IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPUR KHAS

Criminal Appeal No 144 of 2024

(Heero & others Versus The State)

Before:

Mr. Justice Nisar Ahmed Bhanbhro

Appellants:
1. Heero son of Daya Ram
2. Lalchand son of Magho
3. Teerath son of Chandan
4. Jasroop son of Sambo Mal
5. Vikram alias Viky son of Rano

Through Mr. Tulsi Das Khatri Advocate

The State: Through Mr. Ghulam Abass Dalwani
Deputy Prosecutor General, Sindh.

Date of hearing: 20.10.2026
Date of Short Order: 20 .10.2026
Date of Reasons: 22 .10.2026

J U D G M E N T

Nisar Ahmed Bhanbhro J.- The Appellants/ Convicts every one namely 1) Heero son of Daya Ram, 2) Lalchand son of Magho, 3) Teerath son of Chandan, 4) Jasroop son of Sambo Mal and 5) Vikram alias Viky son of Rano have assailed the judgment dated 11.04.2022 **(impugned judgment)** passed by the Court of Learned District & Sessions Judge Umerkot **(Trial Court)**, in special case No.179 of 2022 "Re The State Versus Heero and others" for an offence punishable under section 3,5,8 of Sindh Prevention of Manufacturing, Storage, Sell & Use of Gutka Manpuri Act, 2019 (**the Act**) result of the F.I.R. No. 117 of 2020 of police station Umerkot City. The Appellants after trial were found guilty of the charge, and were convicted and sentenced to suffer Rigorous Imprisonment for Three Years each and

also imposed fine of Rs 200,000 each in case of default in payment of fine to further suffer Simple Imprisonment for Six months, with a benefit of section 382-B Cr.P.C.

2. Brief facts germane to the prosecution story as unfolded in F.I.R. are that on 19.07.2020 at 1330 hours, Complainant SIP Khalilullah Kunbhar S.H.O of Police Station Umerkot City recorded FIR alleging therein that he along with subordinate staff every one namely HC Mangho Mal, PC Lutuf Ali, PC Abdul Hakeem, PC Chanessar, PC Irshad Ali, PC Khadim left police station vide roznamcha entry No 04 at 0930 hours in police van driven by DPC Hindal for patrolling purpose. After visiting different places when police party reached at Kolhi Daro, they received spy information that Vikram @ Viki Malhi was preparing Gutka and Manpuri in a house in Jogi Colony. On such information, they proceeded to pointed place and reached there at 1100 hours. Police party saw one person sitting over chair and getting prepared Gutka and Manpuri from four other persons. Police party alighted from vehicle and caught hold of the four persons, whereas on person sitting on chair skipped away. On query accused disclosed their names as 1) Heero son of Daya Ram, 2) Lalchand son of Magho, 3) Teerath son of Chandan, 4) Jasroop son of Sambo Mal and disclosed the name of fled away suspect as Vikram alias Viky son of Rano. On personal search nothing was else was recovered. From spot two plastic drums blue color, Six iron tubs containing unprepared Gutka, One white Katta half full with Tobacco, One yellow Katta having 15 Kg battle nuts, Two Iron sieves, one tub, one sack containing paper and plastic bags, one Iron Drum, one Computerized Weight Scale, One White Katta containing 800 prepared Manpuri, Two white sacks containing 3200 Gutka (1600 each). Out of the recovered 20

Manpuri and 20 Gutka were separately sealed for Chemical purposes. The accused were arrested being involved in a cognizable offence and brought to police station along with case property. FIR on behalf of the state was recorded.

3. After usual investigation and completing legal formalities, report under section 173 CrPC was submitted before Trial Court for disposal of case in accordance with law. In compliance to section 265-C CrPC Trial Court supplied police papers to the Appellants, they were indicted for the charge, which they pleaded not guilty and claimed Trial.

4. To bring the guilt of accused home, prosecution examined P.W-1 Complainant SIP Khalilullah, he produced departure and arrival entries, memo of arrest and recovery and FIR, PW - 2 HC Magho Mal who produced memo of inspection of place of incident, PW - 3 IO SIP Muhmmad Uris Bajeer who produced Malkhana register entry, receipt of case property and Chemical report. Thereafter, side of prosecution evidence was closed by Learned Prosecutor for State. The statement of accused under section 342 Cr.P.C was recorded, wherein they denied the charge, professed innocence and prayed for acquittal, however did not opt to examine any witness in defense or their own statement on oath.

