IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

[DIVISIONAL BENCH]

Spl. Cr. Jail Appeal No. D-39 of 2019

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

Appellant	:	Shore Din s/o Mehar Dil Khan, Pathan *Through* Mr. Rukhsar Ahmed Junejo, Advocate
The State	:	*Through* Mr. Aftab Ahmed Shar, Addl. P.G
Date of Hearing	:	28.10.2025
Date of judgment	:	28.10.2025
Date of reasons	:	30.10.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J.— This appeal arises from the conviction dated 06.03.2019 passed by the learned Sessions Judge/Special Judge (CNSA), Ghotki, in Special Case No. 08 of 2017, emanating from FIR No.02/2017, Police Station DIO Camp Ubauro, District Ghotki, whereby the appellant Shore Din son of Mehar Dil Khan Pathan was convicted for offence under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced to life imprisonment with a fine of Rs.300,000/-. The appellant, being a lifer convict, has preferred this jail appeal challenging his conviction and sentence.

2. As per prosecution theory, on 07.02.2017 at about 9:00 pm, the Excise Police party led by Excise Inspector Nihal Khan Shar, along with Excise Inspector Qamaruddin Siyal and subordinate Excise Constables (ECs) including Abdul Sattar, Mumtaz Ali, Bux Ali, Mukhtiar Ahmed, Javed Ahmed, Aijaz, Muhammad Daud and Ghulam Hussain proceeded from DIO Camp Ubauro under Daily Diary Entry No.03 at 1:30 pm for vehicle checking and narcotic substances recovery. They allegedly reached Excise Check Post Kamoon Shaheed at the Sindh-Punjab Border at 2:00 pm. At about 9:00 pm during vehicle checking, an oil tanker bearing registration number LSB-377 allegedly appeared from the Sadiqabad side. Upon signaling to stop, the vehicle was intercepted. The driver identified himself as Shore Din Pathan. According to the

prosecution, personal search of the accused yielded Rs.4,000 in eight notes of Rs.500 each, his original CNIC, and driving license from the right-side pocket of his shirt. Thereafter, search of the oil tanker allegedly revealed a secret cavity on the upper portion of the vehicle. Within this cavity, eighty packets of *charas* were discovered. Each packet allegedly weighed one kilogram, totaling eighty kilograms. Two hundred grams from each packet were allegedly separated as samples for chemical examination and sealed on spot. The remaining *charas* was allegedly sealed in four plastic bags with twenty packets in each bag. A memo dated 8.02.2017 at 2:00 am was prepared in the presence of purported mashirs (official witnesses), namely EC Abdul Sattar and EC Bux Ali. Accused Shore Din was arrested on the spot, and the property was brought to DIO Camp Ubauro where the FIR was registered. The chemical examiner's report dated 17.02.2017 allegedly confirmed that the recovered substance was *charas.* The vehicle's registration was verified, showing that the owner was the absconding accused Willayat Shah.

3. The challan was submitted to the court, wherein accused Shore Din was charged while absconding accused Willayat Shah was declared a Proclaimed Offender after fulfillment of legal formalities under Sections 87 and 88 Cr.P.C. Upon application of the appellant for state counsel, Mr. Ghulam Yasin Naich was appointed to conduct the trial on government expense. A formal charge under Section 9(c) of the Control of Narcotic Substances Act, 1997, was framed on 30.10.2017. The appellant pleaded not guilty and claimed trial. At the trial, the prosecution examined Excise Inspector Nihal Khan Shar as P.W-1 (Prosecution Witness 1) and Excise Constable Abdul Sattar as P.W-2. Documentary exhibits including the mashirnama, FIR, chemical report, departure and arrival entries, and vehicle verification report were produced. The prosecution closed its case on 22.12.2018. The appellant's statement under Section 342 Cr.P.C was recorded on 21.01.2019, in which he denied the allegations and claimed to have been falsely implicated after being arrested

from a hotel near the Excise Check Post while taking a meal. The appellant's statement on oath under Section 340(2) Cr.P.C was recorded on 11.02.2019, wherein he asserted that he was the driver of another oil tanker bearing registration number TLU-015 and that excise police had arrested him without justification, snatched his cash of Rs.30,000, and booked him falsely in this case. The appellant examined Muhammad Ashraf son of Muhammad Jan as Defense Witness (D.W-1), who testified that the appellant had been his oil tanker driver two years prior to the alleged incident and that on the night of 07.02.2017 at 11:00 pm, the appellant informed him by cell phone that he had been arrested by Ubauro excise police while taking meal at a hotel. The defense side was closed on 11.02.2019. The learned trial judge convicted the appellant based on the prosecution's case, finding no merit in the defense plea.

