

Present

Mr. Justice Amjad Ali Bohio

Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Appellants/ accused:

1. Nabeel @ Safal S/o Jangi Khan Makrani.
2. Mst Um-e-Heman @ Mandok D/o Jangi Khan Makrani.

Through Mr. Kamran Bhatti, Advocate,

Respondent: The State

Through, Mr. Ghulam Abbas, D.P.G Sindh.

Date of hearing: 11.03.2025

Date of Judgment: 12.05.2025

JUDGMENT

Dr. Syed Fiaz ul Hasan Shah, J: The Appellants Nabeel @ Safal and Mst Um-e-Heman @ Mandok **have** filed present Criminal Appeal under section 410 of the Criminal Procedure Code, 1898, against the Judgment of conviction dated 20-03-2023 passed by the learned 1st Additional Sessions Judge/MCTC/Special Judge for CNSA, Mirpurkhas, in Special Case No. 51/2021 (Re: The State Vs. Nabeel & another) emanating out of FIR No.51/2021 under section 9(C) CNSA, 1997, registered at PS: Mehmoodabad Mirpurkhas.

2. After framing the charge, recording of evidence and hearing the State Prosecutor and Defense side, the trial Court has convicted the appellants under Section 265-H(ii) Cr.P.C for the offence committed under section 9(c) Control of Narcotics Substance Act, 1997 and sentenced for Rigorous imprisonment for 14 (Fourteen) years each and to pay fine of Rs.200,000/- (Two Lac) each. It was further sentenced that in case of default of fine, the Appellants shall suffer further two years more.
3. The brief facts of the prosecution case are that on 10-9-2021 at 0400 hours (4:00 am), SIP Imdad Hussain Lashari, accompanied by police personnel including ASI Muhammad Iqbal from CIA Mirpurkhas, all armed and in police uniform, along with LPC Ghazal Panhwar of Women P.S. Mirpurkhas (also in police uniform), left CIA Mirpurkhas for official duty as recorded in Roznamcha Register Departure Entry No. 19. After receiving intelligence information, SIP Imdad Hussain and his team proceeded towards Mehmoodabad Railway Phattak/Crossing. At approximately 0515 hours, they arrested the accused, Nabeel Makrani and Um-e-Heman alias Mandook Makrani. From Nabeel, they recovered 1239 grams of charas (net weight), while from Um-e-Heman, they recovered 3634 grams of charas, 230 grams of cocaine powder, and 4 grams of ice. These substances were sealed in parcels. Other items, including cash, were recovered, and a memo of arrest and recovery was prepared at the scene. Both accused and the recovered case property were brought to P.S. Mehmoodabad, leading to the registration of FIR No. 51/2021 (Exh-7/B) and the initiation of an investigation.

4. That on 25-9-2021, the learned Civil Judge & Judicial Magistrate/P.O Consumer Protection Court Mirpurkhas, who having supplied police papers to the both accused vide receipt at Exh-01 sent up R&Ps for trial which were ultimately received by this court and my learned predecessor on 02-10-2021 framed charge against them in terms of section 265-D Cr.P.C at Exh-02, to, which they pleaded not guilty vide pleas at Exh-2/A & 2/B in terms of section 265-E Cr.P.C. Later on the learned ADPP for state filed an application U/S 540 Cr.P.C seeking summoning and recording evidence of dispatch official P.C Shahid, which was allowed on the same date.
5. During trial, the Prosecution side in terms of section 265-F Cr.P.C have examined seven (07) Prosecution Witnesses namely Umeruddin Shaikh, Dispatch Official (PW-1 Exh-4 Dated; 19-7-2022) who tendered in evidence a letter dated:15-9-2021 in respect of sending case property (Exh-4/A) WHC I/C Malkhana Muhammad Zaffar Baghio (Exh-6 Dated: 19-01-2023) who tendered in evidence duplicate attested copy of Property Register NO.IX (Serial NO.34 Dated; 10-9-2-21 Exh-6/A). Complainant SIP Imdad Hussain Lashari (PW-3 Exh:07 Dated 04-3-2023) who tendered in evidence original memo of arrest of accused and recovery. FIR crime NO.51/2021 and attested duplicate Roznamcha Register departure Entry NO.19 (0400 hours dated; 10-9-2021 departure entry No.17 Exh-7/A to 7/C) Eye witness cum Mashir ASI Muhammad Iqbal (PW-4 Exh-8. Memo Exh-8/A) Author of FIR cum L.O Inspector Meer Muhamad Keerio (PW-5 Exh-09) who tendered in evidence duplicate Roznamcha Register investigated related entries (9/A

