

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Zafar Ahmed Rajput**

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

**Criminal Appeal No.865 of 2024**  
**Criminal Jail Appeal No.26 of 2025**

Appellant : Muhammad Imran S/o Haji Muhammad Umar  
[in CrI. Appeal No.865/2024] through Mr. Muhammad Tahir Durrani, Advocate

Appellant : Rafiq S/o Faiz Muhammad  
[in CrI. Jail Appeal No.26/2025] through Ms.Anum Salman Jamali, Advocate

Respondent : The State  
through Mr. Abrar Ali Khichi, Addl. Prosecutor  
General Sindh.

Date of hearing : 23<sup>rd</sup> June, 2025

Date of Short Order: 23<sup>rd</sup> June, 2025

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

**Dr. Syed Fiaz ul Hasan Shah, J –** Through the instant Criminal Appeal and Criminal Jail Appeal both the Appellants have challenged the Judgment dated 28.11.2024 passed by learned III-Additional Sessions Judge, Karachi Central **[Trial Court]** in Sessions Case No.949 of 2023 arising out of FIR No.428/2023 U/s 9(1)3(b) CNSA 1997 at PS New Karachi Industrial Area, Karachi whereby the trial Court has convicted both the Appellants and sentenced them for 05 years imprisonment alongwith fine of Rs.40,000/- each and in case of default in payment of fine, the Appellant(s) would have to undergo further one month imprisonment.

2. Brief facts of the case are that on 03.08.2023 at about 1530 hours, Complainant SIP Muhammad Ramzan alongwith his subordinate staff during patrolling apprehended the Appellants and recovered from Appellant Muhammad Imran 515 gram chars and from Appellant Rafiq 510 gram chars. Subsequently, they were booked in the aforesaid FIR.

3. After completing the investigation, charge sheet was submitted against the Appellants. The trial Court framed the Charge against the Appellant as Exh.2 to which they pleaded not guilty and claimed trial vide their pleas as Ex.2/A to Ex.2/B. At the trial, the prosecution has examined complainant PW-1 SIP Muhammad Ramzan at Ex.3, who produced departure entry No.20 as Ex.3/A, memo of arrest and recovery as Ex.3/B and Qaimi entry as Ex.3/C and FIR as Ex.3/D, PW-2 ASI Altaf Hussain was examined at Ex.4, who produced memo of site inspection as Ex.4/A and PW-3 PI Muhammad Abid was examined at Ex.5, who produced Qaimi entry No.40 as Ex.5/A and No.44 as Ex.5/B, CRO of accused as Ex.5/C, letter as Ex.5/D and its receipt as Ex.5/E and chemical report as Ex.5/F. Thereafter, the prosecution closed its side vide statement at Ex.6. The Appellants have recorded statement being accused persons under Section 342 Cr.P.C. at Ex.7 and 8. Both the Appellants/Accused have denied the allegation levelled against them and stated to be innocent and prayed for justice. However, neither the appellants examined themselves on oath nor led any evidence in their defence. The learned trial Court, after hearing the parties and appraisal of the evidence, convicted and sentenced both appellants vide judgment dated 28.11.2024.
4. We have heard the Counsels for the Appellants as well as the Addl; PG and perused the record.
5. The learned Counsel for the Appellants have mainly argued on the point of broken safe custody of case property and prayed that the Appellants may be acquitted as the prosecution has failed to prove the safe custody and safe transmission of case property.
6. PW-1, SIP Mohammad Ramzan Bajwa, produced the Memorandum of Arrest and Recovery (Exh. 3/B), which reflects that the said document was prepared on 03.08.2023 between 15:30 and 16:15 hours, and it explicitly records that the case property was sealed for chemical examination. Likewise, the case property was brought to the Police Station as recorded in Entry No. 24 dated

03.08.2023 (Exh. 3/C), which also confirms the sealing of the property for chemical analysis. Furthermore, FIR No. 428/2023 was lodged at Police Station NKIA, District Central, Karachi, on 03.08.2023 at 16:30 hours, reiterating the same assertion regarding the sealing of the case property. However, the testimony of PW-1 is completely silent with regard to the subsequent handling of the case property—specifically, there is no mention of its delivery to the Investigation Officer or its deposit into the official storeroom (Malkhana)—thereby raising serious concerns regarding the maintenance of the chain of custody.

7. Similarly, the testimony of PW-3, PI Muhammad Abid, fails to shed any light on the secure custody of the case property. He has neither confirmed the receipt of the case property from the Raiding Officer (PW-1) nor clarified whether it was obtained from the Malkhana Incharge for its onward transmission to the Chemical Examiner. This lack of clarity and omission from a key prosecution witness further weakens the prosecution's claim regarding the sanctity and continuity of the chain of custody. The relevant portion of the evidence of PW-3 is re-produced who deposed **“The case property viz. Chars was sent to chemical examiner. I produced the application given to chemical examiner as Exh.5/D and its receipt as Exh.5/E.”**
8. The prosecution witness PW-1,2 &3 have failed to establish the secure and uninterrupted custody of the case property during the intervening period between its sealing at the crime scene on 03.08.2023, from approximately 15:30 to 16:15 hours, as recorded in Exh. 3/B, and its dispatch to the Chemical Laboratory for analysis on 04.08.2023, as per Exh. 5/D and 5/E. No plausible explanation or valid justification has been provided by the prosecution regarding the safeguarding of the case property from the time of the Memorandum of Recovery and registration of the FIR up to its deposit at the Chemical Laboratory, casting serious doubt on the integrity of the chain of custody.

