

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-103 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Asif s/o Din Muhammad, Lund  
Through M/s Achar Khan Gabol & Ghulam Ali  
Bozdar, Advocates

The State : Through Mr. Khalil Ahmed Maitlo, DPG

Date of hearing : 01.10.2025  
Date of short order : 01.10.2025  
Reasons recorded on : 03.10.2025

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.—** Appellant Asif Lund challenges the judgment dated 14.10.2024, passed by the learned Additional Sessions Judge-I/ Special Judge for CNS, Ghotki, in Special Case No.86 of 2024 arising out of Crime No.126 of 2024, for offence under Section 9(c) of the Control of Narcotic Substances Act, 1997, registered at P.S. Mirpur Mathelo. The appellant was convicted for possessing 8000 grams of *charas* and sentenced to fourteen years rigorous imprisonment with a fine of Rs.400,000.

2. As per prosecution theory, on 10.05.2024 at about 2000 hours, ASI Zahid Hussain Malik, while conducting routine patrolling at link road Jarwar near Chandia Pump No.3, claimed to have observed the appellant on a motorcycle carrying a sack. Upon sighting police, the appellant purportedly attempted to flee but was apprehended after a chase of 10-15 paces. From the sack, eight pieces of charas weighing 8000 grams were allegedly recovered, of which 4000 grams were segregated for chemical analysis. A memo of arrest and recovery was prepared at the spot with police constables as mashirs due to alleged non-availability of private witnesses. Additionally, cash of Rs.100 and a motorcycle allegedly stolen in another case were recovered. Consequent upon; case was registered inter alia on the above facts.

3. Following committal proceedings, the trial court supplied copies of case documents to the accused at Exhibit 1. A formal charge under Section 9(c) CNS Act was framed at Exhibit 2, to which the accused pleaded not guilty and claimed trial, recorded at Exhibit 2A. The prosecution examined five witnesses in detail to establish its case beyond reasonable doubt. PW-1 ASI Zahid Hussain Malik, the complainant, testified at Exhibit 3 regarding the alleged patrol departure, arrest of the appellant, recovery of eight slabs of charas weighing 8000 grams, preparation of recovery memo, and return to the station. He produced departure and arrival entries, memo of arrest and recovery, FIR, and malkhana register entries. During extensive cross-examination, critical contradictions emerged regarding the nature of the locality and the weighing process. PW-2 PC Ghulam Mustafa, the recovery mashir, testified at Exhibit 4 corroborating the complainant's version and producing the memo of site inspection. His cross-examination revealed significant contradictions about the availability of establishments at the recovery site and the weighing methodology employed.

4. PW-3 PC Illahi Bux, the property carrier, testified at Exhibit 5 regarding transporting the sealed samples to the Chemical Laboratory at Rohri through Road Certificate No.301. His testimony was brief but established the transmission link in the custody chain. P.W-4 SIP Pir Bux Bhutto, the investigating officer, testified at Exhibit 6 regarding receiving custody of the accused and case property, visiting the place of incident, recording statements of witnesses, dispatching samples for analysis, and receiving the positive chemical report. His cross-examination exposed serious investigative lapses and procedural defects. P.W-5 WHC Irshad Ahmed Mirani, the malkhana incharge, testified at Exhibit 7 regarding safe custody of the case property and its dispatch for chemical analysis. His cross-examination revealed critical defects in documentation and unexplained delays in transmission.

5. The prosecution closed its side at Exhibit 8. The accused's statement under Section 342 Cr.P.C. was recorded at Exhibit 9, wherein he denied all allegations, claimed false implication, and sought justice. He neither examined himself on oath under Section 340(2) Cr.P.C. nor produced any defense evidence. The trial court convicted and sentenced the appellant at Exhibit 10.

6. The learned advocate for the appellant advanced comprehensive arguments challenging the prosecution case on multiple grounds. He contended that the entire case was false and fabricated, emphasizing that no private mashirs were associated despite the recovery allegedly occurring at a busy location with multiple establishments including petrol pumps, hotels, and puncture shops. He highlighted material contradictions in prosecution testimonies regarding the nature of the locality, the weighing process, and the chain of custody. The counsel argued that the unexplained five days delay in dispatching samples for chemical analysis vitiated the chain of custody, making the chemical report unreliable. He submitted that all prosecution witnesses were interested police officials whose evidence could not be relied upon without independent corroboration. The counsel placed reliance on established case law including *Muhammad Ishaq v. The State* (2022 SCMR 1422), *Zahir Shah v. The State* (2019 SCMR 2004), and other binding precedents regarding chain of custody requirements and material contradictions warranting acquittal.

7. The learned DPG for the State defended the prosecution case, arguing that Section 25 of the CNS Act excludes the application of Section 103 Cr.P.C., making police officials competent witnesses whose testimony can sustain conviction. He contended that the recovery of substantial quantity (8000 grams) could not be easily fabricated, that the prosecution evidence was consistent and reliable, and that minor contradictions were immaterial. The

DPG argued that prompt FIR registration, proper sealing, safe custody, and positive chemical report completed the evidentiary chain. He relied on case law including *Muhammad Ismail v. The State* (2010 SCMR 27) and other precedents supporting the competence of official witnesses in CNS prosecutions.

