

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No. D-48 of 2024

Appellant : Ghulam Rabbani son of Ghulam Mustafa,
Through Mr. Qudratullah Shaikh and
Mr. Atta Hussain Qadri, advocates

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar,
Deputy Prosecutor General for the State

Date of hearing : 08-07-2025

Date of order : 15-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI J.– This appeal challenged the judgment of conviction and sentence dated July 12, 2024, which had been passed by the learned Court of Special Judge (CNS)/Sessions Judge Shikarpur. By virtue of this impugned judgment, the Appellant, Ghulam Rabbani Kalhoro, had been convicted under Section 265-H(ii) Cr.P.C. for an offense punishable under Section 9(b) of the Control of Narcotic Substances Act, 1997. He was sentenced to rigorous imprisonment for five years, coupled with a fine of Rs.40,000/-. In the event of default in paying the fine, he was to undergo an additional three months of simple imprisonment with benefit of Section 382-B Cr.P.C.

2. The prosecution's case, as laid out in FIR No.82/2024 of P.S New Foujdari, claimed that on April 17, 2024, at about 06:00 a.m, ASI Nazar Muhammad Malik (PW-01), accompanied by PC Israr Ahmed (PW-02) and PC Abdullah, embarked on a patrolling duty from P.S New Foujdari. At about 06:30 a.m, near Kank Shah Peer Shikarpur, they reportedly spotted a suspicious individual, identified

as the Appellant, Ghulam Rabbani. Upon noticing the police mobile, the Appellant allegedly tried to escape. He was apprehended, and a body search conducted by ASI Nazar Muhammad Malik purportedly led to the recovery of a black-colored shopper bag from the fold of his shalwar. Inside this bag, a piece of charas, weighing 600 grams, was found. The recovery was sealed on the spot, and a mashirnama was prepared by ASI Nazar Muhammad Malik, witnessed by PC Israr Ahmed and PC Abdullah, who were designated as mashirs because private persons were unavailable. The Appellant and the seized charas were then taken to P.S New Foujdari, where ASI Nazar Muhammad Malik formally lodged the FIR. Subsequently, SIP Ali Hussain Shah (PW-04) took charge of the investigation. He visited the scene of the incident, recorded statements from the prosecution witnesses under Section 161 Cr.P.C., and on April 19, 2024, dispatched the 600 grams of charas to the Chemical Examiner in Rohri via R.C. No.53. A subsequent chemical report confirmed the substance to be charas, and following all legal formalities, a charge sheet was submitted against the Appellant.

3. The trial of the Appellant, Ghulam Rabbani, proceeded before the learned Special Judge (CNS)/Sessions Judge Shikarpur. He was formally charged with an offense punishable under Section 9(b) of the CNSA, 1997 (Exh.2), to which he pleaded "not guilty," opting for a trial (Exh.3). The prosecution presented four witnesses to prove its case. These included ASI Nazar Muhammad Malik (PW-01, Exh.4), the complainant and recovery officer, who presented the mashirnama of arrest and recovery, the FIR, and police departure and arrival entries. PC Israr Ahmed (PW-02, Exh.5), an official mashir to the recovery, also produced the mashirnama pertaining to the place of incident. WHC Fateh Muhammad Dal (PW-03, Exh.6), the Malkhana In-charge, provided the Malkhana entry related to the deposit of the seized property. Lastly, SIP Ali Hussain Shah (PW-04,

Exh.7), the Investigating Officer, tendered the relevant entries, the road certificate, and the Forensic Science Laboratory (FSL) report. After these witnesses had been examined, the learned State Counsel formally closed the prosecution's case (Exh.8). When given the opportunity to present his defense under Section 342 Cr.P.C., the Appellant, Ghulam Rabbani, simply denied the prosecution's allegations, asserting his innocence and seeking acquittal. He chose neither to testify under oath nor to produce any witnesses in his defense. After considering the arguments from both the prosecution and the defense, the learned trial court framed two key questions: firstly, whether ASI Nazar Muhammad Malik had indeed recovered 600 grams of charas from the Appellant in the presence of the mashirs on the alleged date, time, and place; and secondly, what the appropriate judgment should be. The trial court ultimately answered the first question in the affirmative, concluding that there was sufficient evidence linking the Appellant to the charged offense. Consequently, the Appellant was convicted and sentenced as described above.

