

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Crl. Appeal No. D-113 of 2022

*Before:*

*Mr. Justice Amjad Ali Bohio, J.*

*Mr. Justice Khalid Hussain Shahani, J.*

Appellant : Sikander Ali s/o Bakh Ali alias Bakhshal Shar,  
Through Mr. Achar Khan Gabol, Advocate

The State : Syed Sardar Ali Shah Rizvi, Additional P.G

Date of hearing : 20.08.2025

Date of short order : 20.08.2025

Reasons recorded : 22.08.2025

## **JUDGMENT**

**KHALID HUSSAIN SHAHANI, J.** – The instant appeal, filed under Section 410 of the Code of Criminal Procedure, 1898, read with Section 48 of the Control of Narcotic Substances Act, 1997, assails the judgment dated September 12, 2022, passed by the learned 1st Additional Sessions Judge/(MCTC)(CNS), Khairpur, in Special Case No.163 of 2021. By the said judgment, the appellant was convicted and sentenced to life imprisonment and a fine of Rs.100,000/- (one hundred thousand rupees) for an offense under Section 9(c) of the CNS Act, 1997.

2. The prosecution's case, as detailed in the FIR, is that on July 9, 2021, ASI Sadaruddin Lak, the complainant (PW-1), was patrolling with his subordinates when he received a tip-off that a white car, containing two individuals and charas, was heading towards Karachi. Acting on this information, the police team set up a checkpoint and at about 1300 hours, they intercepted a white car bearing registration No. PKS-339. The driver of the car, identified as the appellant, Sikandar Ali, was apprehended, while the other occupant, identified as Mansoor Ali, escaped. The police, after failing to secure any private individuals as mashirs, proceeded with two police officials, PC Ghulam Asghar and PC Ashique Hussain, as official mashirs. A search of the vehicle allegedly led to the recovery of 20 pieces/packets of charas, each weighing 1000 grams, for a total of 20 Kgs. A personal search of the appellant yielded three currency notes of Rs. 500/-, totaling Rs. 1500/-. The complainant stated that the appellant confessed to have purchased the charas from an accused named Abdul Majeed. Subsequently, the complainant prepared a memo of arrest and recovery, and the FIR was registered through SIP Abdul Karim (PW-4). The I.O, Inspector Mukhtiar Ali Pathan (PW-5), submitted a charge sheet after a routine investigation. During the trial, the prosecution presented

five witnesses, and the learned trial court, after finding the evidence sufficient against the appellant, convicted him but acquitted his co-accused, Mansoor Ali and Abdul Majeed, citing a lack of evidence.

3. Learned counsel for the appellant, vehemently argued that the prosecution's case is false and based on concocted facts. He contended that the judgment is based on surmise and conjecture as the prosecution has failed to establish its case beyond a reasonable doubt. He highlighted the failure to associate any private mashirs despite the recovery being made on a busy National Highway, and the complete reliance on official witnesses who were subordinate to the complainant, rendering their testimony self-serving and unreliable. The learned counsel emphasized the most crucial aspect, the broken chain of custody. The memo of recovery and the R.C. stated the recovered weight as 20 Kgs, but the chemical examiner's report confirmed the receipt of only 19 Kgs and 600 grams, a fatal discrepancy of 400 grams that was not explained. The learned counsel also pointed out the failure to produce the Malkhana in-charge or any official who received or transported the case property, a significant omission that, according to established jurisprudence, renders the chemical examiner's report unreliable and creates reasonable doubt. He relied on numerous case laws, including *Abdul Ghani Vs. The State (2016 SCMR 608)* and *Javed Iqbal V. The State (2023 SCMR 139)*, to support his arguments regarding the necessity of a secure chain of custody. Furthermore, he highlighted the failure of the trial court to confront the accused with the recovered case property during his statement under Section 342 Cr.P.C., a vital procedural safeguard.

4. Conversely, the learned Additional P.G for the State, defended the trial court's judgment. He argued that the prosecution's case had been fully established, with the complainant's testimony being corroborated by the mashir, PC Ghulam Asghar, and supported by the positive report of the chemical examiner. He contended that the absence of private witnesses was not a fatal flaw, as Section 25 of the CNS Act excludes the applicability of Section 103 Cr.P.C. in such cases, and official witnesses are as credible as public witnesses in the absence of a proven motive for false implication. He also downplayed the weight discrepancy and the delay in sending the sample, arguing that these factors do not discard the "material evidence" of the prosecution witnesses, citing case laws on support of his argument.

