

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Spl. Cr. Jail Appeal No. D-93 of 2024

Before:  
Mr. Justice Amjad Ali Bohio, J.  
Mr. Justice Khalid Hussain Shahani, J.

Appellant : Syed Juman Shah s/o Syed Muhammad Ibrahim Shah  
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 09.09.2025  
Date of short order : 09.09.2025  
Reasons recorded : 11.09.2025

**JUDGMENT**

**KHALID HUSSAIN SHAHANI, J**— The appellant Syed Juman Shah has assailed the judgment dated 09.08.2024, passed by the learned Additional Sessions Judge (MCTC), Mirwah in Special Case No.285/2023, whereby he was convicted for offence under Section 9(3)(c) of the Control of Narcotic Substances Act, 1997 and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.100,000/-, and in case of default to pay fine, to further undergo simple imprisonment for six months.

2. The prosecution case, as set forth in the FIR bearing crime No.117/2023 dated 17.06.2023, is that complainant ASI Taqi Muhammad Jamali along with PC Barkat Ali, PC Sikandar Ali and DPC Jameel Ahmed proceeded for patrolling at about 07:30 hours. During patrolling, when they reached Khokhar Morr at Mehran Highway, they observed a person standing on the eastern side of the road carrying a black polythene shopping bag. Upon seeing the police vehicle, the said person attempted to escape, but was apprehended after a chase of 10 paces. On inquiry, the accused disclosed his name as Syed Juman Shah. Upon checking the shopping bag, four pieces of charas weighing 2000 grams were allegedly recovered. The accused was arrested and case property was sealed at the spot.

3. After completion of investigation, report under Section 173 Cr.P.C was submitted before the trial court. Charge was framed against the accused, to which he pleaded not guilty. During trial, prosecution examined

four witnesses including PW-1 ASI Taqi Muhammad Jamali (complainant), PW-2 PC Barkat Ali (mashir), PW-3 PC Sajjad Ali (malkhana incharge), and PW-4 Inspector Khan Muhammad Shar (Investigation Officer). The accused's statement under Section 342 Cr.P.C was recorded, wherein he denied all allegations and claimed false implication. The trial court, vide impugned judgment, convicted the accused as aforestated.

4. Learned counsel for the appellant has strenuously contended that the prosecution has miserably failed to prove its case beyond reasonable doubt, highlighting material contradictions and procedural violations; that the prosecution failed to establish safe custody and safe transmission of the alleged contraband from the spot of recovery to the chemical examiner; that there was an unexplained delay of two days in sending the case property to the chemical examiner, which compromises the chain of custody; that PW-2 Barkat Ali stated in cross-examination that "one small piece was sealed separately for chemical examination" but the weight of such sample was never mentioned, creating serious doubt about the integrity of the evidence; that the malkhana entry was not properly established as the incharge malkhana/moharrar was not examined to prove safe custody of the case property; that the Investigation Officer was also the bearer and custodian, creating a conflict of roles, and no entry was made in daily diary about collection of case property from malkhana; that material contradictions exist in the statements of prosecution witnesses regarding the preparation and signing of various memos; that despite the incident occurring at a public place (Mehran Highway), no private witnesses were associated, and no proceedings were initiated against persons who refused to act as mashirs; that the chemical examiner's report and other incriminating evidence were not properly confronted with the accused during his examination under Section 342 Cr.P.C.

5. Learned Additional Prosecutor General has supported the impugned judgment and contended that the prosecution witnesses remained consistent on material particulars. He argued that minor discrepancies do not affect the prosecution case when the recovery is proved through reliable witnesses. He submitted that the chemical examiner's report is positive,

confirming the recovered substance as charas, and the delay in transmission was not fatal to the prosecution case.

6. We have heard learned counsel for the parties and carefully examined the evidence on record. The fundamental question before this Court is whether the prosecution has succeeded in proving its case against the appellant beyond reasonable doubt.

7. In cases under the Control of Narcotic Substances Act, 1997, the prosecution must establish an unbroken chain of custody from recovery to chemical examination. The Hon'ble Supreme Court in *State v. Imam Bakhsh* (2018 SCMR 2039) has categorically held that the chain of custody begins with the recovery of the seized drug by the police and includes the separation of representative samples, their dispatch to the malkhana, and further dispatch to the testing laboratory. This chain must be safe, secure and unbroken.