to 9/C) attested P.S Copy of Property Register Entry serial no.35 (Exh-9/D) attested P.S Copy of Road Certificate NO.65/2021, original payment receipt (Exh-9/F) duly received, original letter Dated:29-9-2021 in respect of sending case property recovered from Um-e-Heman alias Mandook (Exh-9/G) positive Laboratory Report NO.19739 dated;20-10-2021 (Exh-9/H) Original positive Laboratory Report NO.ILD/ATR/2021-12685-2 Dated;01-10-2021 in respect of crystal (NW 230 grams) at Exh-9/I, positive Laboratory Report NO.ILD/ATR/2021-12685-1 Dated;01-10-2021 in respect of Ice (NW 04 grams) at Exh-9/J and report along with 13 FIRs at Exh-09/K, Dispatch official P.C/1446 Shahid Rajput (PW-6 Exh-10) who saw and verified relevant documents (Exh-8/G & 9/F) to be same and correct and eye witness LPC Ghazala Panhwar (P-7 Exh-11). During trial, the prosecution has examined PW-1 Complainant and seizing officer SIP Rustam Ali at Exh.6, he had produced departure and arrival entries, memo of arrest and recovery and FIR at Exh.6-A to 6-C. PW2 mashir PC Pirago Mal at Exh.07, he had also produced memo of inspection at Exh.7-A. PW-3 1.O/SIP Mansingh was examined at Exh.8, entry of Malkhana register, entries, letter of DHO, receipt and chemical examiner's report and criminal record of accused Jesso at Exh.8-A to 8-L respectively. Thereafter, the prosecution had closed its side vide statement at Exh.9.

6. The learned ADPP for State therefore closed evidence side vide statement at Exh-12 thus this court recorded statement of both present accused (brother and sister inter se) in terms of section 342 Cr.P.C (Exh-13 & 14) wherein they denied prosecution

evidence without any specific plea and neither opted to state on oath in terms of section 340 (2) Cr.P.C nor to produce defense evidence. It is pertinent to observe that original Record related to Property Register NO.19, Roznamcha Register and R.C Book has been produced, which with the fair assistance of the learned ADPP for state and the learned defense counsel has been checked, perused and found correct hence the same was returned and copies thereof were taken on record.

7. The Counsel for the Appellant argued that the impugned Judgment is entirely is against of all known norms of law of appreciation of evidence, facts, documents and even circumstance hence not sustainable under the law. He further argued that the impugned judgment of conviction is entirely in against of provisions and guidelines, so sketched by Honourable superior courts, for recording a Judgment and the learned trial Judge did not consider that the there is no any independent witness of the alleged offence, but on the contrary all the witness are Police officials and they deposed on instigation of complainant who is also superior Police officers of Police witnesses. He further argued the learned court did not consider that alleged place of incident is thickly populated area inspite of availability of many persons at the place of incident, but the Police did not associate private persons from the place of incident. As per contents of F.I.R the Police got spy information, but inspite of spy information Police did not tried to associate any private mashirs from the place, where he got spy information, inspite of populated area and as well as availability of the private person which also create doubt in the case of

prosecution. Nothing was recovered from the possession of the appellants. On the other hands the Police foisted the case property upon the appellants/accused with malafide and for ulterior motives only to falsely implicated the appellants/accused in this false matter. There is no also question of safe custody of the case property, because Police did not produced the Malkhana Incharge as witness to proof the safe custody as well as did not produce the entry register of the Malkhana which shows that the property was not in safe hand/custody and chance tempering in the property cannot be ignored, but the learned trial court failed to did not consider such facts while passing the impugned Judgment in the above matter. They are so many contradictions in evidence of PWs. As per contents of F.I.R no single word in respect of criminal history of accused, which clearly shows this is first F.I.R against the accused and appellant never involved in such type of cases. The applicants/accused are innocent and not commit such offence as alleged by the complainant. He further argued that the prosecution has failed to prove its case against the accused, therefore accused may be acquitted in the interest of justice and impugned Judgment may be set aside.

8. The Learned DPG appearing on behalf of the State has submitted that all the prosecution witnesses have supported the case in their evidence. He has further submitted that police officials are good witnesses as private witnesses. He has argued that Chemical Analysis reports are in positive. He has urged that huge quantity of narcotics has been recovered from the possession of appellants/accused, which cannot be foisted.

He has lastly contended that the prosecution has succeeded to establish its case beyond any shadow of doubt; therefore, appellants/accused may be convicted in the interest of justice.

