

47

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA****BEFORE:**

Mr. Justice Omer Sial,  
Mr. Justice Khalid Hussain Shahani

**Cr. Jail Appeal No.D-20 of 2024**

Appellants:

Nadeem s/o Baggan Bughio,  
Abdul Razaque s/o Azizullah Solangi,  
Through Mr Athar Abbas Solangi,  
Advocate.

**Cr. Jail Appeal No.D-24 of 2024**

Appellants:

Madad Ali s/o Muhammad Sulleman,  
Babar Ali s/o Rustam Ali  
Both by caste Shaikh  
Through Mr. Ahmed Bux Abro,  
Advocate.

State:

Through Mr. Aitbar Ali Bullo, Deputy  
Prosecutor General, Sindh.

Date of hearing:

06-03-2025

Date of Judgment:

20-03-2025

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

**Khalid Hussain Shahani, J.-** The appellants Nadeem, Abdul Razaque, Madad Ali, and Babar Ali, were convicted under Section 9(1)(3)(e) of the Control of Narcotic Substances Act, 1997, in a case bearing crime No.154/2022, PS Waleed, District Larkana by the court of learned 1<sup>st</sup> Additional Sessions Judge/Special Judge for CNS, Larkana, sentencing them to 20 years of S.I along with a fine of Rs. 800,000/- each. In the event of default of payment of the fine, undergo an additional one year imprisonment, with benefit of Section 382-B Cr.P.C.

02. As per prosecution theory, on 03.11.2022 at about 1530 hours, a police party led by SIP Liaqat Ali, during snap checking at link road connecting Khedkar to Waleed, found a Corolla car bearing registration No. AGB-800, approaching to Waleed. Upon noticing the police presence, the vehicle attempted to reverse its course;

2/3



49

however, the police successfully intercepted it and apprehended two individuals seated in the front seats. Meanwhile, two occupants from the rear seats managed to escape. These individuals were identified as Nadeem Bughio and Abdul Razaque. The detained suspects disclosed their identities as Babar Ali and Madad Ali. Upon conducting a search, the police recovered 12 KGs and 15 KGs of charas from Babar Ali and Madad Ali respectively. Besides, the Chars left by escaped accused Nadeem Bughio and Abdul Razaque, became 20 KGs and 23 KGs, respectively. Two sacks, each containing 40 KGs of narcotics, were also discovered in the trunk of the car. Consequent upon; case was registered inter alia on above facts.

03. After usual investigation, report u/s 173 Cr.P.C was submitted against accused Madad Ali and Babar Ali, while accused Nadeem Bughio and Abdul Razaque were declared absconding.

04. A formal charge was framed against accused Madad Ali and Babar Ali, to which they pleaded not guilty. The prosecution presented ASI Safdar Hussain and SIP Muhammad Ibrahim as witnesses. During trial, accused Nadeem Bughio and Abdul Razaque were arrested in a separate case and later joined the trial.

05. An amended charge was framed against the appellants, to which they pleaded not guilty. The prosecution examined multiple witnesses, including ASI Safdar Hussain (author of the FIR), SIP Muhammad Ibrahim (Second Investigating Officer), Complainant/SIP/SHO Liaqat Ali, ASI Ali Gohar (mashir of arrest and seizure), SIP Shaukat Ali (first Investigating Officer), SIP Zulfiqar Ali (Malkhana Incharge), ASI Safdar Hussain (mashir of arrest of accused Nadeem and Abdul Razaque from district prison), and SIP Muhammad Ibrahim (SIO). In their statements recorded under Section 342 Cr.P.C, the appellants denied any wrongdoing and maintained their innocence.

06. At the very outset, Mr. Solangi learned counsel for the appellants contended that the prosecution failed to establish the safe custody of the contraband from the time of its seizure until its deposit at the chemical laboratory during the trial. He further argued that the appellants were falsely implicated due to existing enmity, as a prior case bearing Crime No.18/2022, registered under Sections 364 & 34 PPC, had been lodged against mashir ASI Ali Gohar by Dost

F-2/b



Muhammad Shaikh, a cousin of the appellants Madad Ali and Babar Ali.

51

07. Conversely, the learned Additional Prosecutor General strongly refuted this argument, asserting that the prosecution had successfully established the chain of custody of the contraband from its seizure to its deposit in the chemical laboratory. However, he reluctantly conceded that the chemical report had not been exhibited during the trial.

08. A review of the case record reveals that the chemical report was not produced by any prosecution witness during the trial. SIP Muhammad Ibrahim testified that the chemical report was available in the police papers; however, he failed to present it as evidence in court. Although, the report was subsequently submitted along with a statement dated 19-03-2024 by the learned DDPP for the State, after the statements of the accused u/s 342 Cr.P.C had already been recorded on 20.02.2024. It had lost its probative value due to its non-production during the trial. This omission alone casts serious doubt on the prosecution's case.

09. Glaring discrepancies have also been observed in the case. SIP Liaqat Ali testified that he had prepared the memo of arrest and seizure, yet in a contradictory statement, he deposed that it had been prepared by PC Shahbaz Hussain under his dictation. Further contradicting this version, ASI Ali Gohar testified that the memo was, in fact, prepared by SIP/SHO Liaqat Ali. Despite being the alleged author of the memo, PC Shehbaz Hussain was not examined by the prosecution.