8. In the instant case, the prosecution has failed to establish safe custody at multiple crucial stages. The evidence reveals that:

- i) *PW-2 Barkat Ali, during cross-examination, stated that "one small piece was sealed separately for chemical examination" but the weight of such sample was never mentioned in any document. This creates serious doubt about what exactly was sent for analysis.*
- ii) *The case property was sent to the chemical examiner after a delay of two days without any plausible explanation. While Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001 may allow such transmission within reasonable time, the prosecution failed to account for the whereabouts of the case property during this intervening period.*
- iii) *Most critically, the prosecution failed to examine the incharge malkhana/moharrar to prove safe custody of the case property in the police malkhana. The Hon'ble Supreme Court in *Javed Iqbal v. The State* (2023 SCMR 139) has held that "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. A disturbing feature of this case is that Investigation Officer Khan Muhammad Shar was simultaneously the bearer and custodian of the case property. This dual role compromises the independence and reliability of the investigation process. Furthermore, no entry was made in the daily diary about the collection of case property from malkhana, which is a mandatory requirement under police rules.

10. The prosecution witnesses have made contradictory statements regarding the preparation of various memos. PW-2 Barkat Ali claims to have signed the memo of place of incident, but this memo was actually prepared later by the Investigation Officer during his visit to the spot. Such material contradictions go to the root of the prosecution case.

11. Despite the alleged incident occurring at Mehran Highway, which is admittedly a busy public road, the prosecution failed to associate any private witness. While the Hon'ble Supreme Court in Faisal Shazad v. The State (2022 SCMR 905) has held that testimony of police officials is as good as any private witness unless animus is proved, the complete absence of independent witnesses in a public place during daytime raises serious questions about the genuineness of the recovery.

12. More importantly, the prosecution witnesses admitted that some persons refused to act as mashirs, but no proceedings were initiated against such persons under the relevant provisions of law. This cavalier attitude towards legal requirements further undermines the prosecution case.

13. A fundamental flaw in the trial proceedings is the failure to properly confront the accused with incriminating evidence during his examination under Section 342 Cr.P.C. The chemical examiner's report and other material evidence were not put to the accused, depriving him of the opportunity to explain such evidence. The Hon'ble Supreme Court in Muhammad Saddique v. The State (2018 SCMR 71) has consistently held that any piece of incriminating evidence not put to the accused during Section 342 examination cannot be used against him.

14. The concept of benefit of doubt is deep-rooted in our jurisprudence. The Hon'ble Supreme Court in Tariq Pervez v. The State (1995 SCMR 1345) has held: "For giving benefit of doubt to an accused person, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

15. In the present case, multiple circumstances create reasonable doubt about the appellant's guilt:

- a) *The broken chain of custody with unexplained gaps;*
- b) *Material contradictions in prosecution evidence;*
- c) *Non-examination of crucial witnesses like malkhana incharge;*
- d) *Procedural violations in investigation;*
- e) *Improper examination of accused under Section 342 Cr.P.C.*

16. While dealing with appeals against acquittal, this Court is mindful of the well-settled principle that an accused person is presumed innocent, and if after trial he is acquitted, he earns double presumption of innocence. The Hon'ble Supreme Court in Muhammad Shafi v. Muhammad Raza (2008 SCMR 329) has held that there is a heavy onus on the prosecution to rebut such presumption, and acquittal can only be interfered with if it is found to be arbitrary, capricious, or shocking.

17. After careful consideration of the evidence and legal principles, we are of the considered view that the prosecution has failed to establish its case beyond reasonable doubt. The multiple defects in the chain of custody, material contradictions in evidence, procedural violations, and failure to properly examine the accused under Section 342 Cr.P.C cumulatively create such reasonable doubt that the appellant is entitled to benefit thereof as a matter of right.

18. The trial court's conviction appears to be based on surmises and conjectures rather than concrete evidence meeting the required standard of proof in criminal cases. The defects highlighted are not minor or cosmetic but go to the very foundation of the prosecution case.

19. In view of the foregoing discussion, this criminal jail appeal was allowed vide short order dated 09.09.2025 and the judgment dated 09.08.2024 passed by the learned Additional Sessions Judge (MCTC), Mirwah in Special Case No.285/2023, whereby the appellant was convicted under Section 9(3)(c) of Control of Narcotic Substances Act, 1997, was set aside. The appellant Syed Juman Shah is/was acquitted of the charge leveled against him and directed to be released forthwith, unless required to be detained in connection with any other case. The case property, if any, shall be disposed of in accordance with law after the expiry of the appeal period or final disposal of any appeal, if preferred by the State.

20. These are the detailed reasons for our short order dated 09.09.2025.

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