9. We have heard the Counsel for the Appellant, D.P.G. and perused the record.

10. **Handling and packing**—It is the case of prosecution that the Appellants were arrested and narcotics substances were recovered from their possession as per description mentioned in the Memorandum of Recovery at Exh.07/A, FIR Exh.07/B, Challan/Police Report and in the Register No.19 Exh.09/D. The details are as under;

No	Name	Narcotics & weight
1	Appellant No.1 Nabeel	1245 gram charas
2	Appellant No.2 Um-e-Heman	3650 grams' charas, 230 grams' cocaine 04 grams' Ice crystal

11. The foundation document in the case is the Memorandum of Recovery and Arrest dated 10-09-2021 Exh.7/A and as per the contents of the said Exh.7/A on 10-09-2021 during patrolling the police has apprehended Appellants and **04 pieces** of charas weighing 1245 grams had recovered from the possession of Appellant No.1 (Nabeel), while **29 pieces of charas** weighing 3650 grams of charas, cocaine powder weighing 230 grams and ice crystal weighing 04 grams had recovered from the possession of the Appellant No.2 (Ume Heman) and after usual proceedings FIR was registered. The PW-1 has not confirmed in his evidence the weight of 04 pieces of chars recovered from the Appellant No.1 or weight f 29 pieces recovered from the

Appellant No.2. The PW-1 HC Umer Din, Dispatch Official deposed: ***“On 15.09-2021 I was posted as HC at Police Station Mehmoodabad, Mirpurkhas. On the same date WHC Muhammad Zaffar in presence of I.O Inspector/SHO Mir Muhammad Keerio handed over two sealed parcels of case property to me for depositing the same to Chemical lab, Karachi vide Roznamcha entry No.26 at 0730 hours through letter dated 15-9-2021.”*** The Report of Chemical Examiner Ex.09/F has also confirmed that 02 parcels with gross weight 1245 grams and 3650 grams received at laboratory. The prosecution has failed to ascertain the mass of each piece separately out of 04+29 pieces which were produced before the trial Court in a parcel shown gross weight 1245 grams which was recovered from the possession of Appellant No.1 or in a parcel shown gross weight 3650 grams.

12. **Mis-descriptions and inaccurate weight**—We have noticed the serious inconsistencies and variations in the description, weight and accuracy of the case properties. The description of case properties and its weight are remarkably caused discord between the testimonies of the prosecution witnesses and documents adduced by them. The racial intolerance between the contents of Exh.7/A (Memorandum of Recovery & Arrest) Exh.7/B (FIR), Police report/ challan and Exh.9/D (Entry in the Register No.19) are promoted, for instance; the case property is **230 grams’ cocaine**. On the hand, the Chemical Examination Report Exh.09/I reveals that it is **235 grams’ Heroin** was delivered into Chemical Laboratory for analysis.

13. **Delay in sending case property**—We have also noticed that there is self-admission of the prosecution witnesses especially the Investigation Officer that the case property has sent after considerable delay of 05 days (charas) to the Chemical Laboratory, Karachi and after 11 days (Cocaine and Ice) to the PSCIR, Laboratory, Karachi. The PW-2 WHC Muhammad Zaffar, WHC/ Incharge Malkhana deposited that: ***“On 10-09-2021 I was posted as WHC at P.S Mehmoodabad. On the same date IO Inspector/SHO Mir Muhammad Keerio handed over parcels of case property of instant crime to me for keeping the same in the Malkhana, I then kept the same in Malkhana vide entry No.34 of register No.19. I produced such entry of register No.19 at Ex.06-A, it is same. Then on 15-09-2021 I handed over parcel of chars to HC Umer Din through IO for depositing the same in the office of chemical examiner. On 21-09-2021 I handed over parcel of case property i.e. Ice Crystal and powder [Heroin] to HC Shahid through IO for depositing the same in the office of Pakistan Council of Scientific and Industrial Research Laboratories Complex Karachi....”*** The IO of the case PW-5 Inspector Mir Muhammad Keerio deposited: ***“that on 15-09-2021 I sent two sealed cloth parcels of chars to the Chemical laboratory government of Sindh at Karachi vide No 51/2021 dated 15-09-2021 through HC Umer Din who deposited the same in the concerned laboratory, came back on the same date and narrated facts to me, I recorded his statement. I also depose that on 21-09-2021 I also sent sealed parcel of powder/ crystal to chemical laboratory Ministry of Science***

and Technology alongwith memorandum No. 51/2021 through PC Shahid, who deposited it with the concerned official.” The admission has come on record that the case properties were recovered on 10-09-2021 and on same day Memorandum of Recovery and Arrest was prepared but as per evidence of PW-02 (Incharge Malkhana), the Investigation Officer, firstly on 15-09-2021 had collected 02 parcels (Charas) and sent to Chemical Laboratory while on 21-09-2021 after considerable delay of 11 days, the Investigation Officer had again belatedly collected remaining case property (Cocaine and Ice) and handed it over to PC Shahid to deposit (although it has recorded in the evidence of PW-5 as “depose” which in fact must written and understand as “deposited”) at the PSCIR Laboratory, Karachi for chemical examination. The conduct of the Investigation Officer is incomprehensive before us and a violation of doctrine of safe custody and safe transmission in the light of settled principles of Supreme Court of Pakistan. The case properties of one crime has sent to the Chemical Laboratory at two different times, days and through two different persons and without Entry in the Register No.XXIX and without Road Certificate as mandatorily required under the Police Rules, 1934. This has lost credibility of the parcel with regard its safe custody and safe transmission and expressly broken the doctrine of safe custody and safe transmission of case property being violation of the settled principles of the Honorable Supreme Court of Pakistan.

