Similarly, in the case of **Shahzaib alias Wadero Feroze v. The State (2024 YLR 1298)**, this Court categorically held that

> *"....It has come in evidence that the accused was arrested from Tarazo Chowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and*

> *recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not a formality but it's object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereo type manner without making an effort to discover the actual facts/truth.*

15. Moreover, the sending of the samples is concerned, according to the prosecution, the Charas was allegedly recovered from the possession of the appellant on 11.09.2024, whereas the same was dispatched to the Chemical Examiner on 16.09.2024, i.e., after a delay of five days. The record shows that no plausible explanation has been furnished by the prosecution for this delay. In this context, reliance is placed upon the judgment in **Zaheer v. The State (2023 YLR 276)**. Further reliance is placed on **Nadir Hussain v. The State (2025 YLR 487), Bachando v. The State (2023 YLR 2622), and Lal Bux alias Lal v. The State (2023 YLR 321)**.

16. During perusal of the record it further transpires that the question regarding the Chemical Examiner's report was not put to the appellant at the time of recording his statement under Section 342, Cr.P.C. It is a well-settled principle of law that any incriminating material not brought to the notice of the accused during his statement cannot subsequently be used against him. The very object of putting such questions is to enable the accused to furnish his explanation, and denial of that opportunity strikes at the root of a fair trial. In this perspective, guidance is sought from the judgment of the Honourable Supreme Court in **Abdul Hayee and Abdullah alias Ghazali and another v. The State and others (2025 SCMR 281)**.

17. It is a settled canon of criminal justice that the prosecution must prove its case beyond the shadow of reasonable doubt. Any doubt arising in the prosecution's story, if not reasonably explainable, must go to the benefit of the accused. The principle is deeply embedded in our jurisprudence and finds support not only in case law but also in Latin maxims of criminal law. **In dubio pro reo – *"In doubt, the accused is to be favored".***Support is also drawn from the case of **Qurban Ali vs. The State (2025 SCMR 1344)**.

18. Keeping in view the above facts and circumstances, it has been established that the prosecution failed to prove its case against the appellant beyond the shadow of doubt. Accordingly, vide short order dated 17.09.2025, this Court had acquitted the appellant, set aside the impugned judgment, conviction, and sentence, and directed the jail authorities concerned to release him forthwith from the above charge, if not required in any other case. These are the detailed reasons in support of the said short order of even date.

**JUDGE**

**JUDGE**