

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-27 of 2024

BEFORE:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Muhammad Ibrahim son of Jam Kando, Soomro
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Khalil Ahmed Maitlo, DPG

Date of hearing : 17.09.2025

Date of short order : 17.09.2025

Reasons recorded on : 18.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – Appellant Muhammad Ibraheem Soomro, has preferred an appeal against the judgment dated 13.02.2024, passed by the learned Additional Sessions Judge-I/Special Judge (CNS)/M.C.T.C-I, Sukkur, in Special Case No.90 of 2023, whereby the appellant was convicted under Section 9(1)(1)(d) of the Control of Narcotic Substances (Amendment) Act, 2022, and sentenced to fourteen years rigorous imprisonment along with a fine of Rs.200,000/-.

2. The prosecution case, as recorded in F.I.R No. 55 of 2023 registered at Police Station Rohri, alleges that on 14th March 2023 at about 0430 hours, a police party led by ASI Sher Ali Soomro intercepted a Mazda truck bearing registration number PX-3530 at Custom Naka, G.T Road Rohri, and recovered 2103 kilograms of hemp from the vehicle in which the appellant was allegedly found. The prosecution further contends that during the personal search of the appellant, currency notes totaling Rs.150 and a keypad mobile phone were recovered. Consequent upon; case was registered *inter alia* on above facts.

3. The genesis of this prosecution stems from alleged spy information received by the police party during routine patrolling, indicating that two persons were transporting hemp in a Mazda truck from Ali Wahan towards Rohri to evade detection by Excise Police. The case proceeded to trial where the prosecution examined three witnesses including ASI Sher Ali Soomro as the complainant (PW-1), HC Riaz Ahmed as mashir (PW-2), and ASI Jahangir Khan as Investigating Officer (PW-3). The trial court, after considering the evidence, convicted the appellant, finding that the prosecution had proved its case beyond reasonable doubt. However, a careful scrutiny of the evidence

reveals fundamental contradictions and procedural irregularities that cast serious doubt on the veracity of the prosecution case.

4. The background history of this case reveals several troubling aspects that undermine the prosecution's narrative. The alleged recovery took place in the early morning hours at a populated area near Custom Naka, yet no independent witnesses were available or joined to witness the proceedings, despite the prosecution's own admission that Custom officials were stationed nearby. The investigation was conducted by ASI Jahangir Khan, who submitted the challan after what appears to be a perfunctory investigation, failing to examine crucial witnesses including the warehouse Head Constable who allegedly took custody of the case property and other police officials mentioned in the roster entry. The chemical examination of samples was delayed by three days without adequate explanation, and discrepancies exist between the number of samples allegedly taken at the spot and those actually transmitted to the laboratory.

5. The learned counsel for the appellant has advanced compelling arguments challenging the conviction on multiple grounds. He contends that the prosecution case is riddled with material contradictions that go to the very root of the matter, particularly regarding the crucial aspects of recovery, the number of bags allegedly seized, the color and specifications of the weighing scale used, and the mode of transportation of the recovered material. He has demonstrated through detailed analysis of the cross-examination of prosecution witnesses that there are irreconcilable differences in their testimonies on fundamental points, including the color of the bags containing the alleged contraband, the number of rickshaws used to transport the material, and the exact procedure followed during the recovery process. The learned counsel has cited numerous precedents to establish that such material contradictions, particularly when they relate to the core allegations, entitle the accused to acquittal as a matter of right rather than grace, relying upon the established principle that a single reasonable doubt is sufficient to absolve an accused person from criminal liability.

6. The learned Additional Deputy Prosecutor General for the State has attempted to defend the conviction by arguing that minor discrepancies should not detract from the overall reliability of the prosecution case, particularly given the positive chemical report and the substantial quantity of contraband allegedly recovered. He has submitted that the witnesses, being police officials, had no personal enmity with the accused and therefore had no motive to falsely

implicate him. The State counsel has further argued that the provisions of Section 103 Cr.P.C. are not applicable to recoveries under the CNS Act, and that the delay in sending samples for chemical examination should not be considered fatal to the prosecution case. However, these submissions, while legally sound in principle, fail to address the fundamental contradictions that permeate the prosecution evidence and create reasonable doubt about the occurrence itself.

7. Having carefully considered the submissions of learned counsel for both parties and after a meticulous examination of the evidence on record, several material contradictions emerge that collectively undermine the prosecution case beyond redemption. The first and most glaring contradiction concerns the number of bags allegedly recovered from the Mazda truck and samples each weighing one kilogram taken and sealed separately for chemical analysis. The complainant ASI Sher Ali Soomro in his examination-in-chief stated that 117 bags were found in the vehicle, with 114 bags containing 18 kilograms each and 3 bags containing 17 kilograms each. However, the F.I.R. specifically mentions only 117 bags, while the mashirnama and other documents show variations in this crucial detail. More particularly, there appears no details in testimony of eye witnesses that 117 samples were further sealed in 13 plastic sacks sent for chemical analysis. Not only this, but the complainant in testimony stated that he affixed two seals on each sample, but contradicting such piece of evidence, chemical report suggests each sample parcel contained one seal. These discrepancies are not merely numerical but goes to the heart of the prosecution case, as the exact quantity of contraband, mode of sealing samples and its subsequent transmission for analysis are fundamentals to establish the offense under the CNS Act.

