

JUDGMENT SHEET.  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

**Cr. Appeal No. D-141 of 2023.**

***PRESENT***

***Mr. Justice Arshad Hussin Khan.***

***Mr. Justice Dr. Syed Fiaz ul Hassan Shah.***

Appellant : Israr Hussain son of Qadir Bux Solangi  
through Mr. Raja Jawad Ali Saahar,  
Advocate.

Respondent : The State through Ms. Rameshan Oad,  
D.P.G.

Date of Hearing: 08.04.2025.

Date of Judgment: \_\_.04.2025.

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**J U D G M E N T**

**Dr. Syed Fiaz ul Hassan Shah, J:** Through captioned appeal, appellant Israr Hussain has called in question judgment dated 01.11.2023, passed by learned Sessions Judge/Special Judge (CNS), Jamshoro in Sessions Case No.66/2023 re: State vs Israr Hussain, emanating from Crime No. 188/2023, registered at P.S. Kotri, whereby the appellant has been convicted for offence punishable under section 9 (1) 3(c) of CNS (Amendment 2022) Act,1997 and sentenced to undergo Rigorous Imprisonment for 12 years and to pay fine of Rs.200.000/- (two hundred thousand), in default of payment thereof to further undergo SI for six months, extending him benefit of section 382-B, Cr.P.C.

2. Briefly the prosecution case is that on 01-06-2023 complainant ASI Nazar Muhammad Panhwar Incharge Police Post Gulshan Shahbaz, duly equipped with arms ammunition and investigation bag and they left Police Station Kotri on two private motorcycles,

vide entry No.46 at 1930 hours, for patrolling within the Jurisdiction of P.P Gulshan-e-Shahbaz. During patrolling at Basti No.1, Basti No.2 and Basti No.4, when the police party reached at the ground near Graveyard of Basti No. 3 at 2030 hours, they saw on the headlights of motorcycles that one person having black coloured shopper in his hand was standing at the ground near graveyard adjacent to Basti No.3 around 20.30 hours and they apprehended him as a suspect alongwith shopper, which was found containing two big pieces of chars wrapped with with *panni*. On inquiry, accused disclosed his name to be Israr Hussain s/o Qadir Bux Solangi R/o Basti No.3 Kotri. The recovered chars was weighed 2000 grams, which was sealed in parcel for chemical analysis. Due to non-availability of public mashirs, PC Qadir Bux and PC Deen Muhammad were cited as mashirs and such mashirnama of arrest and recovery was prepared with the help of torchlight with signatures of mashirs. Thereafter, arrested accused and recovered property were brought at Police Station Kotri, where instant FIR bearing crime No. 188/2023 under Section 9(c) CNS Act 1997 (Amendment 2022) was registered against accused. After usual investigation, the appellant was sent up with the challan to face his trial.

3. After taking the cognizance on the police report filed by the Investigating Officer and framing of the charge against the Appellant at Ex.3, the Appellant pleaded not guilty before the trial Court and claimed trial. In order to prove its case, the prosecution examined (PW-1) mashir PC Khadim Hussain Lakhair at Ex.4, who produced mashirnama of arrest and recovery at Ex.4/A, mashirnama of inspection of place of incident at Ex.4/B, (PW-2) Malkhana Incharge PC Waseem Akram Lashari at Ex.5, who produced malkhana entry No. 120 at Ex.5/A, (PW-3) first Investigating Officer SIP Muhammad

Ramzan Mangi at Ex. 6, who produced CRO certificate of accused at Ex.6/A, departure entry No. 28 for inspection of place of incident at Ex.6/B, arrival entry No.34 after inspection of place of incident at Ex.6/C, departure entry No.42 for depositing case property in chemical laboratory Karachi at Ex.6/D, arrival entry No.45 after depositing case property in laboratory at Ex.6/E, receipt of depositing case property in chemical laboratory at Ex.6/F, forwarding letter addressed to the Chemical Examiner at Ex.6/G, (PW-4) second Investigating Officer SIP Khair Muhammad Mallah at Ex. 7, who produced chemical report at Ex.7/A and (PW-5) complainant ASI Nazar Muhammad Panhwar at Ex.8, who produced departure entry No.46 for patrolling at Ex.8/A, arrival entry No.48 after arrest of accused at Ex.8/B, FIR at Ex.8/C, entry No.49 of FIR at Ex.8/D. Thereafter, learned Incharge SPP appearing on behalf of the State, closed the side of prosecution, vide statement at Ex.9.