4. The learned Advocate for the Appellant, Mr. Qudratullah Shaikh, vigorously argued that the impugned judgment was legally and factually unsustainable. He contended that the prosecution had utterly failed to establish the Appellant's guilt beyond a reasonable doubt, pointing to several significant flaws and contradictions in the prosecution's evidence that, in his view, cast serious doubt on the entire case and entitled the Appellant to the benefit of doubt. Specifically, he argued that the Appellant was falsely implicated and that the charas was planted on him, especially considering his father's police background and alleged animosity. While acknowledging Section 25 of the CNSA, 1997, which precludes the strict application of Section 103 Cr.P.C. regarding the absence of private mashirs, he argued that, given the other severe

inconsistencies, the lack of independent public witnesses became a crucial factor contributing to the overall doubt. The learned counsel meticulously highlighted glaring contradictions within the testimonies of the prosecution witnesses, asserting that these discrepancies undermined the very foundation of the prosecution's narrative, rendering it unreliable and fabricated. He particularly emphasized the contradictory accounts of the accused's reaction to the police: PW-1 (ASI Nazar Muhammad) claimed the accused "tried to scape" and "could run away for five to six paces," but PW-2 (PC Israr Ahmed), the co-mashir, directly contradicted this, stating the accused "did not run away even for a single step." This fundamental disagreement about the initial suspicious behavior, which was the basis for the apprehension, created serious doubt. Another striking inconsistency was the color of the weight scale used: PW-1 described it as "green coloured," while PW-2 stated it was "black coloured", a direct contradiction concerning a vital piece of equipment. Furthermore, there was a significant discrepancy regarding the duration of the recovery proceedings at the spot: PW-1 testified it lasted "about 20 minutes," while PW-2 claimed it was "about 40 minutes," a 100% difference that raised questions about the accuracy of police records. The presence of the SIO at the police station also yielded conflicting accounts: PW-1 and PW-2 stated the SIO was "not available" when they left at 06:00 a.m, yet PW-4 (SIP Ali Hussain Shah), the SIO, asserted he "was available" at 07:50 a.m when the FIR and case property were handed to him. Finally, the witnesses contradicted each other on the presence of private persons during the IO's visit to the spot: PW-1 stated "No private person attracted," while PW-2 claimed "Two to three private persons were available." The learned counsel submitted that the cumulative impact of these contradictions, coupled with the exclusive reliance on official witnesses, made the prosecution's case appear unnatural and

fabricated, rendering it unsafe to uphold a conviction. He contended that the trial court's failure to properly appreciate these material contradictions, had they been considered, should have led to the Appellant's acquittal based on the principle of benefit of doubt.

5. Conversely, the learned DPG for the State staunchly defended the trial court's judgment, arguing that the prosecution had convincingly proved its case against the Appellant beyond any reasonable doubt. He maintained that ASI Nazar Muhammad Malik (PW-01) and PC Israr Ahmed (PW-02) offered consistent ocular evidence regarding the arrest, time, place, and recovery of 600 grams of charas. He stressed that the testimony of WHC Fateh Muhammad Dal (PW-03) and SIP Ali Hussain Shah (PW-04) established an unbroken chain of custody, ensuring the charas's safe transmission to the Chemical Examiner within two days, and the positive chemical report corroborated the substance's nature. The learned ADPP asserted that no ill-will or malice of the police against the Appellant had been proven, thereby negating any suggestion of false implication. He reiterated that police officials are credible witnesses, and Section 25 of the CNSA, 1997, specifically excludes the application of Section 103 Cr.P.C. in narcotics cases. Furthermore, he argued there was no legal impediment for a police officer to act as both complainant and Investigating Officer, citing *Liaqat Ali v. The State* 2022 SCMR 1097, which upholds the reliability of unchallenged police testimony and acknowledges the public's reluctance to serve as witnesses. He dismissed the contradictions pointed out by the defense as "too minor to consider," maintaining they did not undermine the core of the prosecution's case. Finally, he highlighted the Appellant's failure to offer any defense evidence or testify under oath, suggesting this indicated a lack of substance in his claims.