10. Moreover, while the prosecution narrative suggested that the complainant had identified the escaped accused, Nadeem Bughio and Abdul Razaque, the complainant failed to identify them in court. Additionally, the complainant admitted, "It is a fact that the seals of the analyst were not affixed on the parcel." This testimony indicates that the case property presented before the court was not properly sealed, further undermining the integrity of the prosecution's case.

11. Furthermore, Mashir ASI Ali Gohar failed to identify any of the accused in court, further weakening the prosecution's claims. These inconsistencies and lapses in procedural compliance have

1-2/3



significantly diminished the credibility of the prosecution's case and raised substantial doubts regarding the veracity of the allegations made against the accused.

12. In accordance with Article 10-A of the Constitution of Pakistan, the right to a fair trial is an inalienable fundamental right afforded to every accused individual. This constitutional protection imposes an obligation upon the prosecution to ensure the proper presentation of all material evidence, including the chemical report. The failure to produce essential documents constitutes a serious procedural lapse, thereby undermining the credibility of the prosecution's case.

13. The Hon'ble Supreme Court of Pakistan has consistently held in numerous judgments that if the prosecution fails to establish the safe custody and secure transmission of seized narcotics during trial, the benefit of such a lapse must be extended to the accused.

14. In the case of Zahir Shah V. The state (2019 SCMR 2004) it was observed:

*"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. The prosecution must establish that the chain of custody was unbroken, unsuspicious, safe, and secure. Any break in the chain of custody, i.e safe custody or safe transmission, impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus rendering it incapable of sustaining conviction".*

15. In the case of Javed Iqbal V. The State (2023 SCMR 139) it was held:

*"So the safe custody and safe transmission of the sample parcel was not established by the prosecution and this defect on the part of prosecution by itself is sufficient to extent benefit of doubt to the Appellant. It is to be noted that in the cases of 9(c) of NSA, it is the duty of prosecution to establish each and every step from the stage of recovery, making sample parcels, safe custody of sample parcel and safe transmission of sample parcel to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused. Reliance in this behalf can be made upon the cases of Qaiser Khan V. the State through Advocate General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363), Mst. Razia Sultana V. The State and another (2019 SCMR*

*Fi-  
2-13*



5

1300), the State through Regional Director ANF V. Imam Buksh and Others (2018 SCMR 2039), Ikramullah and other V. the State (2015 SCMR 1002) and Amjad Ali V. the State (2012 SCMR 577), wherein it was held that in a case containing the above mentioned defects on the part of the prosecution it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against the accused person beyond any reasonable doubt. So the prosecution has failed to prove the case against the petitioner and his conviction is not sustainable in view of the above mentioned defects".

16. In the case of Asif Ali and another V. The State (2024 SCMR 1408) it was observed:

"In the cases under CNSA, 1997 it was the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused".

17. In the case of Muhammad Hazir V. The State (2023 SCMR 986) it was observed:

"After hearing the learned counsel for the appellant as well as the learned State counsel and perusing the available record along with the impugned judgment with their assistance, it has been observed by us that neither the safe custody nor the safe transmission of sealed sample parcels to the concerned Forensic Science Laboratory was established by the prosecution because neither the Muharar nor the constable Shah Said (FC-2391) who deposited the sample parcel in the concerned laboratory was produced. It is also a circumstance that recovery was affected on 10-02-2015 whereas the sample parcels were received in the said laboratory on 13-02-2015 and prosecution is silent as to where remained these sample parcels during this period, meaning thereby that the element of tempering with is quite apparent in the case. This court in the cases of Qaiser Khan V. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363), Mst. Razia Sultana V. The State and another (2019 SCMR 1300) The State through Regional Director ANF V. Imam Baksh and others (2018 SCMR 2039), Ikramullah and others V. the State (2015 SCMR 1002) and Amjad Ali V. The State (2012 SCMR 577) has held that in a case containing the above mentioned defects on the part of prosecution it cannot be held with any degree of certainty that prosecution has succeeded in establishing its case against accused person beyond any reasonable doubt".

18. In the case of Qaiser Khan V. The State (2021 SCMR 363), the Supreme Court held:

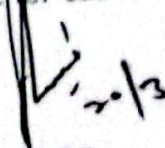
"The Forensic Report reflects that the alleged narcotics were received in the laboratory on 11 December, 2012 but evidence on

*Fi-2012*

record is silent that where the same remained for two days i.e. from 9<sup>th</sup> December, 2012 to 11<sup>th</sup> December, 2012. Similarly evidence regarding safe transmission of alleged recovered narcotics to the laboratory for chemical analysis is also missing. 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. Reliance in this regard can well be placed on the cases of *Mst. Razia Sultana V. The state and another* (2019 SCMR 1300) and *State through Regional Director, ANF V. Imam Buksh and others* (2018 SCMR 2039)".

19. In light of the legal principles established by the Hon'ble Supreme Court and considering that the chemical report was not produced in the present case, thereby failing to establish the safe custody and secure transmission of the contraband, the prosecution's case stands compromised. Furthermore, the defense argument that the instant case was initiated as a retaliatory measure against the appellants due to Crime No.18-2022, registered at PS Rahmatpur by the cousin of appellant Madad Ali against mashir ASI Ali Gohar, cannot be disregarded. Consequently, the conviction cannot be legally sustained. Accordingly, the impugned judgment is set aside, the appeals are allowed, and the appellants are acquitted of the charge. They are to be released forthwith, if not required in any other case.

  
JUDGE

  
JUDGE

Asghar Altaf/P.A