4. After conclusion of trial and recording evidence of prosecution witnesses, the appellant opt not to step into witness box on oath. Therefore, the trial Court recorded statement of accused u/s. 342 Cr.PC at Ex. 10, wherein he denied the prosecution allegations and claimed to be innocent. He neither examined himself, nor produced any witness in his defense. However, he has submitted that on the same day of alleged incident he was coming from Kotri towards his house on rikshaw, Kotri Police stopped him at Kotri Phattak, complainant Nazar Muhammad was already known to him, who demanded registration documents of rikshaw from him, due to non-availability of such documents, ASI Nazar demanded illegal gratification and on his refusal he was abused and thereafter falsely involved in this case.

5. After conclusion of trial and hearing the State Prosecutor and the Counsel for Defence, the learned trial Court convicted and sentenced the Appellant as referred at paragraph-1 hereinabove. The Appellant has impugned the said judgment of conviction before us which was passed on 01.11.2023.

6. The learned counsel appearing on behalf of appellant/accused has contended that complainant and mashir are not consistent with each other in respect of material points; that there is violation of S. 103 Cr.PC in respect of recovery of alleged contraband material; that the parcel was dispatched to the chemical laboratory after 85 hours of alleged recovery, which is in violation of Rule 4 of the Control of Narcotic Substance (Government Analysts) Rules 2001; that accused has been falsely implicated by the police due to non-payment of illegal bribe money, while he was going to his house; that the learned trial Court failed to consider the contradictions made by prosecution witnesses and passed the impugned judgment in haphazard manner; that prosecution has miserably failed to connect the appellant/accused with the recoveries also failed to prove the case without shadow of doubts. Lastly he has prayed for acquittal of accused.

7. The D.P.G while supporting the impugned judgment has contended that the prosecution by examining prosecution witnesses and producing positive chemical examiner's report has proved its case beyond reasonable doubt and the presence of the Appellant has not been denied at crime scene as such the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the Appellant and the present appeal is liable to be dismissed.

8. We have heard the Counsel for Appellant and the DPG for State and with their assistance perused the evidence brought on record.

9. The learned Counsel for the Appellant mainly argued on the point of broken safe custody of case property and prayed that the Appellant may be acquitted as the prosecution has failed to prove the safe custody and safe transmission of case property and so also the question of 03 seals per Raiding Officer is also not confirmed in his evidence and it is inconsistent with the Report of Chemical Examiner which stated that only one seal parcel was received at the chemical lab.

10. The evidence of Mashir of seizure, recovery and arrest PW-1 Khadim Hussain so also the evidence of the Raiding Officer-cum-Seizing Officer and complainant of the FIR have revealed that on 01-06-2023 after seizure of case property and preparation of Memorandum of Recovery at about 20.30 pm, the case property was brought at PS Kotri and thereafter at about 21.30 hours FIR was registered at PS Kotri. Notably, at the relevant time when the case property was brought into the PS Kotri, District Jamshoro, the said Case property was not deposited by the Raiding-cum-Seizing Officer in the Malkhana (Store room) of the Police Station).

11. On the contrary, it is the admission of the PW-01 and PW-5 that the said case property was taken over to Police Check post SITE Kotri. It is further admission of both Prosecution witnesses that only then the case property was handed over to the Investigation Officer at about on 2200 hours at the place of posting of the Investigation Officer at the Check Post SITE Kotri instead of depositing in the Malkhan (store room). The PW-1 Khadim Hussain, Mashir of event of Recovery and Seizing has admitted such facts in

his evidence and deposed: ***“Thereafter, arrested accused and recovered property were brought at Police Station Kotri, where ASI Nazar Muhammad lodged such FIR under Section 9(c) CNS Act against accused on behalf of the State. Thereafter, arrested accused and recovered property were brought at Police Post SITE Kotri after the FIR, where case papers, custody of accused and case property were handed over to SIP Muhammad Ramzan for investigation.*** In his cross-examination, PW-1 further deposed: ***“We reached within 30 minutes at Police Station from place of incident on the day of incident. On our arrival at Police Station from place of incident, accused was locked up and FIR was lodged. We remained at Police Station for about 20/25 minutes for registration of FIR and then we came at Police Post SITE Kotri. On our arrival at Police Post SITE Kotri, case property, custody of accused and case papers were handed over to SIP Ramzan.”***

