IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.D-14 of 2024

(Zameer Hussain Vs. The State)

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

Appellant	:	Zameer Hussain S/o Taj Muhammad, Mirjat, *through* Mr. Irfan Badar Abbasi, 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	:	23.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- The appellant has preferred the present jail appeal challenging the judgment dated 21.03.2024, passed by the learned Additional Sessions Judge-I / Special Judge for CNS, Shikarpur, whereby the appellant was convicted and sentenced to rigorous imprisonment for life and a fine of Rs.500,000/-. In case of default in payment of fine, the appellant was directed to undergo simple imprisonment for a further period of five years. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant. The conviction and sentence were awarded in Special Case No. 286/2022, arising out of Crime No. 10/2022, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station Sultan Kot.

2. The brief facts of the prosecution case are that complainant SIP Mehrab Ali, along with his subordinate staff, while present near Agha Petrol Pump, Shikarpur, apprehended the appellant who was carrying a plastic sack. Upon search, fourteen slabs of Charas along with two additional pieces, one large and one small, were recovered, weighing in total 14,620 grams (14 kilograms and 620 grams). After completing the

requisite codal formalities, the appellant, along with the recovered narcotics, was taken to the Police Station, where the FIR was duly lodged.

3. After the usual investigation, a challan was submitted and the accused was sent up for trial. The learned trial Court provided the requisite documents to the appellant and framed charge on 28.11.2022, to which the appellant pleaded not guilty and claimed trial. Consequently, the prosecution was directed to lead its evidence. It is pertinent to mention that on 10.05.2023, the statement of the process server was recorded, wherein he deposed that the complainant, SIP Mehrab Ali, had passed away.

4. The prosecution commenced its evidence by examining Muhammad Aslam, who acted as mashir. He deposed and produced the relevant roznamcha entries regarding the movement of the seizing party, as well as the memo of arrest and recovery and the memo of the place of incident. The prosecution then examined Haji Khan, Incharge Malkhana, who produced one Malkhana entry recorded in Register No. 19 (on plain white paper). Thereafter, Shabir Ahmed, a police official who acted as dispatch rider, was examined and he exhibited the road certificate. The Investigation Officer was also examined; he placed on record the copy of the FIR, relevant roznamcha entries, the letter addressed to the S.S.P, the S.S.P's forwarding letter to the Chemical Examiner, and the chemical examination report. Subsequently, the learned Law Officer filed a statement, whereupon the prosecution evidence was closed.

5. Thereafter, the learned trial Court recorded the statement of the appellant under Section 342, Cr.P.C, wherein he professed his innocence and prayed for acquittal. In support of his defence, he also produced a raid report issued by the Magistrate, Garhi Yasin. Upon conclusion of the trial and after hearing the learned counsel for the parties, the learned trial Court passed the impugned judgment, which is now under challenge through the present appeal.

6. Learned counsel for the appellant contended that the appellant has been falsely implicated in this case with mala fide intent. It was submitted that although the FIR was lodged on 29.03.2022, a raid had already been conducted on the application of Mst. Rabul Khatoon, a relative of the appellant, for his illegal detention under Section 491, Cr.P.C. Although the

appellant was not recovered during the said raid, his arrest was subsequently shown, thereby creating a cloud of doubtful circumstances surrounding the prosecution case. Learned counsel further argued that all the witnesses examined were police officials, despite the fact that the alleged recovery was effected near a petrol pump, a public place where independent witnesses could have easily been associated. Admittedly, the complainant had expired, but to establish the case through the seizing party, the prosecution ought to have examined another mashir or marginal witness. Instead, only one mashir was produced, resulting in serious contradictions and inconsistencies in the prosecution evidence. On these grounds, he prayed for the acquittal of the appellant.

7. Conversely, the learned Law Officer argued that the contraband was recovered from the exclusive possession of the appellant, and no mala fide against the complainant party was demonstrated by the defence. He further submitted that the case of the appellant does not fall within any exception relating to the chain of custody or continuity of circumstances. Therefore, the learned trial Court had rightly convicted and sentenced the appellant, and the conviction deserves to be maintained.

8. Heard the learned counsel for the parties and perused the material available on record.

9. From the perusal of the record, it transpires that, according to the prosecution, the place of incident was the petrol pump of Agha Taimoor Khan. Although the site was described as abandoned, the first prosecution witness in his deposition admitted the presence of private persons at the spot. In such circumstances, independent witnesses ought to have been joined in the proceedings. No doubt, Section 25 of the CNS Act excludes the applicability of Section 103, Cr.P.C, yet such exclusion is not to be applied in a *stricto sensu* manner. Where the prosecution itself acknowledges the presence of independent persons at the place of occurrence, it is incumbent upon it to offer a plausible justification for their non-association. The present case, however, is lacking in such justification, thereby casting a serious doubt upon the prosecution version. The absence of such independent corroboration materially undermines the prosecution's case. In the present matter, the prosecution has utterly failed to produce any independent source or witness to substantiate the alleged recovery and arrest. This omission creates a serious lacuna in the chain of

evidence, which directly impacts the credibility of the prosecution version. Reliance is placed upon the decision of this Court in **Arshad Ali and another vs. The State (2024 PCr.LJ 1183) [Sindh-DB]**, similarly, in the case of **Shahzaib alias Wadero Feroze vs. The State (2024 YLR 1298) [Sindh-DB]**, this Court 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 stereotype manner without making an effort to discover the actual facts/truth.*