5. After hearing the Learned Counsel for the Prosecution and Defense, Trial Court convicted and sentenced the Appellants as aforementioned, hence this appeal.

6. Learned Counsel for the Appellants argued that the contraband material was foisted upon them. He contended that alleged place of arrest

and recovery was a house situated in heart of city but none from public was cited as witness. He contended that entire case property was neither sealed at spot nor sent for chemical analysis and only 20 pouches of Manpuri and 20 pouches of Gutka were sealed and sent to Chmical laboratory for analysis. He next argued that the sample was sent to the laboratory with a delay of 05 days; hence, the safe custody and transmission of the case property, the prosecution itself has made questionable. He further argued that entry in Register No.19 was also doubtful. He next submitted that as per the evidence of I.O that the case property was kept in malkhana but the incharge of malkhana was not examined. He also pointed out that there were material contradictions between the statements of PWs on the point of paroling, recovery and arrest of the accused. He, therefore, submitted that prosecution case was doubtful, which as per settled law always goes to favor the accused; hence, submits that by granting this appeal, the impugned judgment may be set aside and the Appellants may be acquitted of the charge.

7. Per contra, Learned Deputy Prosecutor General appearing for the state opposed the appeal on the ground that all the PWs have remained consistent on each point and minor discrepancies if any in the evidence occurred due to passage of time and cannot be considered fatal to the prosecution case. As far as delay in sending parcel to the laboratory is concerned, learned Deputy Prosecutor General contended that it is fully explained. He therefore, by opposing the appeal asserted to maintain the impugned judgment and dismiss the appeal in hand.

8. Heard Learned Counsel for the parties and perused material available on record with their able assistance.

9. Careful examination of material on record and re-appraisal of evidence leads to an ineluctable conclusion with the prosecution case is highly doubtful, replete with material contradictions in evidence and impugned judgment of Learned Trial Court suffered from misreading and non reading of evidence.

Recovery Proceedings:

10. Scanning of the evidence on record reveals that appellants were apprehended from a house situated in Umerkot City which is a thickly populated area. In the instant case, Complainant on an advance information proceeded to the place of recovery, which was surrounded by houses. Per Section 21 the Act,the provisions of the Code of Criminal Procedure, 1898 (**the Code**) shall apply mutatis mutandis to the proceedings under this Act. It was thus incumbent upon police party to associate the witnesses from public as the suspected place was a house. There seems to be no effort on the part of raiding party to associate any independent person with recovery proceedings, as nothing has been explained by the prosecution in that regard. Though the evidence of police officials was as good as of the independent witness, but an action must be done in accordance with the law. Section of the Act empowered an Officer of the Police not below the rank of Sub-Inspector to enter into a building, place, premises or conveyance without an order of search by the concerned magistrate, when there is reason to believe that delay in conducting search may allow the suspect to escape or conceal the evidence, provided such permission is obtained from the superintendent of Police of the District. For the sake of reference Section 14 is reproduced below:

> *14.* ***Power of entry search, seizure and arrest without warrant.*** *(1) Where an officer, not below the rank of Sub-Inspector Police or equivalent authorized in this behalf by Home Department, believes on a credible information received to him and arrest or a reasonable complaint has been made or a reasonable without warrant suspicion or apprehension exists of his having been so concerned , that any substance as defined in clause(vi) and (vi of section 2. in respect of which on offence punishable under this Act has been committed, is kept or concealed in any building. place, premises or conveyance, he may, without an order of warrant of search from a Magistrate against such person and without affording him on opportunity for the concealment of evidence or escape, such officer may-*
>
> *(a) enter into any such building place, premises or conveyance.*
>
> ***Provided, that before entering any house prior permission of the SSP of the concerned district shall be taken.***
>
> *(b) break open doors and windows for his liberation remove any other obstacle to such entry in case of resistance;*
>
> *(c) seize such substances and other materials used in the manufacture, sale and purchase thereof and any other article which he has reason to believe to be liable to confiscation and any document or other article which he has reason to believe may furnish evidence of commission of an offence punishable under this Act; and*
>
> *(d) detain and arrest the person whom he has reason to believe to have committed an offence punishable under this Act.*
>
> *(2) Before or immediately after taking any action under sub section the officer shat record grounds and basis of the information and proposed action and forthwith send a copy thereof to his immediate superior officer.*