12. The said fact that the case property was not timely deposited in the Malkhana (Store room at Police Station) and it was handed over to the PW-3 SIP Ramzan has also admitted by the Raiding Officer, Seizing Officer and Complainant PW-5 Nazar Muhammad during his evidence. He deposed: ***“Thereafter, arrested accused and recovered property were brought at Police Station where accused was locked up, such entry No.48 at 2125 hours was maintained and I lodged such FIR on behalf of the state against accused at 2130 hours vide entry No.49 at 2145 hours. .... Thereafter, arrested accused and recovered property were brought at Police Post SITE Kotri, where I handed over case papers, custody of accused and case property to SIP Muhammad Ramzan for further investigation.”***

13. On the other hand, the evidence of PW-Waseem Akram, the Incharge of Malkhana (store room) has also confirmed that the case property was deposited after considerable delay of 03 hours. The Exh. 5/A is Register No.XIX Entry No.120 dated 01-06-2023 at about 23.30 hours. The prosecution has failed to establish the safe custody during this interval period of 03 hours. The PW-03 deposed that ***“I am Malkhana Incharge in this case. On 01-06-2023 I was posted at Police Station Kotri as Incharge Malkhana. On the same day, SIP Muhammad Ramzan Mangi handed over me case property viz. one sealed parcel of chars of crime No.188/2023 under Section 9(c) CNS Act of Police Station Kotri, for depositing in malkhana at 2330 hours. I deposited the case property in malkhana vide entry No.120 of Malkhana Register, which I produce at Ex.5/A and say, it is same.”***

14. Another aspect of the present is that the PW-1 Mashir of the event deposed that on the same day the Investigation Officer has recorded his statement under section 161 Cr.P.C. so also the statement the of Raiding Officer PW-5 Khair Mohammad. Simultaneously, in one breath the said PW-1 deposed that ***“On the same day, SIP Muhammad Ramzan recorded my statement under Section 161 Cr.PC at 2220 hours. On 02-06-2023 vide entry No.28 at 1605 hours, I alongwith co-mashir and complainant under the supervision of SIP Ramzan, left Police Station Kotri on two private motorcycles for inspection of place of incident.”*** This contra stance of the witness of event give one of the two possibilities. Either the statement under section 161 Cr.P.C. has not recorded on 01-06-2023 or the Investigation Officer has not taken the prosecution witnesses Mashir and Raiding Officer on 02-06-2023 as it is mandatory that the crime scene should be visited

and thereafter statement must be recorded and not vice versa for the obvious reason the place of crime would have to record in the Statement of the eye witness and not otherwise as has been done in the present case. In case, it is accepted that the statement has recorded on 01-06-2023 and inspection of crime scene has done on 02-06-2023, the mandatory inspection of the crime scene could not have incorporated in the statement or alternatively the Investigation Officer would have to record the further statement under section 162 Cr.P.C. which have not done in the present case. Therefore, the Exh.4/A has become inadmissible in evidence due to glaring contradiction of the testimony as said document is prepared on the oral statement which have not been confirmed in the testimony by the witness on oath during recording his evidence.

15. The Investigation Officer of the case has also admitted that the case property was deposited on 05-06-2023 with the Chemical laboratory with delay of 85 hours. Although he has tried to explain the delay but it seems that it was an improvement to hide his defect of delay by bullying that delay have occurred as Friday was half day (which is incorrect for government Offices, every Friday is full working day) and due to Saturday (again Chemical Lab is open on Saturday) as well as the Appellant successfully demonstrated that the letter for chemical lab was prepared on 02-06-2023 by the Prosecution and this fact has admitted by the Investigation Officer. He deposed ***“On 01-06-2023 at 2200 hours, I received case property, custody of accused and case papers of this case for investigation. ....It is correct to suggest that the recovered property was dispatched to the chemical laboratory for analysis after more than 85 hours. Voluntarily says; due to holidays of Saturday and Sunday, the case property was***