5. The most glaring and fatal flaw in the prosecution's case emerges from the contradictory testimony of PW-01 (ASI Sadaruddin) regarding the

preparation of the recovery memo. In his examination-in-chief, he categorically stated "I prepared memo of arrest and recovery," yet during cross-examination, he contradicted himself by stating "PC Shahid Hussain had written such memo." This contradiction was further corroborated by PW-02 (PC Ghulam Asghar) who testified that "The memo of arrest and recovery was prepared by PC Shahid Hussain." The Supreme Court of Pakistan in *Zakir Khan v. The State* (1995 SCMR 1793) held that "only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked." However, the question of who prepared the recovery memo is not a minor discrepancy but a fundamental contradiction that goes to the heart of the prosecution's case. In *Nazeer Ahmed v. The State* (2016 SCMR 1628), the Court emphasized that material contradictions destroy the credibility of witness testimony. This contradiction is particularly damaging because the recovery memo is the foundational document establishing the entire case. If the primary witness cannot maintain consistency about such a basic fact, it raises serious questions about the reliability of his entire testimony.

6. The prosecution's case suffers from multiple timing discrepancies that suggest fabrication. PW-01 testified in chief examination that spy information was received "about 1300 hours," but in cross-examination, he changed this to "1240 hours" a 20-minute discrepancy. Additionally, he stated they reached Ranipur Toll Plaza at "1250 hours" in cross-examination, creating further inconsistencies in the timeline. In cases involving fabricated evidence, courts have consistently held that inconsistencies in timing, especially regarding crucial events, indicate concoction. This Court in *Akhtar Ali and others v. The State* (2021 P.Cr.L.J 750) noted that material discrepancies in prosecution testimony create reasonable doubt about the veracity of the case.

7. Perhaps the most serious evidentiary gap in this case is the non-production of the proper/original *Malkhana* Register No. XIX. PW-05 (Inspector Mukhtiar Ali) referenced "Register No.19 under entry No.158," but the prosecution failed to produce the actual register in court. Only photocopied entries were exhibited, which violates the fundamental principle of best evidence. Article 72 of the Qanun-e-Shahadat Order, 1984 mandates that primary evidence must be produced when available. The Lahore High Court in *Criminal Appeal No. 72 of 2017 - Raza alias Ramzan vs. The State* (2011 YLR 522) held: "Where a thing was provided to be done in a particular manner, it had to be done in that manner and if not so done, the same would not be lawful."

The Supreme Court of Pakistan in *Qaiser Khan v. The State* (2022 SCMR 1641) emphasized "The law in this regard is settled by now that if safe custody of narcotics and its transmission through safe hands is not established on the record, same cannot be used against the accused." In *Zahir Shah alias Shat v. The State* (2019 SCMR 2004), the Supreme Court held, "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."

8. The case exhibits clear indicators of evidence tampering. The recovery memo records 20 Kgs of charas, but the Chemical Laboratory report shows only 19 Kgs 600 grams, a discrepancy of 400 grams. PW-05 admitted: "I myself had not weighed the recovered charas," creating doubt about the actual quantity recovered. More significantly, the recovery memo makes no mention of red-colored panny wrapping, yet the charas presented in court shows red color panny wrapping. PW-02 admitted: "charas present in court shows that some pieces wrapped in red color panny which is not mentioned in memo of arrest and recovery." This Court has consistently held that unexplained discrepancies in weight and packaging indicate tampering. In *Javed Iqbal vs. The State* (2023 SCMR 139), it was held that "the prosecution is responsible to establish each and every step from the stage of recovery till the delivery of the parcel to the concerned laboratory."

9. The search and recovery was conducted without independent mashirs from the locality, in direct violation of Section 103 Cr.P.C. PW-01 admitted: "I tried to associate private person but could not succeed," yet only police officials were made mashirs. This occurred on a busy National Highway with continuous traffic flow. The Supreme Court in *PLJ 1997 SC 1922 State v. Bashir ruled*, "Where members from public are not associated in recovery proceedings u/S. 103 Cr.P.C. which is mandatory unless it is shown by the prosecution that in the circumstances of a particular case it was not possible to have two mashirs from the public but where no efforts were made to secure two mashirs recoveries may be considered doubtful." However, the Peshawar High Court in *2013 PCrLJ 1374* noted, "the provision of section 103, Cr.P.C. has been excluded under the provision of section 25 of C.N.S.A. 1997." Nevertheless, the complete failure to attempt securing independent witnesses on a busy highway creates suspicion.

10. PW-05 (Investigation Officer) made several damaging admissions that reveal the investigation's inadequacy:

1. "I had not checked record of CIA Centre"
2. "I had not recorded statement of any independent person"
3. "I had not got recorded confessional statement u/s 164 Cr.P.C"
4. "I had not matched finger prints"
5. "I had not recorded statement of WHC regarding safe custody"

The failure to record a confessional statement under Section 164 Cr.P.C is particularly significant. The Supreme Court in *Rabindra Kumar Pal alias Dara Singh v. Republic of India (AIR 2011)* established that confessional statements under Section 164 require strict compliance with procedural safeguards, including ensuring the accused is free from police influence and has sufficient time for reflection. The prosecution also failed to produce handwriting expert evidence to verify the memo preparation. In *Muhammad Hussain v. Abdul Razzak (1970 SCMR 506)*, the Supreme Court held, "Handwriting expert certificates cannot be considered without the author being examined and cross-examined."

