

# **N THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Spl.Criminal Appeal No. D-107 of 2024

Before:

Mr. Justice Mahmood A. Khan

Mr. Justice Khalid Hussain Shahani

Appellant: Khadim Hussain son of Shadi Khan Khoso  
Through Mr. Suhail Ahmed Khoso, advocate

The State: Through Mr. Shafi Muhammad Mahar, DPG

Date of Hearing: 05.08.2025

Date of Judgment: 05.08.2025

## **JUDGMENT**

**KHALID HUSSAIN SHAHANI, J:--** This Special Criminal Appeal assails the judgment dated 22.10.2024, delivered by the learned Sessions Judge/Special Judge (CNS), Ghotki, whereby the appellant, Khadim Hussain Khoso, was convicted for an offence under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced to undergo rigorous imprisonment for nine years and to pay a fine of Rs. 80,000/-, or in default, to suffer further simple imprisonment for four months.

2. The prosecution case is that on 02.07.2024 at 1600 hours, complainant ASI Amanullah Kalwar (PW-1) and his team, including PC Muhammad Khan Gabole (PW-2), apprehended the appellant near Sher Ali Bridge on the Mathelo link road. The appellant was allegedly carrying a shopper bag from which 2000 grams of Charas were recovered. A sample of 750 grams was separated and the contraband was sealed. Consequent upon; case was registered inter alia on above facts.

3. After completion of the investigation by SIP Sher Khan Bozdar (PW-5), which included sending the sample to the Chemical Laboratory at Rohri and obtaining a positive report, a final report was submitted.

4. The trial court framed a formal charge against the appellant, to which he pleaded not guilty. The prosecution examined five witnesses. The appellant, in his statement under Section 342 Cr.P.C., denied the allegations, claimed his innocence, and asserted that he had been illegally detained by the police prior to the registration of this case. The learned trial Judge, finding the prosecution witnesses to be unanimous and their evidence consistent, convicted

the appellant, holding that the chain of custody was unbroken, the absence of private mashirs was explained by Section 25 of the CNS Act, 1997, and other defense pleas were without merit.

5. Mr. Khoso, the learned counsel for the appellant, has launched a multipronged attack on the impugned judgment contending that the trial court failed to appreciate the glaring contradictions and fatal infirmities in the prosecution's evidence. Learned counsel has painstakingly drawn the Court's attention to the testimony of the prosecution witnesses, which is demonstrably riddled with inconsistencies. A foundational flaw lies in the very identity of the case property; the complainant (PW-1) testified that the recovered shopper was blue, yet admitted in cross-examination that the articles produced in court were contained within two small white shoppers. The mashir (PW-2) conveniently failed to recall the color, a failure that erodes the bedrock of the recovery itself. This discrepancy is compounded by a devastating admission from the mashir, PW-02 Muhammad Khan, which dismantles the very foundation of the recovery. He stated unequivocally that after the alleged recovery, *"we brought the accused and case property at PS where on the dictation of complainant, WHC prepared the memo... where we both mashirs put our hands/ signatures."* This is a direct contradiction of the complainant's claim that the memo was prepared at the spot. The memo of arrest and recovery is the backbone of the prosecution's case; its preparation at the scene, in the presence of witnesses, is what lends it authenticity. When its creation is shifted to the controlled environment of a police station, its evidentiary value is catastrophically diminished, opening the door to deliberation, manipulation, and after-thought. This fatal flaw is exacerbated by PW-2's further admission that *"it is a fact that contraband charas was sealed at PS"*. The law mandates the immediate sealing of recovered narcotics at the spot to ensure the integrity of the case property and to rule out any possibility of tampering or substitution. By failing to seal the contraband at the scene and instead transporting it unsealed to the police station, the prosecution has created an irreparable break in the chain of custody from its very inception. The safe custody and transmission of the sample become meaningless when the sanctity of the parent article from which the sample was drawn is compromised at the outset. This single admission by the mashir renders the entire recovery exercise suspect and fatally wounds the prosecution's case. The credibility of the witnesses is further shattered by their conflicting accounts of the vehicle used for the subsequent

inspection of the scene, with PW-1 and the IO (PW-5) claiming it was a private vehicle, while PW-2 insisted it was an official police mobile.

6. Conversely, Mr. Mahar, the learned Deputy Prosecutor General for the State, has supported the impugned judgment, adopted the reasoning of the learned trial court and argued that any discrepancies are minor and do not affect the core of the prosecution's case.