11. Section 21 of the Act holds that the provisions of the Code shall apply to the proceedings of arrest and recovery including section 103 of the Code. Since section 103 of the Code required association of independent witnesses in search and seizure from a place. However, to authenticate the recovery proceedings, if any independent person was not

available or refused to associate in the search and seizure, then it required the head of the police party to record video through built in camera of mobile phone in order to make this court to believe that in fact the recovery was affected from the possession of accused. For the agencies involved in detection of narcotics cases, it is essential that help of modern technology may be taken by recording video and by taking photographs of recovery proceedings, such important piece of evidence be secured and produced in evidence before Trial Court to dispel any impression of foisting property or false implication. the help of modern technology devices would further support the prosecution case and in case of any loopholes in the prosecution evidence, the accused would not get benefit of the same, as he would not be in position to damage video recordings, once this piece of evidence is successfully brought before Court, the burden will shift to the accused to establish that contraband material was foisted upon him. Article 164 of the Qanun-e-Shahadat Order, 1984 encourages the collection of evidence which may become available because of modern devices, it reads as under:

> ***164. Production of evidence that has become available because of modern devices etc****. In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.*

12. The above provision of law accentuated that the evidence collected through modern devices or techniques may be produced before Court. The built-in camera mobile phone is the revolution in modern day technology which is available in the hands of every person. It serves many purposes, it can be used as a source for recording audio, video, photography so also recording of statements of the accused under investigation and if securely produced before the Court can serve as a best

piece of evidence supporting prosecution case. more particular when Article 165 gives overriding effect to the provisions of Qanun-e-Shahadat, Order 1984. The production of evidence generated through modern devices would form a substantial piece of evidence in favor of prosecution and help the Court to believe in the existence of a fact that the incident as alleged by the prosecution has occurred, then the burden would shift on the defense to disprove charges. In presence of such a piece of evidence the credibility of witness would hardly be shattered as the entire proceedings would be available before the Court in the shape of video. The use of modern technology would help in curbing the menace of drug peddling as video recordings would expose the faces of many accused persons involved in this illicit business. For the purposes of production of evidence generated through modern technology, the prosecution has to preserve the evidence in line with guidelines envisaged under article 46–A and 78 – A of the Qanun e Shahadat Order, 1984. To bring the said piece of evidence in ordinary manner may not be helpful for the prosecution, any lapse on the part of prosecution in preserving this piece of evidence will again tilt in favor of defense. Therefore, reasonable care and caution has to be exercised during investigation to preserve such piece of evidence in manner which may be acceptable and admissible in evidence and then its production before Court during evidence to ensure that no real culprit goes unpunished for the offence he committed and no innocent soul gets involved in a fake recovery case.

13. In the instant case, the police party neither obtained the order for search from the concerned Magistrate nor conveyed information to the superior officials regarding the raid, which violated the mandatory provisions of Section 14 *ibid*. In such circumstances non association of

independent witnesses and non recording of the video of recovery proceedings created doubt to the veracity of prosecution case in particular when the recovery was allegedly affected in urban area during peak hours of the day and people do often remain present in the streets.

Safe Custody of Recovered Property

14. Per Prosecution Story, in all about 3200 pouches of Gutka and 800 pouches of Manpuri besides raw material were recovered from the house under possession the accused. However, only 20 pouches of Gutka and 20 pouches of Manpuri were sealed and sent for Chemical Analysis to Laboratory. The entire recovered articles were not sealed at the spot. The property was deposited in the malkhana but the incharge of the malkhana was not examined before Trial Court. The samples were sent to the Laboratory after Five days and delay in sending the samples remained unexplained. Per Laboratory Report (available at page 53 of the paper book), it only received a parcel containing 20 pouches of Manpuri. There is no report on record to say that recovered articles were Gutka. The samples from all the pouches and raw material were not drawn, in the circumstances, the sample did not represent the entire contraband material. The contraband was recovered on 19.07.2020 and it was sent to Chemical Laboratory on 24.07.2020, the witnesses PW 1 SIP Khalilullah and PW 3 IO SIP Muhammd Uris failed to demonstrate while recording evidence that in whose possession the custody of recovered contraband remained in the intervening period. The safe custody and transmission of the contraband material to the Laboratory was compromised, which created dent in the prosecution case and doubt so created ought to be resolved in favor of the accused being a blue-eyed child of the criminal law. Reliance in this regard may be placed on the judgments of Honorable Supreme Court of Pakistan in the case of **Said Wazir and another Versus**

The State and others (2023 S C M R 1144), **Qaiser Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar** (2021 SCMR 363), **Mst. Razia Sultana v. The State and another** (2019 SCMR 1300), **The State through Regional Director ANF v. Imam Bakhsh and others** (2018 SCMR 2039), **Ikramullah and others v. The State** (2015 SCMR 1002) and **Amjad Ali v. The State** (2012 SCMR 577) wherein it was held that in a case containing the above mentioned defect on the part of the prosecution, it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.