11. The alleged recovery of Rs. 1500/- in three notes of Rs. 500/- each lacks corroboration. PW-02 admitted: "serial numbers of currency notes are not mentioned in memo of arrest and recovery." This omission is significant as currency notes have unique serial numbers that should be recorded for identification. PW-01 admitted in cross-examination: "it is not mentioned in memo of arrest and recovery that accused was cuffed with hand-cuff," yet PW-04 testified, "The accused was cuffed with handcuff when he was brought at PS by the complainant." This contradiction suggests either incomplete documentation or false testimony.

12. PW-01 admitted that roznamcha entries were "written on white paper" and were "attested copies." Both entries were attested by the same official (HC Fauvaz Hussain), creating suspicion about their authenticity. Original registers were never produced. In *Abdul Rehman and another v. Zia-Ul-Haq Makhdoom and others (2012 SCMR 954)*, the Supreme Court held that admitting photostat copies without observing legal requirements of Article 76 of the Qanun-e-Shahadat Order, 1984 would be illegal. The transmission of case property to the Chemical Laboratory shows irregularities. PW-03 (PC Mukhtiar Hussain) testified about depositing the samples, but his name was not mentioned in the R.C or police letter. Additionally, no mashirnama was prepared at the laboratory, and the weight discrepancy remained unexplained.

The prosecution's case contains several "dishonest improvements" that suggest fabrication,

1. Perfect Timing: Spy information was allegedly received just as the targeted vehicle approached
2. Convenient Escape: Co-accused Mansoor allegedly escaped into a "banana and date palm garden"
3. Voluntary Disclosure: Accused allegedly disclosed co-accused names without pressure
4. Identical Stories: All six police officials narrated identical versions

13. The concept of "dishonest improvements" was discussed in *Zakir Khan v. The State (1995 SCMR 1793)* where the Court noted, "There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court."

14. The prosecution's case suffers from multiple fatal flaws that create reasonable doubt about the accused's guilt. The basic question of who prepared the recovery memo remains disputed among prosecution witnesses. Non-production of proper *Malkhana* Register No. XIX violates the best evidence rule, Weight discrepancies and packaging changes indicate manipulation. Section 103 Cr.P.C not properly complied with. Multiple admissions of inadequate investigation. Multiple breaks in the chain of custody render evidence unreliable. The Supreme Court of Pakistan in *Muhammad Boota vs. The State (2020 SCMR 196)* reaffirmed that the prosecution must prove its case beyond reasonable doubt. When multiple aspects of the case are doubtful, the benefit of doubt must go to the accused. In *State v. Imam Bakhsh (2018 SCMR 2039)*, the Supreme Court held that any break in the chain of custody renders the evidence incapable of sustaining conviction. This case exhibits multiple such breaks.

15. We find the prosecution's case to be fraught with material contradictions, omissions, and investigative flaws that raise a reasonable doubt about the appellant's guilt. The most critical defect lies in the broken and untrustworthy chain of custody of the recovered charas. The significant and unexplained discrepancy of 400 grams between the weight stated at the time of recovery and the weight received by the chemical laboratory is a fatal blow to the prosecution's case. It is a well-settled principle that the integrity of the recovered substance is paramount in narcotics cases. The prosecution's failure to produce the key witnesses responsible for the case property's custody at the police station's *Malkhana* further compounds this issue. This court has

consistently held that the safe custody and transmission of the substance must be proved without any suspicion to sustain a conviction. The acquittal of the co-accused, Mansoor Ali and Abdul Majeed, also casts a serious doubt on the entire prosecution narrative. If the court found the evidence to be insufficient to connect the co-accused to the crime, then the very foundation of the story, which originated from the alleged confession of the appellant, crumbles. The court should have extended the same benefit of the doubt to the appellant. Furthermore, a careful review of the trial proceedings reveals a significant procedural lapse, the accused was not properly confronted with the recovered case property during his examination under Section 342 Cr.P.C., which violates a fundamental principle of a fair trial. This omission, combined with the other defects, makes it impossible for this Court to uphold the conviction. For all the above reasons, we are convinced that the prosecution has failed to establish its case against the appellant beyond a reasonable doubt.

17. The cumulative effect of these deficiencies creates such serious doubt about the prosecution's case that no reasonable person could conclude guilt beyond reasonable doubt. The appeal was therefore allowed, and the accused Sikandar Ali Shar acquitted of all charges vide short order dated 20.08.2025, to be released forthwith if not required in other custody case, these are the detailed reasons thereof. Case property shall be destroyed as per the earlier order.

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