

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.D-24 of 2022

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant : Bakhshal S/o Lal Bux Jatoi, *through* Mr. Azhar Hussain Abbasi, Advocate.

The State : *through* Mr. Ali Anwar Kandhro, Additional Prosecutor General, Sindh

Date of Hearing : 27.08.2025.

Date of Decision : 27.08.2025.

Date of Reason : 03.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- The appellant has appealed against the judgment dated 02.06. 2022, passed by the learned Special Judge (CNS) Shikarpur in Special Case No. 434 of 2021. The appellant was convicted and sentenced to rigorous imprisonment for life, along with a fine of One Million Rupees. In case of default, the appellant shall suffer six additional months of simple imprisonment. The period the appellant was detained in custody will be considered when calculating the sentence. The appellant was booked under FIR No. 92 of 2021 for an offense punishable under Section 9(c) of the Control of Narcotic Substances Act, as registered at the Stuart Ganj police station.

2. The prosecution case began on 23.07.2021, when the complainant, ASI Muhammad Yaqoob, and his subordinate staff were on a patrol. While at the Masan graveyard situated on the Shikarpur bypass near Tharupur Mohallah, they noticed a suspicious person carrying a white sack on his shoulder. Upon seeing the police, the person attempted to flee but was apprehended. During a search, the police opened the sack and discovered 15 packets of chars. Each packet contained two slabs, for a total of 30 slabs with a combined weight of 15400 grams. After completing the necessary formalities, the contraband narcotics and the accused were

taken to the police station, where the complainant lodged the FIR. The case was then handed over to the Investigation Officer, who conducted an investigation and submitted a challan (charge sheet) to the trial Court. The trial Court took cognizance of the offense. The necessary legal documents were provided to the appellant and on 07.12.2021, a charge was framed against the appellant. In response, the appellant pleaded not guilty and requested a full trial. The prosecution was then permitted by the court to present its evidence.

3. The prosecution's case began with the testimony of the complainant, ASI Muhammad Yaqoob. He presented Memo of Arrest and Recovery, a copy of the FIR, and relevant roznamcha entries. Next, the prosecution called its witness, mashir Abdul Hameed, who also served as a witness to the incident, exhibited the Memo of the Place of Incident and confirmed he was a witness to the memo of arrest and recovery. The third witness for the prosecution was Nadeem Hussain, the In-charge of the Malkhana. He produced the entry from Register No. 19. Subsequently, the prosecution examined Mir Khan, a dispatch rider. He testified that he deposited the contraband material with the chemical examiner and produced Road Certificate No. 72 dated 27.07.2021. The final witness for the prosecution was the investigation officer, Khadim Hussain. He exhibited several documents to the court, including Roznamcha entries detailing his movements to the place of the incident. A letter to the Senior Superintendent of Police (SSP) Shikarpur dated 24.07. 2021. A letter from the SSP to the chemical analyzer dated 26.07. 2021. The report from the Chemical Examiner. Roznamcha entries regarding the dispatch of the case property to the Chemical Examiner. Finally, on 19.05.2022, the learned District Public Prosecutor filed a statement formally closing the prosecution's evidence.

4. After the prosecution closed its case, the trial court recorded the appellant's statement under Section 342 CrPC. In this statement, the appellant maintained his innocence and prayed an acquittal. The appellant also submitted documents claiming that the police had falsely implicated him as a form of retaliation, stemming from a petition that his

relatives had filed against the police. Following this, the court heard arguments from the counsel for both parties. The trial Court then passed its judgment, which the appellant is now challenging through this Criminal Jail Appeal.

5. The appellant's counsel contended that their client was framed in a false case. They argued that the appellant's relatives had filed a constitutional petition in the High Court, which led to multiple family members being nominated in false cases and having chars foisted on them. On the merits of the case, the counsel raised several points to cast doubt on the prosecution's evidence. The counsel argued that the dispatch rider who testified in court was not the same official who delivered the case property to the chemical examiner. The chemical report, they claimed, showed that a different official delivered the property via a different road certificate. This, they argued, created a major contradiction, proving that the property examined by the chemist was not the same. Further he contended that there was an unexplained delay in sending the recovered property to the chemical examiner, which further weakened the prosecution's case. The description of the recovered chars in the memo of recovery did not match the description in the chemical examiner's report. Due to these significant contradictions, the counsel asserted that the case against the appellant was doubtful and that the benefit of this doubt should be given to the accused. He cited several case laws to support his arguments, including 2023 SCMR 1791, 2024 MLD 813, 2024 PCrLJ 1183, 2021 SCMR 363, and 2022 SCMR 819.