Contradictions in the evidence

15. The Prosecution witnesses have contradicted each other on material points. PW - 1 SIP Khalilullah deposed that place of information and recovery were thickly populated area but he did not ask any witness from public to witness the recovery. PW - 2 Maghomal deposed that SIP Khalilullah requested few persons at place of information to witness the recovery but they refused. PW - 1 Khalilullah and PW 2 Maghomal deposed that recovered articles were removed to police station by hiring a private vehicle but such fact did not find mention in the memo of arrest and recovery.

Poor Investigation

16. Fair, impartial and strong investigation is always is considered pivotal for the prosecution cases. In cases related to drugs peddling, it is always expected that investigation remained aloft, leaving no room for the accused to get benefit of any lapses on the part of prosecution. Those selling contraband substances make their buyers addicts, destroy their state of mind, health and productivity, and adversely affect the lives of

their family members. The very fabric of society is damaged. The Police forces are paid out of the public exchequer. It is incumbent upon them to stem this societal ill and eradicates the criminal elements by getting them convicted through Courts. The Prosecution services, paid out of the public exchequer, is responsible to advise the police to remain vigilant during investigation and follow the principles laid down by the Superior Courts. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. It is expected that all concerned will attend to these matters with the attention that they demand, because the menace of Manpuri and Gutka in society has far reaching consequences: by destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drugs addicts resort to all methods to obtain drugs, including committing crimes. To curb the drug peddling, it is right time to convict the persons involved in this agonizing trade and it is only possible when prosecution starts with a perfect investigation mechanism. In the present case right from recovery to filing of report under section 173 Cr.P.C entire investigation process remained compromised, which titled balance in favor of accused.

Benefit of Doubt

17. It is settled principle of law that multiple circumstances were not necessary to create dent in prosecution story, a single circumstance creating reasonable doubt in prudent mind is sufficient to discredit prosecution story, and benefit of such doubt has to be resolved in favor of accused not as a matter of grace but as a matter of right. It is always the

prosecution burdened to prove its case beyond shadow of doubt and once it fully discharges its burden then it shifts to the defence. Reliance in this regard may be made on the dicta laid down by Honorable Supreme Court of Pakistan in the case of **Ahmed Ali and another Versus The State (**2023 S C M R 781) wherein it was held that "Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right."

Conclusion

18. For what has been discussed herein above, the prosecution has failed to prove its case against the appellants beyond shadow of reasonable doubt, benefit of which, ought to be given to the accused. Consequently; instant appeal is allowed. The impugned judgment dated 11.04.2022 is set aside. The Appellants/ Convicts 1) Heero son of Daya Ram, 2) Lalchand son of Magho, 3) Teerath son of Chandan, 4) Jasroop son of Sambo Mal and 5) Vikram alias Viky son of Rano are acquitted of the charge of Special Case No.179 of 2020 "Re The State Versus Heero and others" for an offence punishable under section 3,5,8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sell & Use of Gutka and Manpuri Act, 2019, emanating from F.I.R. No. 117 of 2020 of police station Umerkot City.

19. These are the reasons for short order dated 20.10.2026, that reads as under:

"For the reasons to follow, instant appeal is allowed. The impugned judgment dated 11.04.2022 passed by the Court of Learned Sessions Judge Umerkot is set aside. The Appellants/ Convicts 1) Heero son of Daya Ram, 2) Lalchand son of Magho, 3) Teerath son of Chandan, 4) Jasroop son of Sambo Mal and 5) Vikram alias Viky son of Rano are acquitted of the charge of Special Case No.179 of 2020 "Re The State Versus Heero and others" for an offence punishable under section 3,5,8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sell & Use of Gutka and Manpuri Act, 2019, emanating from F.I.R. No. 117 of 2020 of police station Umerkot City. The appellants are present on bail, their bail bonds stand canceled and surety discharged."

JUDGE

Approved for Reporting

"Saleem"