7. The meticulous examination of evidence and unwavering commitment to established legal principles forms the bedrock of criminal jurisprudence. This analysis expands upon the fundamental tenets governing criminal trials, particularly the prosecution's burden of proof and the critical evaluation of witness credibility in light of material contradictions that undermine the integrity of the prosecution's case.

8. The cardinal principle that the prosecution bears the heavy burden of proving its case against the accused beyond shadow of reasonable doubt represents what Viscount Sankey eloquently termed the "golden thread" running through the entire fabric of criminal jurisprudence. This principle, firmly established in the landmark case of *Woolmington v DPP* (1935), fundamentally revolutionized criminal law by establishing that "throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt"

9. The Woolmington doctrine has been consistently recognized and applied by Pakistani courts, with the Supreme Court emphasizing that "the prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused". This burden never shifts to the accused, and failure to discharge it mandates acquittal as a matter of legal right, not judicial discretion.

10. The burden of proof principle is intrinsically linked to the presumption of innocence, which serves as a fundamental safeguard against wrongful conviction. As established in Pakistani jurisprudence, "an accused person is presumed to be innocent till the time he is proved guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt".

11. The theoretical underpinning of this principle rests on the legal maxim that "it is better that ten guilty persons escape than that one innocent person be wrongly convicted". This principle reflects the state's recognition that the deprivation of liberty through criminal conviction requires the highest standard of proof, necessitating moral certainty rather than mere probability. When prosecution witnesses present unanimous and consistent testimony, as claimed by trial courts, such conclusions must be rigorously scrutinized against the actual record. The legal doctrine of impeachment allows for the systematic undermining of witness credibility through the demonstration of material contradictions. As established in Pakistani case law, "if there is one which impeaches the credibility of the witness, that may make the entire statement doubtful". The jurisprudential distinction between material contradictions **and** minor discrepancies is crucial for determining the evidentiary value of witness testimony. Material contradictions are those that "strike at the very heart of the prosecution's narrative and seriously impeach the credibility of the witnesses," while minor discrepancies are typically excused as natural human fallibility. The Apex courts have consistently held that "when a witness made contradictory statement or improvement changing his version to suit the situation, if found to be deliberate and dishonest, would cause serious doubt on his veracity". The Supreme Court has established that dishonest improvements made by witnesses to strengthen the prosecution case result in the complete loss of credibility and evidentiary value.

12. In case of *Farman Ahmed v. Muhammad Inayat* (2007 SCMR 1825), the Honorable Supreme Court was pleased to held that improvements once found to be deliberate and dishonest would cast serious doubts on veracity of such witness" *Muhammad Mansha v. The State* (2018 SCMR 772), "Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements"

13. The chain of custody doctrine represents a fundamental evidentiary requirement in narcotic cases, designed to ensure the integrity and authenticity of seized substances from recovery to chemical analysis. As defined by legal authorities, it is "a chronological documentation of the handling of evidence throughout a criminal investigation". The chain of custody encompasses several critical stages:

1. *Initial Recovery and Documentation: Evidence must be properly seized and documented at the crime scene.*
2. *Safe Custody: Secured storage at police facilities with proper documentation.*
3. *Safe Transmission: Documented transfer to chemical examination facilities*
4. *Laboratory Analysis: Proper handling and testing by qualified examiners.*

14. The Supreme Court of Pakistan has repeatedly emphasized that "any break or gap in the chain of custody makes the Report of the Chemical Examiner unsafe and unreliable for purposes of conviction". The court has established that: Safe custody and safe transmission must be "unbroken, safe, secure, and indisputable" Any gap or break in the chain entitles the accused to benefit of doubt. The prosecution must "establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure". Reliance is placed on the cases of *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), wherein Established comprehensive requirements for chain of custody, case of *Ikramullah v. State* (2015 SCMR 1002), wherein it was articulated that Acquittal based on failure to prove safe custody and transmission.