***deposited on Monday, hence delay was caused. .... It is correct to suggest that the forwarding letter addressed to the chemical examiner was issued on 02-06-2023. Voluntarily says; the Friday was half day, therefore, the permission was granted from DSP in late hours***". Therefore, the ground of delay in sending case property when the letter addressed to chemical lab was prepared on 02-06-2023 but after delay of 04 days the case property was sent to Chemical lab is also failure on the part of the prosecution to prove their case as required under Article 117 of the Qanun-e-Shahadat Order, 1984 and to prevent their case beyond reasonable doubt. The Incharge Malkhana has also admitted that ***"It is correct to suggest that it is not mentioned in malkhana entry that SIP Muhammad Ramzan received back case property from me for depositing in chemical laboratory. It is correct to suggest that the time of receiving case property by I.O SIP Muhammad Ramzan from me is not mentioned in malkhana entry. It is correct to suggest that time of returning case property from chemical laboratory is not mentioned in malkhana entry."***

16. The Raiding Officer, Seizing Officer and Complainant PW-5 Nazar Muhammad during his evidence has also deposed that ***"I myself sealed the recovered property and affixed three seals. The contents over sealed parcel were written at place of incident, while crime number was written at Police Station."*** On the other hand, the report of Chemical Examiner Exh.07/A states that at the time of receiving of case property at the chemical lab, only one sealed was available on the case property which is contrary to the testimony of Raiding Officer/Seizing Officer and complainant PW-5 and it also disprove the safe custody.

17. We are mindful to hold that it was the prime duty of the Investigating Officer to enter the factum of handing over the case property as well as sealed sample parcels and other recovered articles from the possession of Appellant in the relevant register of police station i.e. register No.2 but the same was not done in the present case which proved fatal to the prosecution case. The first provision of law relating to daily diary is section 44 of the Police Act, 1861 which is hereby reproduced as under for ready reference:

**Section 44 in [The Police Act, 1861]** 44. Police- officers to keep diary: It shall be the duty of every officer in charge of a police station to keep a general diary in such form shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Rule 22.48 of the Police Rules 1934, Rule 22.48 pertains to Register No.II:

**Register No. II. –**

(1) The Daily Diary shall be maintained in accordance with section 44 of the Police Act.

It shall be in Form 22.48(1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be dispatched to a Gazetted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf. Shortly before the close of each quarter, books containing the proper number of pages for the ensuing three months shall be issued to police stations by the Superintendent. The Superintendent

shall fix the hours at which station diaries shall be daily closed with reference to the hour of dispatch of the post or messenger.

(2). The daily diary is intended to be complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) All entries in the station diary shall be made by the officer in charge of the police station or by the station clerk. Literate officers making a report shall read the report re-corded and append their signatures. Every matter recorded in such diary shall be so recorded as soon as possible; each separate entry shall be numbered and the hour at which it was made shall commence each such entry. If the hour at which the information, or otherwise containing such entries reaches the police station differs from the hour at which such entry was made, both hours shall be stated. As soon as entry has been made in the diary, a line shall be drawn across the page immediately below it.

(4) The opening entry each day shall give the name of each person in custody, the of-fence of which he is accused, and the date and hour of his arrest, the name of each accused person at large on bail or recognizance and the date of his release on such security. The last entry each day shall show (a) the balance of cash in hand as shown in the cash account, and (b) the balance of the cattle-pound account.

Similarly, as per requirement of Rules, the Form register No.XIX in Punjab Police Rules,1934 7 is as follows:

**RULE NO.22.70: REGISTERS NO. XIX:**

This register shall be maintained in Form 22.70. With the exception of articles already included in register No. XVI<sup>1</sup> every article placed in the store-room shall be entered in this register

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<sup>1</sup> Punjab Police Rules, 1934 in volume III and chapter No.22 10

and the removal of any such article shall be noted in the appropriate column. The register may be destroyed three years after the date of the last entry.

**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 dispatched).

8. Remarks. (To be prepared on a quarter sheet of native paper)

**Rule 22.49 of the Police Rules 1934,**

Rule 22.49. - Matters to be entered in Register No. II - The following matters shall, amongst others, be entered

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(h) All arrivals at, and dispatches from, the police station of persons in custody, and all admissions to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.