6. Conversely, the State Counsel argued that the trial court's judgment was just and reasonable in all aspects. He asserted that any minor discrepancies in the evidence should be disregarded. The State Counsel's primary point was the sheer quantity of the recovered chars 15 kilograms and 400 grams. He contended that it was highly improbable that the police would have foisted such a large quantity of contraband on the appellant. The accused, he added, had failed to prove his innocence, and therefore, the conviction and sentence were correctly awarded. Reliance is

placed upon the cases as reported in PLD 2006 SC 61, 2017 SCMR 283 and 2012 SCMR 905.

7. Heard the learned counsel for the parties and perused the entire material available on record with their able assistance.

8. The prosecution's case hinges upon the alleged recovery of contraband, specifically charas, with a total weight of 15 kilograms and 400 grams (15.4 kg). According to the prosecution, the substance was recovered in 30 slabs contained within 15 separate packets. In cases involving narcotic substances, where the penalties are severe and the consequences grave, it is the paramount obligation of the prosecution to ensure that the investigation and prosecution are conducted with the highest degree of caution, transparency, and adherence to legal procedure. Any lapse in this regard not only jeopardizes the integrity of the case but also undermines the fairness of the trial process. It is incumbent upon the investigating and raiding authorities to leave no room for doubt in the process of recovery, seizure, and documentation of contraband substances. In the present case, a glaring omission is observed that no record or evidence has been presented showing the weight of each individual packet or slab. The raiding party did not weigh the individual packets at the time of recovery, nor did they provide any explanation as to why this essential exercise was not conducted. It is imperative in such cases for the prosecution to segregate and weigh each slab or packet individually, especially when the prosecution seeks to attribute the entire recovered weight to the accused. This omission raises serious concerns about the credibility and reliability of the recovery process. The law does not permit the prosecution to adopt a broad-brush approach by merely stating the total cumulative weight and expecting the burden to shift upon the accused. The initial burden lies squarely with the prosecution to conclusively establish the identity, quantity, and linkage of the contraband with the accused. In the absence of specific weight records for each packet or slab, the possibility of manipulation, overstatement, or procedural irregularity cannot be ruled out. Such procedural lapses are fatal to the prosecution's case, particularly when the consequences of conviction in

narcotics cases are grave and entail stringent punishments. Given the above-mentioned deficiencies particularly the failure to weigh each packet individually, **the** lack of proper documentation, and the absence of a cogent explanation for this omission, this Court is of the view that the prosecution has failed to discharge its primary burden of proof beyond reasonable doubt. In this context, support is drawn from the cases of **Qalandar Shah vs. The State and another (2021 YLR 2349)** and **Ansar Abbas alias Pakori vs. The State and another (2021 PCrLJ 138)**.

9. It is an admitted fact on record, as stated by the prosecution witnesses, that the area where the alleged arrest and recovery took place is a busy public place. In such circumstances, it is incumbent upon the police officials to corroborate their version of the incident with evidence from independent and trustworthy sources, rather than relying solely upon the statements of police witnesses. While the principle of no embargo exists against reliance on police witnesses, once the presence or availability of independent witnesses or sources on the spot is brought on record, it becomes the primary duty of the prosecution to establish the guilt of the accused through such independent evidence. The absence of such independent corroboration significantly weakens the prosecution's case. In the instant matter, the prosecution has completely failed to produce any such independent source or witness to corroborate the recovery and arrest, thereby creating a serious lacuna in the chain of evidence. Reliance is placed upon the decision of this Court in **Arshad Ali and another vs. The State (2024 PCr.LJ 1183) [Sindh-DB]**, Similarly, in the case of **Shahzaib alias Wadero Feroze vs. The State (2024 YLR 1298) [Sindh-DB]**, this Court held that:

"....It has come in evidence that the accused was arrested from Tarazo Chowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case)

and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not a formality but it's object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth.