8. The second material contradiction relates to the color and type of weighing equipment used at the spot. The complainant stated in his cross-examination that an electronic scale of red color was used to weigh the bags, while the mashir HC Riaz Ahmed testified that a golden-colored electronic scale was employed for the same purpose. This contradiction cannot be dismissed as minor since the accuracy of weighing is crucial in narcotic cases, and the inability of the prosecution witnesses to consistently describe the very instrument used for this critical measurement raises serious questions about the reliability of their testimony. The Supreme Court has repeatedly held that material contradictions on fundamental aspects of the case cannot be

overlooked in favor of the prosecution, particularly when they relate to the modus operandi of the alleged offense.

9. A third significant contradiction emerges regarding the mode of transportation used to convey the allegedly recovered material from the scene to the police station. The complainant testified that two loader rickshaws were used to transport the hemp, while the mashir stated that 4 to 5 Jumbo rickshaws were employed for this purpose. This discrepancy is material because it indicates either a failure of memory on crucial details or, more troublingly, suggests that the witnesses are not testifying about the same occurrence. The prosecution's inability to maintain consistency on such a basic logistical detail raises fundamental questions about the veracity of the entire narrative.

10. The fourth material contradiction concerns the color and description of the bags containing the alleged contraband. The complainant described the bags as white in color and tied with plastic rope, while the mashir characterized them as blue and green colored bags. Besides, there is glaring contradiction regarding source of light to prepare memo of arrest and recovery, as complainant claims to have prepare on street light. As against, the mashir testified it on head light of vehicle. These contradictions are particularly damaging because it relates to the very containers in which the contraband was allegedly found, and the inability of two eyewitnesses to agree on such a basic physical characteristic undermines the credibility of their testimony. The Supreme Court has consistently held that when witnesses provide contradictory accounts of material facts, the benefit of doubt must be extended to the accused.

11. The fifth contradiction relates to the mobile phone allegedly recovered from the appellant's person. The complainant stated that a Nokia company mobile phone was recovered, while the mashir testified that it was a Vigotel company mobile phone. While this might appear to be a minor detail, it assumes significance when viewed in conjunction with other contradictions, as it demonstrates the prosecution's failure to maintain consistency even on relatively straightforward factual assertions. Moreover, the failure to mention the mobile number or SIM card details in the mashirnama, as admitted by the complainant during cross-examination, further undermines the reliability of this aspect of the recovery.

12. Beyond these specific contradictions, the prosecution case suffers from several procedural irregularities that cast doubt on its authenticity. The investigation reveals that 117 samples were allegedly taken from the bags at the

spot, with one kilogram extracted from each bag for chemical examination, yet only 13 parcels were actually transmitted to the chemical laboratory. This discrepancy has never been satisfactorily explained by the prosecution, and the Investigating Officer's admission that marking and serial numbers were written on the sacks but later erased raises serious questions about the integrity of the case property. The failure to maintain proper documentation and chain of custody protocols in a case involving such a substantial quantity of contraband suggests either gross negligence or deliberate manipulation of evidence.

13. The delay of three days in transmitting samples to the chemical laboratory, while not per se fatal to the prosecution case, becomes significant when viewed alongside other irregularities in the investigation. The Investigating Officer failed to produce any entry in Register-19 indicating the date on which samples were taken for transmission to the laboratory, and this omission was admitted during cross-examination. The prosecution's inability to establish a clear timeline for the handling of case property creates reasonable doubt about whether the samples examined by the chemical analyst were indeed from the same batch allegedly recovered from the appellant.

14. The procedural violation of Section 103 Cr.P.C., while argued by the State to be inapplicable to CNS cases, nonetheless reflects the prosecution's failure to conduct the recovery in a transparent manner that would inspire confidence in an impartial observer. The admission by the complainant that Custom officials were available in the vicinity but were not approached to witness the recovery suggests a deliberate attempt to avoid independent scrutiny of the proceedings. This raises the question of why, if the recovery was genuine, the police would avoid involving neutral witnesses who could have lent credibility to their case.

15. The cross-examination of prosecution witnesses reveals further inconsistencies that undermine their credibility. The complainant admitted that no video recording was made of the recovery proceedings, despite the availability of mobile phone technology and the substantial nature of the alleged seizure. In an era where documentation of police actions is increasingly important for ensuring transparency and accountability, the failure to record such significant proceedings creates an inference that the police had reasons to avoid creating permanent evidence of their actions.

16. The prosecution's case is further weakened by the fact that only three witnesses were examined to establish the recovery of such a substantial

quantity of contraband. The remaining police officials mentioned in the roster entry, including PC Ghulam Ali and PC Ali Bux, were not produced as witnesses, and no explanation was provided for this omission. The failure to examine all available witnesses in a case of this magnitude suggests either that their testimony would not have supported the prosecution case or that they were not actually present during the alleged recovery.