18. The prosecution has failed to prove the 03 seals on the parcel of case property due to overt contradiction in the statement of the Raiding Officer PW-5 and report of Chemical examiner and even the procedure to record the date, time and purpose of taking out and taking in the case property has also not been followed as prescribed in the above-mentioned laws.

19. **Broken Safe custody and safe transmission of case property.** We are mindful that conviction can be awarded to an Accused or maintained by this Court on the basis of direct oral evidence of only one eye-witness if same is reliable, trustworthy and confidence-inspiring as has been held by the Supreme Court of Pakistan in cases reported ***“Muhammad Ehsan vs. The State” (2006 SCMR 1857) and “Niaz-Ud-Din v. The State” (2011 SCMR 725)***. However, the Hon’ble Supreme Court has greatly emphasized in narcotics cases reported as ***“Ikramullah Vs. The State” (2015 SCMR 1002) “Amjad Ali Vs. The State” (2012 SCMR 577), “Haji Nawaz Vs. The State” (2020 SCMR 687) and “Qaiser Khan Vs. The State” (2021 SCMR 363)*** that safe custody or safe transmission of the Narcotics to be considered and focused carefully and if it is not substantiated or based on unpersuasive evidence, the Report of Government Analyst becomes doubtful and unreliable. The prosecution is under mandatory duty to prove its case not only beyond reasonable doubt but also lays with burden of proof of safe-custody and safe-transmission of case property under Article 117 of the Qanun-e-Shahadat Order, 1984. The Supreme Court of Pakistan held in cases ***“Javed Iqbal v. The State” (2023 SCMR 139); “Mst. Sakina Ramzan v. The State” (2021 SCMR 451) and “Qaiser Khan v. The State” (2021 SCMR 363)*** that the chain of events—series of things linked, connected or associated together, would have to demonstrate and prove by the prosecution and if any link is missing or division occur, the benefit would go in favor of the accused.

20. We hold that impugned Judgment of Conviction based on unpersuasive evidence of broken safe custody and safe transmission of the case property that causing miscarriage of justice.

In conclusion, we refer about the doctrine of benefit of doubt. The rule of benefit of doubt is essentially the rule of prudence which cannot be ignored while dispensing justice. The steadily commandment of law necessitate unremitting attention for conviction that it must be based on un-impeachable evidence and certainty of guilt and where any doubt emerges would indispensably favor the Accused. The Hon'ble Supreme Court of Pakistan has ruled down in several cases that it does not need to be a plethora of circumstances raising doubt—a single event that creates reasonable doubt in the mind of a prudent person regarding an accused's guilt would entitle him acquittal as a matter of right and not as clemency or grace. Reliance can be placed on ***“Tariq Pervez v. The State”, (1995 SCMR 1345), “Riaz Masih alias Mithoo v. The State”, (1995 SCMR 1730), “Muhammad Akram v. The State”, (2009 SCMR 230), “Hashim Qasim and another v. The State”, (2017 SCMR 986), “Ikramullah Vs. The State”, (2015 SCMR 1002), “The STATE through Regional Director ANF V. IMAM BAKHSH and others (2018 SCMR 2039)”, and “KHAIR-UL-BASHAR V. The STATE”, (2019 SCMR 930).***

21. It is trite law that single dent in the case of prosecution is sufficient for acquittal as held in cases ***“Rehmatullah vs. The State” (2024 SCMR 1782); “Muhammad Mansha versus The State” (2018 SCMR 772), “Abdul Jabbar and another versus The State” (2019 SCMR 129), “Mst. Asia Bibi versus The State and others” Crl. Appeal No.40132/2023 8 (PLD 2019 SC 64) and “Amir Muhammad Khan versus The State” (2023 SCMR 566).***

22. The case in hand is glaringly noticeable because of inexcusable susceptible evidence adduced by the prosecution which

does not qualify test of law as required under Article 2(iv) and Article 117 of the Qanun-e-Shahadat Order, 1984, therefore, the instant appeal is **allowed**. Consequently, the impugned Judgment dated 01.11.2023 of conviction passed by learned Sessions Judge/Special Judge (CNS), Jamshoro in Sessions Case No.66/2023 is **set aside** and the Appellant is acquitted from the charge. He is ordered to be released from the custody forthwith if he is not required in any other custody case/crime.

JUDGE

JUDGE

Muhammad Danish\*