9. In the absence of direct, trustworthy and reliable evidence demonstrating the manner, source, and circumstances under which the Investigation Officer (PW-3) received the case property for onward transmission to the Chemical Laboratory for analysis, the presumption of continuous and secure custody of the said property throughout the relevant period cannot be safely drawn.
10. The PW-3 has admitted in his evidence **“It is correct to suggest that I have not produced the entry of Register 19 in my evidence.”** The prosecution has also failed to produce Register No. XXIX, which contains the relevant entries pertaining to the case property. This omission is a clear deviation from the mandatory requirement prescribed under the Police Rules, 1934. The non-production of this crucial register undermines the prosecution's case, as it constitutes a vital evidentiary link to establish and verify the chain of custody of the case property throughout the investigation and trial period.
11. It is well settled that it is the prime duty of the Investigating Officer to duly record the handing over of the case property, sealed sample parcels, and other recovered articles from the possession of the appellants in the relevant police station registers—namely Register No. II and Register No. XXIX. However, in the present case, this essential procedure was not complied with, which proves fatal to the prosecution's case and casts serious doubt on the integrity of the chain of custody. In this regard, it is pertinent to refer to the foundational statutory requirement concerning the maintenance of daily diaries, as enshrined in Section 44 of the Police Act, 1861, which is reproduced below 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 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).

1. Column 1.
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.

**12.** We are mindful of the well-established principle that a conviction may be awarded to an accused, or maintained by this Court, solely on the basis of the direct oral testimony of a single eye-witness, provided that such testimony is found to be reliable, trustworthy, and confidence-inspiring. This legal position has consistently been upheld by the Honourable Supreme Court of Pakistan in a catena of judgments, reaffirming that the number of witnesses is secondary to the quality and credibility of the evidence adduced as held in “**Muhammad**

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

**Ehsan vs. The State” (2006 SCMR 1857) and “Niaz-Ud-Din v. The State” (2011 SCMR 725).**

13. However, for Narcotics related cases, the Hon’ble Supreme Court strongly emphasized that it is imperative that the safe custody and secure transmission of narcotics be carefully scrutinized in every case. If the prosecution fails to substantiate this aspect with cogent and persuasive evidence, the credibility of the Report of the Government Analyst becomes doubtful and its evidentiary value significantly diminished. It is a well-established principle that the prosecution bears the mandatory burden—not only to prove its case beyond reasonable doubt—but also to establish, with clarity and certainty, the uninterrupted chain of custody and safe transmission of the case property. This duty is further reinforced under Article 117 of the Qanun-e-Shahadat Order, 1984, which places the burden of proof on the party asserting a fact, in this instance, the prosecution. Reliance can be placed on cases **“Ikramullah Vs. The State (2015 SCMR 1002) “Amjad Ali Vs. The State” (2012 SCMR 577), “Ikramullah Vs. The State” (2015 SCMR 1002), “Haji Nawaz Vs. The State” (2020 SCMR 687) and “Qaiser Khan Vs. The State” (2021 SCMR 363).**
14. The prosecution has failed to provide any explanation or documentary evidence regarding the custody and location of the case property between 03.08.2023 at 16.30 hours and 04.08.2024. This intervening period remains unaccounted for, thereby raising legitimate concerns about potential lapses in the secure handling and preservation of the case property, which is essential to maintaining the integrity of the chain of custody. The absence of a clear and credible record indicating where the case property was stored and who retained control over it during this crucial period significantly undermines its evidentiary value. It is evident that the prosecution has failed to demonstrate that adequate safeguards were adopted to ensure the security and authenticity of the case property throughout the investigation process." 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. Therefore, we hold that impugned Judgment of Conviction based on unpersuasive evidence of broken save custody and save transmission of the case property that causing miscarriage of justice.

15. In conclusion, we refer to the doctrine of benefit of doubt, which is deeply rooted in the principles of justice and prudence. This rule, firmly entrenched in our legal jurisprudence, mandates that a conviction must rest upon unimpeachable evidence and the certainty of guilt. Any doubt, however slight, must inescapably operate in favor of the accused. The Honourable Supreme Court of Pakistan has consistently held that a multitude of suspicious circumstances is not required—rather, even a single instance that raises reasonable doubt in the mind of a prudent person as to the guilt of the accused suffices to entitle the accused to an acquittal. Such acquittal is not to be regarded as an act of leniency or indulgence, but rather as a matter of legal entitlement." Reliance can be placed on cases reported as **“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)**, and **“Hashim Qasim and another v. The State”, (2017 SCMR 986)**.
16. 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)**.



17. 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 impugned Judgment dated 28.11.2024 is set aside and the Appellants are acquitted of the charge by allowing instant Appeals.
18. These are the reasons of our short Order dated 23.06.2025.

**JUDGE**

**JUDGE**

Kamran/PS