17. The appellant's statement under Section 342 Cr.P.C consistently maintained his innocence, claiming that he was proceeding to Sabzi Mandi Sukkur for labor work when he was apprehended by the police. While this explanation was not substantiated by independent evidence, the prosecution's failure to conclusively disprove this alternative narrative, coupled with the material contradictions in their own case, creates reasonable doubt about the appellant's guilt. The burden of proof in criminal cases rests entirely on the prosecution, and when their case is riddled with fundamental contradictions, the accused is entitled to the benefit of doubt.

18. The chemical report, while positive for hemp, cannot cure the fundamental defects in the prosecution case regarding the recovery and handling of the alleged contraband. The reliability of the chemical analysis is undermined by the prosecution's failure to establish proper chain of custody and the discrepancies in the number of samples allegedly taken versus those actually transmitted to the laboratory. The principle established by the Supreme Court in numerous cases is that scientific evidence can only corroborate reliable ocular testimony; it cannot substitute for it when the primary evidence is found to be unreliable.

19. The case law consistently establishes that material contradictions on fundamental points of the prosecution case entitle the accused to acquittal. In *Zulfiqar Ahmad and others v. The State* (2011 SCMR 492), the Supreme Court observed that while minor contradictions may be ignored due to the passage of time, material contradictions that go to the root of the case cannot be overlooked. Similarly, in *Muhammad Arshad alias Achhi v. The State* (1995 SCMR 1639), it was held that a single circumstance creating reasonable doubt in a prudent mind is sufficient for acquittal of the accused as a matter of right, not as a matter of grace.

20. The principle of double presumption of innocence applicable to appeals against conviction requires that this Court should only interfere with an acquittal if it is found to be perverse or based on complete misreading of

evidence. However, in the present case, the trial court's conviction appears to be based on a failure to adequately consider the material contradictions that permeate the prosecution case. The learned trial judge's observation that the contradictions were "minor discrepancies or irregularities" fails to appreciate the cumulative effect of these contradictions on the overall reliability of the prosecution case.

21. The prosecution's failure to trace and apprehend the alleged co-accused who supposedly escaped from the scene further undermines the case. Despite the F.I.R. specifically mentioning two persons at the scene, no serious effort appears to have been made to investigate the identity or whereabouts of the escaped person. This omission is particularly significant because it suggests either that the prosecution was not genuinely interested in uncovering the truth or that the alleged co-accused was a fabrication designed to lend credibility to an otherwise implausible narrative.

22. The principle established in numerous Supreme Court cases is that when prosecution witnesses provide contradictory versions of material facts, their testimony becomes unreliable and cannot form the basis of conviction without independent corroboration. In the present case, the material contradictions between the testimonies of the complainant and the mashir on fundamental aspects of the alleged recovery create reasonable doubt about whether the recovery occurred as alleged. The prosecution's failure to provide any plausible explanation for these contradictions further undermines their case.

23. The doctrine of benefit of doubt, deeply rooted in Islamic jurisprudence and consistently applied by Pakistani courts, requires that when there are reasonable doubts about an accused person's guilt, those doubts must be resolved in favor of the accused. The Holy Prophet (Peace Be Upon Him) observed that *"it is better to err in releasing a criminal than to punish an innocent person"*, a principle that has been repeatedly affirmed by the Superior Courts of Pakistan. In the present case, the multiple contradictions and procedural irregularities create more than reasonable doubt; they create serious concerns about the reliability of the prosecution case as a whole.

24. After a thorough analysis of the evidence and careful consideration of the legal principles applicable to criminal appeals, this Court finds that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The material contradictions in the testimony of prosecution witnesses on fundamental aspects of the alleged recovery, coupled with procedural

irregularities in the investigation and handling of case property, create reasonable doubt about the appellant's guilt. The learned trial court's failure to adequately consider these contradictions and its characterization of them as "minor discrepancies" constitutes a misreading of the evidence that has resulted in a miscarriage of justice.

25. The conviction of Muhammad Ibraheem is therefore unsustainable in law and must be set aside. The principle that it is better for ten guilty persons to escape than for one innocent person to suffer requires that when there is reasonable doubt about an accused person's guilt, that doubt must be resolved in their favor. The prosecution's case against the appellant is so riddled with contradictions and irregularities that no court could reasonably conclude that guilt has been established beyond doubt.

26. In view of the foregoing analysis and the material contradictions that permeate the prosecution case, this Special Criminal Appeal is/was allowed vide short order dated 17.09.2025. The judgment dated 13.02.2024 passed by the learned Additional Sessions Judge-I/Special Judge (CNS)/M.C.T.C-I, Sukkur, in Special Case No.90 of 2023 is/was set aside. The appellant Muhammad Ibraheem Soomro is/was acquitted of the charge under Section 9(1)(1)(d) of the Control of Narcotic Substances (Amendment) Act, 2022, with the directions to be released forthwith if not required in any other case. The case property, if any, shall be disposed of in accordance with law. These are the detailed reasons of short order referred above.

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