Further, support is drawn from the case of **Danish vs the state 2025 YLR 1355,** as 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.*

10. It is an admitted position that the complainant had expired prior to the commencement of trial. In such circumstances, it was essential for the prosecution to establish its case against the appellant by producing another marginal witness. The prosecution case rests upon five police officials who were shown as members of the seizing party; therefore, the prosecution was primarily required to examine another witness from the seizing party, rather than relying solely on the testimony of a single mashir. The withholding of such material witnesses attracts an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, thereby further weakening the prosecution case.

11. The prosecution's stance is that, after registration of the FIR, the contraband material along with the accused was handed over to the Investigation Officer under the relevant roznamcha entry. The Investigation Officer, in his deposition, testified that upon receiving the recovered substance from the complainant, he handed over the case property to the Incharge Malkhana, who placed the same in the Malkhana under a proper entry. The Incharge Malkhana, when examined, also affirmed that the property had been deposited and entered in Register No. 19. However, the documentary record tells a different story. A careful perusal of the Malkhana entry reveals that it contains no mention that the case property was kept in safe custody by the Incharge Malkhana. Instead, the name of the depositor is recorded as that of the Investigation Officer. Significantly, the Investigation Officer himself did not support this version of the documentation in his evidence. This glaring inconsistency cast serious doubt upon the safe transmission and secure custody of the narcotics allegedly recovered, thereby shaking the credibility of the prosecution case regarding the chain of custody. In this context, reliance is placed on the judgment in ***Zaheer v. The State*** **(2023 YLR 276)** Additional support is drawn from the decisions of the Honourable Supreme Court in ***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)**, all of which reiterate the imperative nature of adherence to the procedural safeguard.

12. Furthermore, the record reveals that the entry made in Register No. 19 is not in accordance with the prescribed proforma contemplated under Rule 22.70 of the Police Rules, 1934. For ready reference, the said Rule together with the prescribed proforma is reproduced herein below:

> *22-70. Register No. XIX:- This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall me noted in the appropriate column.*

FORM No. 22-70

POLICE STATION _____ _____ DISTRICT

Register No. XIX. Store - Room Register (Part-I)

Column 1, -- Serial No.

2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. -- Date of deposit and name of depositor.

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.

6. -- How disposed of and date.

7.-- Signature of recipient (including person by whom despatched).

8. -- Remarks.

13. In view of the foregoing facts, when Register No. 19 was not produced in its original form, and only a plain white paper containing a description of the property was brought on record, the same cannot be treated as a lawful entry of Register No. 19. Mere description on plain paper is insufficient to establish compliance with the statutory requirement. Reliance is placed on the recent judgment of the Honourable Supreme Court in ***Criminal Petition for Leave to Appeal No. 219-P of 2023, titled Irshad Khan v. The State,*** wherein it was observed that an extract of Register No. 19 prepared on plain paper cannot be relied upon as a substitute for the original register, and its exhibition was rightly objected to. The Honourable Supreme Court in case of **Jeehand v. The State (2025 SCMR 923),** had held that:

> *We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till it's*

> *receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.*

14. Moreover, the Honourable Apex Court in the case cited **Jeehand v. The State** *supra* has been pleased to hold that…"**Communi observantia non set recedendum---**When law requires a thing to be done in a particular manner, the same must be done accordingly and if prescribed procedure is not followed, it would be presumed that the same had not been done in accordance with law.

15. Moreover, the dispatch rider also failed to produce any record of his movement pertaining to the deposit of the case property before the Chemical Examination Laboratory. This omission strikes at the root of the prosecution's claim of safe transmission of the recovered substance. In this regard, the Honourable Supreme Court in ***Irshad Khan v. The State*** **(**supra) categorically observed that the fair play demands that it should have been tendered in evidence to prove the fact.

16. It is a well-settled principle of Criminal jurisprudence that if a single circumstance creates a reasonable doubt in the prosecution's case, the accused is entitled to the benefit of such doubt. This principle is deeply rooted in the maxim ***"in dubio pro reo", meaning that when in doubt, the decision should favor the accused.*** In the instant matter, as has been demonstrated through the various inconsistencies, discrepancies, and procedural lapses in the prosecution's case, even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of **Qurban Ali vs. The State (2025 SCMR 1344)**.

17. In view of the foregoing circumstances, it is manifest that the prosecution has failed to prove the charge against the appellant beyond the shadow of reasonable doubt. Accordingly, the appellant is entitled to

the benefit of doubt, and the conviction recorded by the learned trial Court could not be sustained. This Court had already allowed the instant appeal through a short order dated 17.09.2025, wherein it was ordered that the appellant stood acquitted of the charge. Consequently, in the said short order, the impugned judgment of conviction and sentence had been set aside and the jail authorities had been directed to release the appellant forthwith, if not required to be detained in any other case. The detailed reasons recorded hereinabove constitute the basis of the said short order.

JUDGE

JUDGE