8. Upon comprehensive examination of the entire record, this Court identifies multiple fatal defects that individually and collectively render the prosecution case unsustainable and warrant acquittal.

9. The prosecution witnesses have contradicted each other on fundamental aspects that directly impact the credibility of the recovery proceedings. Most significantly, PW-1 ASI Zahid Hussain categorically denied the presence of any commercial establishments at the recovery site, stating under cross-examination: *"It is untrue to say there were patrol pump and different shops at the place of recovery."* This denial is directly contradicted by both PW-2 PC Ghulam Mustafa, who admitted: *"It is true there were a Patrol Pump and a puncture shop and Hotel at the place of arrest,"* and PW-4 SIP Pir Bux Bhutto, who similarly admitted: *"It is true there were a petrol pump, puncture shop and a hotel located in the nearby."*

10. This fundamental contradiction regarding the availability of private witnesses is not a minor discrepancy but strikes at the heart of the prosecution's claim that no private mashirs could be secured. The complainant's deliberate concealment of the availability of civilian witnesses raises serious questions about the genuineness of the proceedings and suggests potential fabrication.

11. Furthermore, contradictions emerge regarding the weighing methodology. PW-1 testified that the charas was weighed on a *"digital official scale of white colour,"* while PW-2 stated under cross-examination: *"We used the iron instrument of five KG on scale for weighing the charas,"* indicating manual weighing with iron weights. Such contradictions on core procedural

aspects cannot be dismissed as peripheral variations but represent fundamental inconsistencies undermining the reliability of the entire narrative.

12. While Section 25 of the CNS Act excludes the strict application of Section 103 Cr.P.C., the deliberate failure to associate private witnesses in a densely populated commercial area creates reasonable doubt about the genuineness of recovery proceedings. The Supreme Court in *Nazir Ahmed v. The State* (PLD 2009 Karachi 191) observed that excluding Section 103 "has not conferred any additional or extra sanctity upon the officers of police or such other forces. It has not made them more reliable." The Court emphasized that when private witnesses are readily available, their non-association without reasonable explanation raises suspicion about the veracity of official witnesses' testimony.

13. The prosecution's contradictory statements regarding the availability of private witnesses with the complainant categorically denying their presence while other witnesses admitting to nearby establishments indicates a coordinated effort to avoid independent scrutiny, suggesting potential fabrication rather than genuine operational constraints.

14. The prosecution has failed to establish an unbroken chain of custody from recovery to chemical analysis, creating multiple gaps that render the chemical report legally unreliable. Critical defects includes; the charas was allegedly recovered on 10.05.2024 but not dispatched for analysis until 15.05.2024. PW-5 admitted under cross-examination: "It is true that the alleged charas was seized on 10.05.2024, whereas, it was dispatched on 15.05.2024, for chemical analyzer without reasonable explanation of such delay." Such unexplained delays create opportunities for tampering and compromise sample integrity, as recognized in *Muhammad Ishaq v. The State* (2022 SCMR 1422) and *Zahir Shah v. The State* (2019 SCMR 2004).

15. PW-5 admitted critical procedural lapses: "It is true that entry No. 3E already produced does not bear date and time of its keeping. It is true the same also does not bear signature of its keeper." This fundamental violation of basic custody requirements undermines the integrity of the safe custody claim.

16. PW-1 admitted inconsistencies in sealing: "When confronted the sealed case property today produced in Court it is verified only two seals are affixed," contradicting his earlier testimony of three seals per parcel. The driver PC Altaf Hussain Shah, who was present during the alleged recovery, was not examined, creating an unexplained gap in the prosecution evidence. This pattern aligns with the defects identified in *Ikramullah v. The State* (2015 SCMR 1002) where failure to produce key custodial witnesses led to acquittal.

17. The chemical report reveals serious procedural violations undermining its reliability. Most critically, PW-1 admitted: "It is true that I did not prepare Form 1 according to CNS rules of 2001. It is true that I did not mention a number to each piece sent for chemical lab." The failure to comply with CNS Rules 2001 regarding proper documentation and numbering of pieces violates mandatory procedures established in *Khair-ul-Bashar v. The State*.

18. Additionally, the chemical report indicates "fourteen black brown pieces" were analyzed, but prosecution evidence consistently refers to "eight slabs" or "eight pieces." This discrepancy between recovery and analysis creates doubt about sample integrity and chain of custody maintenance. PW-4 admitted to multiple investigative failures that compromise the case's credibility: he did not investigate the character of the accused from his residential area, did not inquire about the source of charas or intended purchaser, failed to record statements of any independent local witnesses despite the public nature of the alleged occurrence, and did not properly verify the alleged criminal record

produced. Such investigative negligence suggests either gross incompetence or deliberate avoidance of exculpatory evidence.

