

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-25 of 2024

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant	: Manzoor Ahmed son of Karim Bux by caste Jakhrani, <i>through</i> Mr. Shakeel Ahmed. G. Ansari, Advocate.
The State	: <i>through</i> Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh
Date of Hearing	: 05-08-2025.
Date of Decision	: 05-08-2025.
Date of Reason	: 12.08.2025.

JUDGMENT

Ali Haider 'Ada', J:- Through the present Criminal Appeal, the appellant has assailed the judgment dated 30.03.2024, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court/Special Judge for CNSA, Shikarpur, in Special Case No.87 of 2022, whereby the learned trial Court convicted the appellant and sentenced him to imprisonment for life along with a fine of Rupees One Million. In case of default in payment of fine, the appellant was directed to undergo simple imprisonment for a further period of five years. However, the benefit of Section 382-B, Code of Criminal Procedure, 1898, was extended to the appellant.

2. Brief facts of the prosecution case are that, on 19.01.2022, after receiving the spy information, the appellant was apprehended by a police party headed by Excise Inspector Khursheed Ahmed. Upon conducting a body search of the appellant, the police allegedly recovered fifteen (15) packets of Charas, each packet containing two patties, making a total of thirty (30) patties. The said patties bore the marking Gumnam 2021-2022, and the total weight of the recovered contraband was determined to be 15 kilograms. It was further alleged that the recovered Charas was being transported in a Toyota Hiace Wagon. Thereafter, on completion of the codal formalities, FIR was registered against the appellant in respect of the said offence. That, thereafter, the usual investigation was conducted and

upon completion thereof, the appellant/accused was sent up for trial by the investigating agency.

3. After framing of charge against the appellant on 09.03.2022 by the learned trial Court to which the appellant pleaded not guilty and claimed to be tried, the learned trial Court permitted the prosecution to lead its evidence. In pursuance thereof, the prosecution examined the witnesses: PW-01: Excise Inspector Khursheed Ahmed, the complainant, who testified to the facts of the case and exhibited the Roznamcha Entry, memo of recovery and arrest, FIR, and memo of inspection of the place of incident. He further produced and exhibited the Chemical Examiner's report. PW-02: Excise Constable Ghulam Nabi, who acted as mashir to the aforesaid memos and supported the prosecution's version. PW-03: Excise Constable Riaz Ali, who was cited as a witness as well as co-mashir and also being the dispatch rider and exhibited the forwarding letter to the Chemical Examiner. Thereafter, the prosecution closed its side through a statement dated 30.03.2024. The learned trial Court then examined the appellant under Section 342, Cr.P.C, wherein the appellant professed his innocence, denied the allegations leveled against him, and prayed for his acquittal. Upon hearing the parties, the learned trial Court rendered the impugned judgment, which is now under judicial scrutiny before this Court.

4. Learned counsel for the appellant contended that the property in question has been falsely foisted upon the appellant, as he is neither the owner of the vehicle in question, namely Toyota Hiace Wagon, nor he possess a valid driving license. It was further argued that the complainant himself assumed the role of Investigating Officer, thereby wearing two hats in the same matter, which is against the settled norms of fair investigation. Counsel also questioned the integrity of the chain of custody, asserting that the safe custody and safe transmission of the case property to the Chemical Examiner are highly doubtful. In view of these infirmities, learned counsel prayed for the acquittal of the appellant.

5. Conversely, learned Additional Prosecutor General submitted that a huge quantity of contraband, 15 kilograms of charas, was recovered from the possession of the appellant, and there is no element of malafide on the part of the prosecution to falsely implicate him. He maintained that, given

the nature and quantity of the recovered narcotics, the appellant is not entitled to relief of acquittal.