10. Another material aspect that undermines the prosecution's case is the evident contradiction between the memo of recovery and the report of the Chemical Examiner. As per the recovery memo prepared by the raiding party at the time of seizure, it is clearly mentioned that each packet contained a picture of a cup along with some text written in English. These markings were evidently relied upon as means of identification of the recovered contraband. However, when the entire case property was sent to the Chemical Examiner for analysis, the report submitted by the examiner is completely silent regarding the presence of any such identifying marks on the packets received. No reference to the cup symbol or any English writing is found in the chemical analysis report. When there is a disconnect between the physical description of the case property at the time of recovery and the description recorded by the chemical examiner, the possibility of tampering or improper handling cannot be ruled out. Such inconsistencies were also viewed seriously in various precedents, wherein Courts have held that any break or ambiguity in the chain of custody goes to the root of the prosecution's case and renders it unreliable. It is the duty of the prosecution to ensure that the identity of the seized material remains intact and traceable from the time of recovery until it reaches the chemical examiner. In this regard, reliance is placed on the recent judgment of this Court in **Nadir Hussain vs. The State (2025 YLR 487)**, Similarly, relied in the case of **Najeeb Ullah and another vs. The State (2025 YLR 1170)**, held that:

He in examination-in-chief stated that the colour of the recovered car was blue, whereas complainant Abdul Qadir RL (PW-1) in his murasila (Ex.P/1-A) and FIR(Ex.P/6-A) has mentioned the colour of said car as golden. In view of the above, the statements of both the above witnesses have been found to be contradictory, creating doubt in the recovery.

11. A serious concern arises with regard to the safe custody and proper transmission of the recovered case property. According to the deposition of the Investigating Officer, upon receiving the case property from the complainant, he handed it over to the Incharge Malkhana for safekeeping and formal deposit. The Incharge Malkhana corroborated this version, affirming that the Investigating Officer had indeed entrusted him with the case property, which was subsequently recorded in Malkhana Register No. 19. However, a perusal of the relevant entry in Register No. 19 reveals a material contradiction. Contrary to the oral testimonies of both the Investigating Officer and the Incharge Malkhana, the documentary record suggests that the Investigating Officer himself deposited the case property directly into the Malkhana. Furthermore, the entry in Register No. 19 does not conform to the prescribed format. Notably, one of the crucial columns namely, the date of deposit is noticeably absent from the said entry. This irregularity casts further doubt on the authenticity and reliability of the documentation maintained in respect of the case property. This inconsistency between the oral testimonies of the official witnesses and the documentary record maintained in Register No. 19 strikes at the very root of the prosecution's case. The integrity of the chain of custody of the case property is an essential element in establishing the sanctity and evidentiary value of recovered items. The lack of proper documentation, coupled with contradictory testimonies, seriously undermines the credibility of the prosecution's version and casts a shadow of doubt on the safe and secure handling of the case property.

12. Another significant inconsistency emerges from the testimony of Prosecution Witness, Constable Mir Khan, who appeared before the Court and deposed that he acted as the dispatch rider for the case property, claiming to have delivered it to the Chemical Examiner under Road Certificate No. 72. However, upon scrutiny of the said Road Certificate, it is noted that the name of the dispatch rider is not mentioned therein,

raising immediate questions about the authenticity of the procedure followed. More notably, the documentary record produced by the prosecution particularly Roznamcha Entry No. 14 states that the case property was handed over to two police officials, Constable Mir Khan and Constable Irfan Ali, for onward transmission to the Chemical Examiner. Surprisingly, while Constable Mir Khan acknowledged his role in delivering the property, he failed to disclose the presence of his co-companion Constable Irfan Ali, who was officially assigned the same duty. This omission in his deposition casts doubt on the completeness and veracity of his testimony. A further and even more disconcerting discrepancy is found in the Chemical Examiner's Report. The report clearly reflects that the case property was received under Road Certificate No. 72 through a different official altogether, namely, PC Muhammad Saddique. Neither Constable Mir Khan nor Constable Irfan Ali is named as the dispatch rider in the report. This factual divergence between the oral testimony and the official Chemical Examiner's acknowledgment document directly undermines the prosecution's claim regarding the proper and secure dispatch of the case property. The Honourable Supreme Court in case of **Jeehand v. The State (2025 SCMR 923)**, had held that:

