

THE HIGH COURT OF SINDH, CIRCUIT COURT AT LARKANA

Before:

Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada',

Criminal Appeal No.D-09 of 2026

(Abdul Hameed v. The State)

Appellant: Abdul Hameed Mahar, through Mr. Shahbaz Ali M. Brohi, Advocate.

Respondent: The State, through Mr. Aitbar Ali Bullo, D.P.G. Sindh.

Date of hearing: 03.09.2026.

Date of Judgment: 03.09.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through the instant Criminal Appeal, the appellant/convict Abdul Hameed son of Abdul Majeed Mahar has called in question the legality, propriety and correctness of judgment dated 20.02.2026 passed by the learned Special Judge for CNS/Sessions Judge, Kashmore at Kandhkot, in Special Case No.26 of 2025, arising out of Crime No.184/2025 registered at Police Station A-Section, Kandhkot, for an offence punishable under section 9(i)(3)(c) of the Sindh Control of Narcotic Substances (Amendment) Act, 2024, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.300,000/-, and in default thereof to further undergo simple imprisonment for two months, with benefit of section 382-B, Cr.P.C. The appellant, who was on bail during trial, was taken into custody and remanded to Central Prison Sukkur. He seeks setting aside of the impugned judgment and his acquittal from the charge.

2. The brief background of the prosecution case is that on 26.07.2025, SIP Rukun Din, then posted at Police Station A-Section, Kandhkot, allegedly left the police station along with PC Muhammad Tayab, PC Muhammad Asad and DPC Himat Ali for patrolling vide departure entry No.17, at 1330 hours. According to

the prosecution, while patrolling on Juman Shah-CIA Center road, the police party reached near Ilyas warehouse at about 1430 hours, where they allegedly noticed a person carrying a black-coloured shopper in his right hand. On seeing the police, the person allegedly attempted to escape towards the north but was apprehended at a distance of about 10/15 paces. According to SIP Rukun Din, the apprehended person disclosed his name as Abdul Hameed Mahar and the shopper allegedly recovered from him was found to contain 1500 grams of charas. A personal search allegedly resulted in recovery of Rs.400/-. The contraband was allegedly weighed and sealed at the spot, whereafter a mashirnama of arrest and recovery was prepared and FIR No.184/2025 was registered at Police Station A-Section, Kandhkot.

3. The prosecution case further is that after registration of the FIR, the case property, accused and relevant papers were handed over to SIP Khawand Bux, the Investigating Officer. The alleged narcotic was deposited in the police malkhana through WHC Ghulam Mustafa under entry No.360 of Register No.19. Thereafter, the Investigating Officer claimed to have sent the sealed parcel through PC Niaz Muhammad to the Chemical Examiner, Rohri, and a positive chemical report was subsequently received. After completion of investigation, challan was submitted before the competent Court.

4. At the trial, the prosecution examined five witnesses. PW-1 SIP Rukun Din was examined at Ex.03; PW-2 PC Muhammad Tayab at Ex.04; PW-3 WHC Ghulam Mustafa at Ex.05; PW-4 SIP Khawand Bux, Investigating Officer, at Ex.06; and PW-5 PC Niaz Muhammad at Ex.07. Documentary material including departure entries, mashirnama of arrest and recovery, FIR, malkhana record, inspection memo, road certificate and Chemical Examiner's report was produced. After closure of the prosecution evidence, the statement of the appellant under section 342, Cr.P.C. was recorded. The appellant denied the allegations and claimed false implication. He did not examine himself on oath but produced Mst. Hayatan as a defence witness, who produced material relating to an application under section 491, Cr.P.C. filed before the learned Sessions Court, Shikarpur.

5. The learned trial Court, after considering the evidence, held that the prosecution had proved the recovery of 1500 grams of charas from the appellant beyond reasonable doubt and accordingly convicted and sentenced him. The learned trial Court principally relied upon the evidence of PW-1 and PW-2 as recovery witnesses, the evidence regarding malkhana custody and transmission of the parcel, and the positive report of the Chemical Examiner. It also held that the objections regarding non-association of private persons, non-recording of video and

the defence plea regarding previous illegal detention did not create any reasonable doubt.