6. Arguments heard. Record carefully examined with due care and caution.

7. According to the prosecution, the complainant allegedly received spy information regarding the transportation of narcotics, whereupon he, along with his subordinates, left the police station and proceeded towards the pointed location. It is stated that prior to his departure, the complainant made Roznamcha Entry No.02, reflecting the movement of the police party from the station. However, a careful perusal of the said Roznamcha Entry reveals that it contains no mention whatsoever of the complainant having received any spy information. Furthermore, the prosecution case is materially contradicted with respect to the description and packing of the alleged narcotics. The complainant deposed that the recovered contraband consisted of fifteen packets, each wrapped in blue pannies (plastic coverings). Conversely, the Chemical Examiner's report describes the contraband as being wrapped in yellow plastic pannies, further kept in a pink plastic shopper. Significantly, none of the prosecution witnesses, including the complainant, made any mention of the recovery of such a pink shopper from the possession of the appellant. This glaring inconsistency between ocular and documentary evidence materially creates doubt regarding the identity, safe custody, and safe transmission of the case property. Reliance, in this regard, is placed upon the case of *Zafar Ali Abbasi and another v. Zafar Ali Abbasi and others* (2024 SCMR 1773), wherein it was held by Apex Court that:

"...According to the said witness, the dagger was wrapped in a black colour shopper, but when it was presented before the Trial Court, it was unsealed and was wrapped in a white colour plastic. None of the recovery witness put any identification mark upon it in order to exclude any possibility of foisting false recovery or substituting the recovered one. The manner in which the dagger was taken into possession and produced in the Court, creates doubt regarding its recovery, therefore, the High Court has rightly disbelieved it.

8. According to the testimony of dispatch rider Riaz Ali, who was also cited as a co-mashir of the memo of recovery and arrest, he received the case property from the Investigating Officer on 22.02.2022. This version is

corroborated by the forwarding letter of the complainant/Investigating Officer addressed to the Chemical Examiner, wherein the date accompanying his signature is recorded as 22.02.2022; however, during cross-examination, he stated that the same was 22.01.2022. This factual aspect is of material significance because, even assuming that the recovery took place on 19.01.2022, the statutory period of seventy-two hours, as prescribed under Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, for transmitting the sealed parcels to the Chemical Examiner, would have expired on 21.01.2022. The dispatch of the case property on 22.02.2022 or 22.01.2022, therefore, constitutes a clear violation of the requirement of safe custody and prompt transmission, thereby causing a serious dent in the prosecution's case with respect to the sanctity of the chain of custody. Reliance is placed upon the judgments rendered in *Asif Ali and another v. The State* (2024 SCMR 1408) and *Qaiser Khan v. The State* (2021 SCMR 363).

9. Furthermore, under the Police Rules, 1934, every movement or event concerning case property is required to be recorded in the relevant registers maintained at the police station, particularly Register No. 19 (Malkhana Register), which reflects the receipt, custody, and dispatch of case property. The said register is to be maintained by the Malkhana Incharge, who is the custodian of such property. In the present case, however, the prosecution neither examined the Malkhana Incharge as a witness nor produced the relevant extract of Register No. 19 to establish that the case property was ever deposited in safe custody after its alleged recovery, or that it remained untampered until its dispatch to the Chemical Examiner. This omission constitutes a serious lacuna in the prosecution case, as it breaks the vital link in the chain of safe custody of the recovered narcotics. In this regard Reliance is placed upon the cases of *Javed Iqbal v. The State* (2023 SCMR 139), *Ahmed Ali and another v. The State* (2023 SCMR 781), and *Shoaib Ahmed v. The State* (2025 MLD 620).

10. In order to establish the chain of custody of the case property, when such essential link is missing, it inevitably breaks the chain of safe transmission, thereby casting serious doubt upon both the safe custody and the safe transmission of the narcotics allegedly recovered. In this

context, reliance is placed upon the case of *Zahir Shah alias Shat v. The State* (2019 SCMR 2004), as held that:

“...This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. Reliance is placed on State v. Imam Bakhsh (2018 SCMR 2039).

11. It is well-settled principle of criminal jurisprudence that if a single loophole in the prosecution’s case comes on record, the benefit of such doubt must be extended to the accused. The standard of proof in criminal trials requires the prosecution to establish its case beyond reasonable doubt. Any failing in this regard entitles the accused to acquittal. In support of this proposition, reliance is placed on the authoritative judgment of the Hon’ble Supreme Court in the case of *Ahmed Ali and another vs. The State* (2023 SCMR 781), wherein it was held as under:

12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).

12. Accordingly, and as already recorded, the instant appeal was allowed vide short order dated 05.08.2025, whereby the conviction and sentence awarded to the appellant, as well as the impugned judgment, were set aside. Consequently, the appellant was acquitted of the charge, with directions to the jail authorities to issue his release warrant forthwith, if he is not required in any other case. These are the detailed reasons for the aforesaid short order.

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