We have noted that in the instant case, safe custody and safe transmission of the alleged drugs from the spot of recovery till it's receipt by the Narcotic Testing Laboratory are not satisfactorily established. The Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when it is produced before the court, remains in safe custody and is not hampered with until that time. A complete mechanism is provided in the Police Rules qua safe custody and safe transmission of the case property to concerned laboratory and then to the Trial Court.

13. Moreover, the Honourable Apex Court in the case cited *supra* has been pleased to hold that..."**Communi observantia non set recedendum**---When law requires a thing to be done in a particular

manner, the same must be done accordingly and if prescribed procedure is not followed, it would be presumed that the same had not been done in accordance with law.

14. The question of safe custody and secure transmission of the recovered case property constitutes a pivotal issue in the instant matter, which significantly undermines the prosecution's case. Firstly, the entry in Register No. 19 is flawed, as it does not record the date of deposit, a fundamental requirement for maintaining a proper chain of custody. Moreover, the identity of the dispatch rider remains disputed, with the prosecution itself failing to clarify who was the designated dispatch rider. This ambiguity only adds to the already unclear and questionable state of affairs. More importantly, there is a glaring delay in sending the property to the Chemical Examiner. The Chemical Examiner's report states that the property was received on 27-07-2021, which is after a lapse of seventy-two (72) hours from the alleged date of seizure, without any explanation or justification. Contrastingly, the letter issued by the Senior Superintendent of Police (SSP) to the Chemical Examiner indicates that the property was sent for analysis on 26-06-2021. Further compounding the uncertainty is the Road Certificate relied upon by the prosecution's purported dispatch rider, which records the handover of the property on 27-07-2021. This raise creates doubtful question as to where the property was located during the intervening period and what custody it was subjected to. Reliance is placed on the judgment in *Zaheer v. The State* (2023 YLR 276). Additional support is drawn from the decisions of the Honourable Supreme Court in *Muhammad Iqbal v. The State* (2025 SCMR 704), *Abdul Haq v. The State* (2025 SCMR 751), *Asif Ali and another v. The State* (2024 SCMR 1408), *Javed Iqbal v. The State* (2023 SCMR 139), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), and *Zubair Khan v. The State* (2021 SCMR 492), all of which reiterate the imperative nature of adherence to the procedural safeguard. In light of these considerations, the prosecution's failure to ensure timely and properly documented custody and transmission of the recovered property creates a serious dent in the prosecution's case,

thereby warranting doubt regarding the validity and truthfulness of the evidence presented.

15. It is a well-settled principle of Criminal jurisprudence that if a single circumstance creates a reasonable doubt in the prosecution's case, the accused is entitled to the benefit of such doubt. This principle is deeply rooted in the maxim "*in dubio pro reo*", meaning that when in doubt, the decision should favor the accused. In the instant matter, as has been demonstrated through the various inconsistencies, discrepancies, and procedural lapses in the prosecution's case, even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of **Qurban Ali vs. The State (2025 SCMR 1344)**.

16. In view of the foregoing circumstances, it is manifest that the prosecution has failed to prove the charge against the appellant beyond the shadow of reasonable doubt. Accordingly, the appellant was rightly entitled to the benefit of doubt, and the conviction recorded by the learned trial court could not be sustained. This Court had already allowed the instant appeal through a short order dated 27.08.2025, whereby the appellant was acquitted of the charge. Consequently, the impugned judgment of conviction and sentence was set aside, and the jail authorities were directed to release the appellant forthwith, if not required to be detained in any other case. The detailed reasons recorded hereinabove form the basis of the said short order.

JUDGE

JUDGE