6. Learned counsel for the appellant has contended that the impugned judgment is contrary to the evidence available on record and that the prosecution failed to prove its case beyond reasonable doubt. He contended that the entire recovery is supported only by police officials; that material contradictions exist in the statements of PW-1 and PW-2; that the prosecution evidence itself contains a serious discrepancy regarding the identity of the accused; that the place of alleged recovery was a busy locality but no independent person was associated; that the alleged recovery was not video-recorded; and that the prosecution failed to establish an unimpeachable chain of custody of the alleged narcotic. Learned counsel has further referred to the proceedings under section 491, Cr.P.C. initiated at Shikarpur to demonstrate that the appellant had been in police custody prior to the date on which his arrest in the present narcotics case was shown.

7. Conversely, learned D.P.G. Sindh for the State has supported the impugned judgment and contended that the recovery of 1500 grams of charas was effected from the conscious possession of the appellant and that the evidence of the police witnesses is consistent on material particulars. He contended that official witnesses cannot be discarded merely because they happen to be police officials and that the positive report of the Chemical Examiner corroborates the prosecution case. He further contended that non-association of private mashirs is not fatal and that the defence plea regarding prior detention was not sufficient to displace the positive evidence of recovery. He has prayed for dismissal of the appeal and maintenance of the conviction and sentence.

8. We have heard the learned counsel for the appellant and learned D.P.G. Sindh for the State at considerable length and have carefully examined the impugned judgment, the evidence of all prosecution witnesses, the documentary material brought on record, the statement of the appellant under section 342, Cr.P.C., the defence evidence and the entire record and proceedings of the case.

9. We have considered the prosecution evidence with particular care because the conviction of the appellant rests substantially upon the alleged recovery of narcotic substance. In a narcotics case, the prosecution is required not merely to prove that a substance was eventually found to be narcotic by the Chemical Examiner, but also to establish that the substance examined by the laboratory was the very same substance allegedly recovered from the accused, that it remained safely sealed and preserved, and that every link in the chain of custody has been satisfactorily established. The principle has been repeatedly recognized in

the authorities relied upon in the record, including *Ameer Zeb v. The State* (PLD 2012 SC 380), *Ikramullah and others v. The State* (2015 SCMR 1002), *The State through Regional Director, ANF v. Imam Bakhsh and others* (2018 SCMR 2039), *Mst. Razia Sultana v. The State and another* (2019 SCMR 1300), *Zahir Shah alias Shat v. The State* (2019 SCMR 2004), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Gulzar v. The State* (2021 SCMR 380), *Javed Iqbal v. The State* (2023 SCMR 139), *Muhammad Hazir v. The State* (2023 SCMR 986), *Asif Ali and another v. The State* (2024 SCMR 1408), *Muhammad Iqbal v. The State through P.G. Sindh* (2025 SCMR 704), *Abdul Haq v. The State* (2025 SCMR 751) and *Farman Ali and another v. The State* (2025 SCMR 1730).

10. PW-1 SIP Rukun Din, the complainant and head of the police party, stated that he apprehended the appellant after the latter allegedly attempted to escape and that 1500 grams of charas were recovered from the shopper carried by him. He stated that the contraband was weighed and sealed at the spot and that the mashirnama was prepared there. However, his cross-examination brings forth circumstances which cannot be ignored. He admitted that the place of arrest was situated in a busy area and that there were surrounding roads and streets. He further admitted that no private person was associated with the proceedings and that **no video recording of the arrest and recovery** was produced. He also admitted that the serial numbers of the recovered currency notes were not mentioned in the mashirnama. More importantly, PW-2 PC Muhammad Tayab, who was presented as a recovery mashir, does not completely support the prosecution version in a manner which can safely sustain a conviction. In his examination-in-chief, while describing the person allegedly apprehended, he stated that the accused disclosed his name as **“Abdul Majeed Mahar”**, whereas the appellant before the Court and the person named in the FIR and impugned judgment is **Abdul Hameed son of Abdul Majeed Mahar**. This discrepancy is not a mere variation in spelling or pronunciation. The prosecution was required to establish with certainty the identity of the person from whose possession the alleged narcotic was recovered. The very recovery witness produced by the prosecution attributes a different name to the apprehended person. The importance of this discrepancy increases when the surrounding evidence is considered. PW-1 stated that the appellant was apprehended after a chase of about 10/15 paces. PW-2 stated that the police party jointly arrested the accused and that the entire recovery proceedings were completed at the spot. Yet PW-1 and PW-2 differed materially about the surrounding circumstances and the time consumed in the proceedings. PW-1 stated that he himself weighed the charas and that the police remained at the place for about thirty minutes, whereas PW-2 gave a different account regarding the time

and sequence of the proceedings. PW-2 also stated that the memo was written by him on the dictation of SIP Rukun Din. These discrepancies are required to be considered together rather than in isolation.