15. The admission by prosecution witnesses that recovery memos were prepared at police stations rather than at the crime scene represents a fundamental breach of investigative transparency. As established in Pakistani jurisprudence, "the main object of preparing the recovery memo on the spot and with the signatures of the witnesses is to ensure that the recovery is affected in presence of the marginal witnesses, honestly and fairly, so as to exclude the possibility of false implication and fabrication". The precedential authority clearly establishes that "recovery memo prepared at police station and article sealed and packed also at police station. Such recovery held doubtful". This principle recognizes that recovery memos must be prepared at the scene to ensure authenticity. Sealing and packing must occur at the recovery location. Police station preparation creates irrebuttable presumption of tampering. The preparation of recovery documents at police stations rather than crime scenes creates what can be termed the "contamination doctrine" the legal presumption that evidence handled outside proper protocols is inherently unreliable. This doctrine serves several theoretical purposes:

1. **Deterrent Effect:** Discourages investigative shortcuts and procedural violations
2. **Integrity Preservation:** Maintains public confidence in judicial processes

### 3. Constitutional Protection: Safeguards against fabricated evidence and wrongful conviction

16. Criminal jurisprudence recognizes that individual evidentiary defects may aggregate to create reasonable doubt, even when each defect might be excusable in isolation. The cumulative effect theory requires courts to evaluate the totality of contradictions, procedural illegalities, and investigative omissions rather than examining each flaw separately. The Honorable Apex Courts of Pakistan have consistently applied this principle, holding that "the cumulative effect of contradictions, procedural illegalities, and investigative omissions" can result in prosecution failure even where individual defects might not be determinative. The Supreme Court has established that multiple defects create compound reasonable doubt. Procedural violations undermine case integrity and Investigative omissions cast suspicion on prosecution reliability. The emphasis on strict burden of proof requirements and benefit of doubt principles reflects the adoption of a protective model of criminal justice, prioritizing the prevention of wrongful conviction over efficient crime prosecution. This model recognizes that the vast resources of the state require corresponding procedural safeguards, criminal conviction carries severe, often irreversible consequences and the state's monopoly on legitimate force requires rigorous procedural compliance. While alternative truth-seeking models prioritize factual accuracy and efficient conviction of the guilty, the protective model's dominance in common law systems reflects several theoretical considerations i.e. human fallibility in fact finding requires error-correction mechanisms, prosecutorial advantages necessitate defensive procedural barriers and individual rights protection serves broader democratic objectives

17. Modern criminal investigation increasingly relies on digital evidence, forensic technology, and scientific analysis, creating new challenges for traditional doctrines of witness credibility and chain of custody. Future development may require the adapted chain of custody requirements for digital evidence, enhanced scientific evidence standards for forensic analysis and reformed witness credibility assessments incorporating psychological research. The Honorable Apex Courts of Pakistan in application of common law principles, while maintaining fundamental protections, may benefit from comparative analysis with other jurisdictions' approaches to burden of proof allocation in complex cases, scientific evidence evaluation standards, procedural safeguard modernization and the Enduring Relevance of

Fundamental Principles. The analysis of criminal law principles governing burden of proof, witness credibility, and evidence integrity reveals the enduring relevance of foundational legal doctrines established through centuries of jurisprudential development. The "golden thread" of prosecution burden, the impeachment doctrine for witness credibility, and the chain of custody requirements for physical evidence collectively form an integrated framework designed to prevent wrongful conviction while maintaining public confidence in criminal justice administration.

18. The theoretical underpinnings of these principles including the presumption of innocence, the protective model of criminal justice, and the cumulative effect doctrine reflect sophisticated balancing of competing values: individual liberty versus social protection, procedural fairness versus efficient prosecution, and truth-seeking versus error prevention. As criminal law continues evolving to address contemporary challenges, these fundamental principles provide the stable foundation upon which adaptive innovations can be constructed while preserving the essential character of fair and just criminal proceedings. The benefit of doubt, when supported by material contradictions, procedural violations, and investigative failures, remains not merely a technical legal requirement but a fundamental expression of civilized society's commitment to individual dignity and judicial integrity. The prosecution's failure to prove its case "beyond any shadow of reasonable doubt" through "unimpeachable evidence" necessitates acquittal as both legal requirement and moral imperative, ensuring that the criminal justice system remains worthy of public trust and constitutional legitimacy. For the foregoing reasons, this appeal was allowed by a short order on 05.08.2025. The impugned judgment of conviction and sentence dated 22.10.2024 were set aside. The appellant, Khadim Hussain son of Shadi Khan Khoso, was acquitted of the charge with the directions to be released forthwith if not required in any other custody case. These are the detailed reasons for short order.

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