19. The circumstances align with numerous Supreme Court decisions mandating acquittal in CNS cases with similar defects. In *Muhammad Ishaq v. The State* (2022 SCMR 1422), the Supreme Court acquitted the accused where there were gaps in the chain of custody and the prosecution "was silent as to where" drug samples remained, emphasizing that the "element of tampering" becomes pronounced in such circumstances. In *Zahir Shah v. The State* (2019 SCMR 2004), the Court held that "safe custody and safe transmission of drugs from the spot of recovery till its receipt by Narcotics Testing Laboratory must be satisfactorily established. Such chain of custody was fundamental as report of Government Analyst was the main evidence for the purpose of conviction". In *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), the Court emphasized that prosecution must establish that seized drugs remained in "unbroken, safe, secure, and indisputable custody at all times," failing which benefit of doubt must be given to the accused. In *Ikramullah v. The State* (2015 SCMR 1002), acquittal was granted when the prosecution failed to name or produce the police official who transported samples to the chemical examiner, similar to the present case where critical custodial procedures were not properly established.

20. The Supreme Court has consistently held that material contradictions going to the root of the case warrant acquittal. In *Khizar Farooq v. The State*, the Court emphasized that contradictions on material aspects create reasonable doubt requiring benefit to be extended to the accused. The present case exhibits contradictions far more serious than those typically considered in appellate review, as they involve deliberate concealment of available private witnesses and fundamental inconsistencies in core procedural claims.

21. Article 10-A of the Constitution guarantees fair trial, which includes the right to have guilt proved beyond reasonable doubt through reliable evidence. The prosecution has failed to discharge this burden due to the cumulative effect of material contradictions, procedural violations, and evidentiary gaps. The principle established in *Tariq Pervez v. The State* that benefit of doubt is the right of the accused, not a matter of grace, applies with full force to the present circumstances.

22. The appellate scrutiny reveals systematic inactions and omissions that collectively vitiate the prosecution case: failure to associate readily available private witnesses despite commercial establishments at the recovery site; failure to properly document chain of custody with required dates, times, and signatures; failure to dispatch samples within reasonable time without explanation; failure to prepare mandatory Form-1 under CNS Rules; failure to number individual pieces sent for analysis; failure to examine key witnesses including the driver present during recovery; failure to investigate character and background of the accused; failure to inquire about source and intended sale of contraband; failure to maintain consistent testimony regarding fundamental aspects of recovery proceedings; and failure to produce credible explanation for five days delay in sample transmission.

23. Multiple illegalities compromise the prosecution case: violation of CNS Rules 2001 regarding Form-1 preparation and piece numbering; violation of basic chain of custody requirements through defective documentation; violation of fair trial principles through presentation of contradictory evidence; violation of investigative standards through failure to examine available independent witnesses; and violation of procedural integrity through unexplained delays and missing documentation.



24. The defects identified are not isolated lapses but form a pattern of systemic failures that collectively render the evidence unreliable. Each defect independently creates doubt, but their cumulative effect establishes that the prosecution has failed to prove the case beyond reasonable doubt. The material contradictions regarding locality, the unexplained delays in transmission, the defective documentation, the procedural violations in chemical analysis, and the investigative inadequacies collectively establish reasonable doubt about the appellant's guilt.

25. The binding precedents establish clear standards that the prosecution has failed to meet. The chain of custody requirements articulated in Zahir Shah, Muhammad Ishaq, and Mst. Sakina Ramzan are not satisfied due to the five days unexplained delay and defective documentation. The investigative standards established in Ikramullah regarding production of key custodial witnesses are violated through non-examination of the driver and other crucial personnel. The evidentiary reliability standards established in various Supreme Court decisions are compromised by the material contradictions and procedural violations identified.

26. The prosecution case suffers from fundamental and irreconcilable defects that create reasonable doubt about the appellant's guilt. The material contradictions regarding the locality of recovery, the unexplained delays in transmission, the defective chain of custody, the procedural violations in chemical analysis, the investigative inadequacies, and the absence of independent corroboration collectively render the evidence unreliable and insufficient to sustain conviction. The trial court erred in overlooking these fatal defects and convicting the appellant based on inherently unreliable evidence.

27. The cumulative effect of these defects establishes that the prosecution has failed to prove the case beyond reasonable doubt. In accordance

with the settled principle that it is better for ten guilty persons to escape than for one innocent to suffer, and recognizing that benefit of doubt is the right of the accused as established in Tariq Pervez v. The State, this Court extends the benefit of doubt to the appellant.

28. The criminal appeal is/was allowed vide short order dated 01.10.2025. Accordingly, the judgment dated 14.10.2024 passed by the learned Additional Sessions Judge-I/Special Judge for CNS, Ghotki, in Special Case No. 86 of 2024 is/was set aside. Appellant Asif son of Din Muhammad Lund is/was acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997 with the directions to be released forthwith unless required in any other case. These are the detailed reasons for short order dated 01.10.2025.

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