11. We are conscious of the settled proposition that a police official is not an incompetent witness merely because he is a police official. Indeed, the prosecution may lawfully establish a recovery through official witnesses where the evidence otherwise inspires confidence. However, the status of a witness as a police official does not place his testimony beyond judicial scrutiny. Thus, the question is not whether PW-1 and PW-2 are police officials; the question is whether their evidence, when examined as a whole, establishes the identity, recovery and subsequent integrity of the alleged contraband beyond reasonable doubt. Another significant circumstance is the non-association of any private person. According to PW-1, the place of arrest was a busy area. PW-2 also admitted the existence of shops in the vicinity. The Investigating Officer, PW-4, expressly admitted that houses, shops and hotels existed at the place of incident. Yet no private person was associated with the recovery proceedings, no independent witness was examined during investigation and no explanation satisfactory to the Court appears on record for the complete absence of independent corroboration. We do not hold that non-association of private persons, by itself, renders every narcotics recovery doubtful. Nor do we hold that section 103, Cr.P.C. can be invoked contrary to the special statutory scheme applicable to narcotics cases. However, where the official evidence itself contains material discrepancies, the absence of any independent or objective corroboration becomes a circumstance of considerable significance in assessing whether the prosecution has discharged its burden beyond reasonable doubt.

12. The prosecution case also suffers from defects regarding the case property and its identification. PW-1 and PW-2 claimed that the recovered charas was sealed at the spot. Yet the prosecution evidence, as tested in cross-examination, contains circumstances casting doubt upon the integrity of the sealed property and the documentation relating thereto. The evidence of the prosecution must establish not only that a parcel was sealed but also that the parcel ultimately examined by the Chemical Examiner was safely retained in the same condition and that the property produced before the Court corresponded with the property allegedly recovered from the appellant. The Honourable Supreme Court consistently emphasized that the chain of custody in narcotics cases is not a mere procedural formality. In **Zahir Shah alias Shat (2019 SCMR 2004)**, **Gulzar (2021 SCMR 380)**, **Javed Iqbal (2023 SCMR 139)** and **Asif Ali and another (2024 SCMR 1408)**, the importance of establishing safe custody and safe transmission has been stressed.

PW-3 WHC Ghulam Mustafa was examined to prove deposit of the case property in the malkhana. He stated that the sealed parcel was deposited in Register No.19. However, during cross-examination, he admitted that the **time of deposit was not mentioned in the relevant entry**, and also that the time of delivery of the case property to the parcel bearer was not mentioned. Thus, the documentary record does not provide a complete contemporaneous account of the movement and custody of the alleged narcotic. The importance of such documentation cannot be understated. The police malkhana register is intended to provide a contemporaneous trail of the receipt, retention and removal of case property. Where the prosecution seeks to rely upon the positive Chemical Examiner's report, the intervening custody must be proved through reliable evidence rather than left to inference.

13. PW-4 SIP Khawand Bux, the Investigating Officer, stated that he received custody of the appellant, FIR, memo and case property and caused the alleged charas to be deposited in the malkhana. He further stated that on 29.07.2025 the case property was sent to the Chemical Examiner, Rohri, through PC Niaz Muhammad. In cross-examination, however, several relevant aspects of the chain of custody were left inadequately explained. The evidence records that the case property was transported in a vehicle and that the particulars of the conveyance were not fully reflected in the relevant departure record. We reiterate that use of a particular mode of transport is not, by itself, prohibited. The difficulty arises when the prosecution evidence is already burdened by uncertainty regarding identification, custody and documentation. In such circumstances, every link becomes material because the prosecution carries the burden of excluding the reasonable possibility of interference, substitution or mishandling of the alleged narcotic. The positive report of the Chemical Examiner does not, by itself, resolve these difficulties. Such report establishes the nature of the material received and examined by the laboratory. It does not independently establish that the material examined was necessarily the very same material allegedly recovered from the appellant unless the prosecution proves the intervening chain of custody. This principle is firmly reflected in **Ikramullah (2015 SCMR 1002)**, **Imam Bakhsh (2018 SCMR 2039)**, **Qaiser Khan (2021 SCMR 363)**, **Javed Iqbal (2023 SCMR 139)**, **Asif Ali (2024 SCMR 1408)**, **Muhammad Iqbal (2025 SCMR 704)**, **Abdul Haq (2025 SCMR 751)** and **Farman Ali (2025 SCMR 1730)**. Therefore, the chemical report cannot be treated as a substitute for proof of the recovery and an unbroken chain connecting the recovered substance with the substance examined by the Chemical Examiner.