14. Additionally, the Investigation Officer has failed to give plausible explanation for the considerable delay of 11 days in sending

case properties to the Chemical Laboratory for analysis of the case property which is again violation of CNS Rules too.

15. Furthermore, the Exh.09/J depict the date of issue as 29.09.2021. This date contradicts the time and date of dispatch of the case property to the Chemical Laboratory. The Appellants have successfully demonstrated the contradictions before us by inviting attention towards Ex.09/G dispatching case property while Ex.9/F receiving of case property on 21.09.2021. Both Exh.9/F & 9/G are contradictory to each other and therefore stand disproved. There is no explanation as how Ex.9/F generated on 21.09.2021 when the date of dispatched at Exh.9/G under the signature of the Investigation officer is PS/NO.51/2021 dated 29.09.2021 with clear and visible description about **03 parcels** (for two properties). The oral testimony of I.O that on 15-09-2021 he sent two sealed cloth parcels of chars to chemical laboratory Government of Sindh at Karachi No.51/2021 dated 15-09-2021 through HC Umer Din who deposited the same in the concerned laboratory and that on 21-09-2021 he also sent sealed parcel of powder/ crystal (not 03 parcels as written in at Exh.9/G page 45 of paper book) to the Chemical Laboratory negates the version of the prosecution.

16. In stark contrast, the case properties were sent to the Chemical laboratory. However, the prosecution has failed to prove the safe custody with regard to return of the case property from the Chemical Laboratory to the Malkhana after chemical analysis and until the production of said case properties before the trial Court during evidence and confrontation to the Appellants. The

PW-5 Mir Mohammad, IO of the case admitted during his cross examination: ***“it is correct to suggest that no entry was made in Register No.19 when case property was returned back from the office of chemical examiner.”*** The Prosecution has failed to bring in order every moment while handling the case property in accordance with Police Rules, 1934. The Form register No.XIX in Police Rules,1934 is the mandatory requirement of law 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. XVI¹ 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).

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.

¹ Punjab Police Rules, 1934 in volume III and chapter No.22 10

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

(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.

17. It was mandatory upon the prosecution to testify on oath and adduce documents that the case property have been returned from the Chemical Laboratory and same has again been kept in Malkhana and only then it was finally produced in Court. The Hon'ble Supreme Court in the case "**Ahmed Ali & another vs. The State**" (**Criminal Appeal No.48 of 2021**) held that:

"Thus, 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 is produced before the court, remains in safe custody and is not tampered with until that time. **A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.**

Line Supplied-Emphasize added.

18. The prosecution has failed to prove accuracy, description and weight of case property so also the 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.

19. It is mandatory for the Prosecution to undergo two tests for —case property. Firstly, to recover, seize, present in charge sheet or challan and to establish safe custody by preparation of documents flawless in description, accuracy, deposit in save custody with proper status and secondly, safe transmission of it under proper documents from save custody to Chemical Lab and from Chemical laboratory to the Police and production before the Court as an admissible evidence. Any violation of it would lead to draw a negative inference that led basis for acquittal of an accused. Reliance can be placed on the cases ***“Qaiser and another v. The State” (2022 SCMR 1641); “Ikramulah v. The State” (2015 SCMR 1002), “The State v. Imam Bakhsh” (2018 S'CMR 2039), “Abdul Ghani v. The State” (2019 SCMR 608), “Kamran Shah v. The State” (2019 7 SCMR 1217), “Mst. Razia Sultana v. The State” (2019 SCMR 1300), “Faizan Ali v. The State” (2019 SCMR 1649), “Zahir Shah alias Shat v. State through AG KPK” (2019 SCMR 2004), “Haji Nawaz v. The State” (2020 SCMR 687), “Qaiser Khan v. The State” (2021 SCMR 363), “Mst. Sakina***

***Ramzan v. The State*” (2021 SCMR 451), “Zubair Khan v. The State” (2021 SCMR 492), “Gulzar v. The State” (2021 SCMR 380).**

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). 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 20.03.2023 of conviction passed by the learned Model Criminal Trial Court/Special Judge Control of Narcotics Substance, Mirpur Khas in Special Case No.51 of 2021 is **set aside** and the Appellants are acquitted from the charge. Both Appellants are ordered to be released from the custody forthwith if they are not required in any other case/crime.

JUDGE

JUDGE