6. Having given anxious consideration to the arguments presented by both the learned counsel for the Appellant and the

learned DPG for the State, and meticulously re-examining the entire trial court record, including the evidence and cross-examination of the prosecution witnesses and the impugned judgment, in light of criminal jurisprudence, particularly concerning the "benefit of doubt," it must be acknowledged that Honorable Superior Courts have consistently affirmed the competence of police officials as witnesses whose testimony can be relied upon if it inspires confidence and remains unshattered. Furthermore, Section 25 of the CNSA, 1997, explicitly excludes the application of Section 103 Cr.P.C. regarding the non-association of private mashirs. However, the present case differs significantly. Here, the contradictions identified by the learned defense counsel are not merely minor discrepancies that can be overlooked; instead, they constitute material contradictions that fundamentally undermine the prosecution's narrative, thereby creating serious doubt about the truthfulness and reliability of the police witnesses' accounts. For instance, the fundamental premise for the police stopping and apprehending the Appellant, his alleged attempt to escape, was directly contradicted: PW-1 (ASI Nazar Muhammad) stated the accused "tried to scape" and "could run away for five to six paces," while PW-2 (PC Israr Ahmed), the co-mashir, unequivocally stated, "Accused did not run away even for a single step." This irreconcilable contradiction on a crucial initial event creates a serious doubt about the recovery's veracity. A glaring factual contradiction also emerged concerning the color of the weight scale used: PW-1 described it as "green coloured," while PW-2 stated it was "black coloured." Such a basic inconsistency between two key witnesses involved in the same operation casts significant doubt on their observation or veracity. Furthermore, a substantial discrepancy existed in the reported duration of the recovery proceedings at the spot: PW-1 claimed "about 20 minutes," whereas PW-2 asserted "about 40 minutes" a

100% difference that challenges the accuracy of police record-keeping. The presence of the SIO at the police station also yielded conflicting accounts, as PW-1 and PW-2 claimed he was "not available" when they left at 06:00 a.m, while PW-4 (SIP Ali Hussain Shah), the SIO himself, stated he "was available" at 07:50 a.m when the FIR and case property were handed over to him. This procedural anomaly adds to the overall doubt. Lastly, a direct contradiction arose regarding the presence of private persons during the IO's visit to the spot: PW-1 stated "No private person attracted" while PW-2 claimed "Two to three private persons were available." This inconsistency, again between key police witnesses, raises further questions about the transparency of the proceedings. While the non-association of private mashirs may not be fatal in CNSA cases due to Section 25, as held in *Roshan v. The State* (supra), the cumulative effect of these numerous and material contradictions within the prosecution's own witnesses' testimonies cannot be disregarded. These are not trivial variations; they pertain to crucial aspects of the recovery, the accused's conduct, and the procedural integrity of the police action. When the very foundation of the prosecution's evidence is riddled with such inconsistencies, it becomes unsafe to uphold a conviction. The principle of criminal justice mandates that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that doubt must always be extended to him. The contradictions presented in this case are sufficient to engender such a doubt. Although the learned trial court dismissed these contradictions as "too minor to consider," in this Court's view, they are fundamental inconsistencies directly impacting the credibility of the prosecution witnesses and the veracity of the alleged recovery. Consequently, the prosecution's case, when critically examined in light of these contradictions, fails to inspire the requisite confidence for maintaining a conviction. Therefore, this Court is compelled to

conclude that the prosecution has failed to prove its case against the Appellant beyond any reasonable doubt, and the benefit of doubt must, in these circumstances, accrue to the Appellant. For these reasons, the Criminal Jail Appeal No. D-48 of 2024, filed by Ghulam Rabbani Kalhoro, is hereby allowed. The impugned judgment dated July 12, 2024, passed by the learned Court of Special Judge (CNS)/Sessions Judge Shikarpur, is set aside. The Appellant, Ghulam Rabbani, is acquitted of the charge and shall be released from custody forthwith, unless he is required in any other case. A copy of this judgment shall be immediately transmitted to the Superintendent, Central Prison Sukkur, for compliance, and to the learned trial court for its record, and the original record and proceedings shall be returned forthwith.

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Asghar Altaf/P.A