14. The absence of video recording is another circumstance requiring consideration. The prosecution witnesses admitted that no video recording of the

alleged arrest and recovery was made. We are conscious that the occurrence in the present case took place on 26.07.2025 and that the precise applicability of a subsequent statutory requirement must be determined with reference to the statutory commencement and transitional provisions. We, therefore, do not hold the appellant entitled to acquittal merely because no video was recorded. Nevertheless, where the prosecution evidence is otherwise disputed and contains material inconsistencies, the admitted absence of objective electronic evidence is a relevant circumstance in evaluating the overall reliability of the alleged recovery.

15. The prosecution also alleged, through the complainant, that the appellant disclosed that he was possessing charas for the purpose of selling it. Such alleged statement, however, cannot be treated as an independent substitute for proof of conscious possession. The primary question remains whether the prosecution has proved, through legally reliable evidence, that the contraband was recovered from the appellant and that the material ultimately examined by the Chemical Examiner was the same material allegedly recovered from him. The quantity of alleged narcotic may be substantial, but quantity cannot cure defects in proof of possession or identity of the recovered substance. A serious sentence makes it all the more necessary that the foundational facts be established with corresponding certainty.

16. We have also considered the defence plea regarding the appellant's alleged prior detention. The record shows that the defence relied upon an application under section 491, Cr.P.C. said to have been filed before the competent Court at Shikarpur on 16.07.2025. The defence witness Mst. Hayatan stated that police officials had taken the appellant and Habibullah into custody on 22.05.2025 and that proceeding under section 491, Cr.P.C. were thereafter initiated. The material produced by the defence included a copy of the application and the order dated 31.07.2025. We do not consider it necessary to conclusively determine, in these appellate proceedings, every factual allegation contained in the section 491 application. Nevertheless, the fact that such proceedings were initiated shortly before the alleged narcotics recovery constitutes a circumstance which was required to be examined in conjunction with the prosecution evidence, particularly because the defence case was one of false implication and prior police custody. The learned trial Court rejected this aspect principally on the ground that Mst. Hayatan was the mother of the appellant and was therefore an interested witness and that mere filing of a section 491 application did not establish illegal detention. We agree that the relationship of a defence witness with the accused is a circumstance requiring caution in appreciating her testimony. But relationship alone does not render a witness wholly incapable of consideration. More importantly, the burden of

establishing the narcotics charge never shifted to the appellant. Even if the defence version regarding prior detention is not accepted in its entirety, the prosecution must still prove its own case beyond reasonable doubt. A weakness in the defence cannot supply missing links in the prosecution case.

17. The prosecution evidence, viewed cumulatively, therefore presents the following circumstances:

- First: PW-1 and PW-2 are not entirely consistent regarding the circumstances and timing of the alleged recovery;
- Second, PW-2, the alleged mashir, gave the apprehended person's name as **Abdul Majeed**, whereas the appellant is Abdul Hameed;
- Third, the place of recovery was admitted to be a busy locality, yet no private person was associated or examined;
- Fourth, no objective video recording of the alleged recovery was available;
- Fifth, the malkhana documentation did not contain complete particulars regarding the timing of custody and movement; and
- Sixth, the prosecution has not furnished a chain of custody of such unimpeachable character as would eliminate every reasonable doubt regarding the identity and integrity of the alleged narcotic.

These circumstances cannot properly be dismissed as insignificant technicalities. They concern the very foundation of the prosecution case.

18. We are mindful of the principle that contradictions which do not affect the core of the prosecution case may be ignored. However, a distinction must be drawn between minor discrepancies and contradictions which touch the identity of the accused, the recovery proceedings or the custody and identity of the case property. The discrepancy in the name attributed to the apprehended person by PW-2 is particularly significant because PW-2 was not a peripheral witness; he was produced as a member of the recovery party and mashir of arrest and recovery. Similarly, defects in the chain of custody assume greater significance in a narcotics case because the physical substance is itself the principal incriminating article. Once reasonable doubt arises about whether the substance examined by the laboratory remained the same substance allegedly recovered from the accused, the positive chemical report cannot independently sustain the conviction.

19. The learned trial Court, in our respectful view, approached the prosecution evidence largely by considering each circumstance separately and by accepting the prosecution version wherever a possible explanation could be

inferred. The appellate Court, however, is required to assess whether the prosecution case, taken as a whole, reaches the standard of proof beyond reasonable doubt. Criminal conviction cannot rest upon possibilities, assumptions or presumptions which arise only after the prosecution evidence has left material gaps. The law requires proof, not probability. It is a cardinal principle of criminal jurisprudence that the prosecution must stand on its own legs. The benefit of doubt is not a concession or grace extended to an accused; it is a substantive right flowing from the presumption of innocence and the prosecution's obligation to prove guilt beyond reasonable doubt. In the case of **Tariq Pervez v. The State (1995 SCMR 1345)**, the Honourable Supreme Court held that even a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient to entitle an accused to acquittal. The same principle has been reiterated in the cases of **Muhammad Akram v. The State (2009 SCMR 230)**, **Muhammad Aslam v. The State (2011 SCMR 820)**, **Muhammad Mansha v. The State (2018 SCMR 772)** and in the narcotics context, **Farman Ali and another v. The State (2025 SCMR 1730)**. In the present case, the doubt does not arise from a solitary peripheral circumstance. It arises from a combination of circumstances touching the identity of the accused as described by the recovery witnesses, the circumstances of recovery, the absence of independent corroboration, the documentation of malkhana custody and the integrity of the chain connecting the alleged recovered substance with the material examined by the Chemical Examiner.

20. It is also settled that where two views are reasonably possible on the evidence, the view favourable to the accused is to be adopted. The Court is not required to search for explanations in order to sustain a conviction when the prosecution itself has failed to remove reasonable doubt through positive and reliable evidence. The accused is not required to prove his innocence. His plea of false implication may be weak, but the weakness of that plea cannot strengthen a prosecution case which has failed to meet the requisite standard of proof.

21. The principle that police officials may be relied upon where their testimony is confidence-inspiring is not in dispute. Likewise, the statutory exclusion or modification of section 103, Cr.P.C. in narcotics cases does not automatically render every recovery proved. Those principles operate where the prosecution evidence is otherwise trustworthy and establishes the recovery and custody of the narcotic beyond reasonable doubt. The present case stands on a different footing because the doubt arises from the prosecution evidence itself. Thus, the benefit available to the appellant is not founded merely upon the fact that private mashirs were not associated; it arises from the cumulative effect of the material deficiencies appearing from the prosecution record.

22. The learned trial Court also placed considerable reliance upon the positive Chemical Examiner's report. There is no reason to doubt the proposition that a genuine positive chemical analysis is important evidence regarding the nature of the substance received by the laboratory. But the Chemical Examiner does not witness the alleged recovery. The report does not answer the antecedent questions: from whom was the substance recovered, was the same substance sealed at the spot, was it safely deposited, was it maintained in an identifiable condition and was the very same parcel transmitted to the laboratory? Where those links are established through clear, reliable and consistent evidence, a chemical report provides powerful corroboration. Where the connecting chain itself remains doubtful, the chemical report cannot fill that evidentiary gap. We, therefore, find that the prosecution has failed to establish the charge against the appellant **beyond reasonable doubt**. The deficiencies discussed above go beyond mere irregularities and create a genuine and reasonable doubt regarding the prosecution version. It would be unsafe to maintain a conviction carrying a sentence of ten years' rigorous imprisonment and a substantial fine upon evidence which does not exclude reasonable doubt as to the identity and integrity of the alleged recovered narcotic.

23. For what has been discussed above, we are unable to agree with the conclusion reached by the learned trial Court. The prosecution has failed to prove the charge against the appellant beyond reasonable doubt. Consequently, instant appeal is **allowed** and the impugned judgment is **set aside**. The appellant Abdul Hameed son of Abdul Majeed Mahar is acquitted of the charge by extending to him the benefit of doubt. The appellant is presently confined in Jail. He shall be **released forthwith**, if not required to be detained in any other custody case. These are reasons for our short order dated 03.09.2026.

24. The appeal stands **allowed** in the above terms.

JUDGE

JUDGE

APPROVED FOR REPORTING