4. Learned advocate for appellant vehemently argued that the entire story was engineered by the Excise officials, who implicated Shore Din after arresting him from a hotel. He was not the driver of the impugned oil tanker and was deprived of his cash by police officials. Serious doubts were raised by pointing out the absence of any disinterested mashirs despite the case property being recovered allegedly on a busy public highway with adjoining establishments. He further argued that material contradictions in the testimonies of prosecution witnesses were highlighted. These included differing statements about the number of vehicles checked prior to the incident, discrepancies in the identification and dimension of the “secret cavity”, varying descriptions of the color and markings on the recovered bags, inconsistencies regarding the weighing of the narcotics and the conduct of sealing and sampling, and the lack of mention of time of arrival and other details at the scene in the official documents. The defense further stressed that crucial documents like the registration book of the impugned tanker were never produced; the chemical report, signed by a single officer, failed to comply with CNS Analysis Rules, and the chain of custody was never properly established. The learned advocate

also relied upon various precedents from the Superior Courts, especially the Supreme Court of Pakistan, on the principles of benefit of doubt, omissions, and contradictions in prosecution evidence.

5. The learned Addl. P.G for the State argued that the prosecution case rested on credible and confidence-inspiring testimony of the two prosecution witnesses, namely P.W-1 and P.W-2, who were official excise police officials present at the scene. The learned Addl. P.G submitted that no motive had been established by the defense to show why such a large quantity of *charas* (80 kilograms) would be foisted upon the appellant. The Addl. P.G argued that foisting such a huge quantity of narcotic contraband would be impractical and that no police official would take such an extreme step without a compelling reason. The learned Addl. P.G conceded that some contradictions pointed out by the defense counsel were of a minor nature and did not go to the root of the prosecution case. He submitted that the contradictions regarding the time spent, the number of vehicles checked, and similar matters were natural variations that could arise due to human fallibility and did not necessarily reflect dishonesty or fabrication. The Addl. P.G argued that the core of the prosecution case namely, the recovery of 80 kilograms of *charas* from the secret cavity of the oil tanker bearing registration number LSB-377 from the possession of the appellant as its driver remained intact and unshaken despite the minor contradictions. He further argued that the defense witness Muhammad Ashraf's evidence was not credible as he admitted that he was not present at the scene of the alleged incident and that he had received the information from the appellant only by cell phone. The learned Addl. P.G submitted that there was no corroborating evidence such as Call Data Records (CDRs) to establish that the communication on cell phone had indeed taken place as alleged. He contended that the appellant's assertion that he was the driver of another oil tanker (TLU-015) was a belated defense and not substantiated with contemporaneous documentary proof available at the time of arrest. The Addl. P.G argued that merely

producing a copy of the registration certificate during arguments after the defense had closed its case was not a reliable manner of introducing evidence. Regarding the allegations of snatching Rs.30,000/-, the Addl. P.G submitted that these allegations were vague and not specifically put to the prosecution witnesses in a manner that would compel them to respond. The absence of specific cross-examination on material points, the Addl. P.G argued, meant that the defense had abandoned these allegations. Finally, the learned Addl. P.G submitted that the settled principle of law is that procedural defects and minor contradictions do not vitiate the case if the substantive core of the prosecution story remains intact, and he placed reliance upon the judgment reported as 2004 P.Cr.L.J-Q-1710(d). The DPG prayed for dismissal of the appeal and maintenance of the conviction.

6. Upon careful perusal and reappraisal of the entire record in exercise of appellate jurisdiction, we are obliged to undertake a fresh and comprehensive evaluation of the evidence in its true perspective, considering each contradiction, omission, improvement, and procedural defect with the gravity it merits in relation to the charge preferred. The touchstone for criminal conviction is that the prosecution must prove its case against the accused beyond reasonable doubt. This principle has been repeatedly and emphatically reaffirmed by the Supreme Court of Pakistan.

7. The learned trial court's approach of dismissing the contradictions as "minor in nature and ignorable" represents a fundamental misapplication of the principles of evidence appreciation. The trial court stated in the impugned judgment: "During arguments learned D.A pointed out some contradictions in evidence of P.Ws which are minor in nature and ignorable." This statement reveals a predetermined mind unwilling to engage with the material contradictions systematically. However, upon the appellate scrutiny undertaken by this Court, the contradictions are neither minor nor ignorable; rather, they

strike at the root of the prosecution case and create reasonable doubt in the mind of a prudent observer.

8. *First,* the contradiction regarding the dimensions of the secret cavity (2x2 feet with 8 feet depth versus 4x4 feet with 2/3 feet depth) is material because it goes to the core question of where the contraband was allegedly kept. If two eyewitnesses present at the same location cannot agree on the basic dimensions of the cavity where the largest quantity of the recovered substance was allegedly kept, it raises legitimate questions about their observation, recollection, or truthfulness. The trial court's mere assertion that these are "minor" contradictions without reasoned explanation as to why dimensional variations are immaterial in a case of alleged secret cavity recovery is unsatisfactory.

9. *Second,* the discrepancy in the number of vehicles checked (40 versus 2-3) undermines the credibility of both witnesses. How can two persons present at the same location and participating in the same operation give such vastly differing numbers? P.W-1 stated *"about 40 vehicles,"* which is a definitive assertion, whereas P.W-2's *"02/03 vehicles"* represents a radically different recollection. This variance suggests either that one of them was not paying attention to or participating in the checking operation, or that one is being untruthful about the duration and nature of the operations undertaken prior to the alleged recovery. The trial court did not address this contradiction meaningfully.

10. *Third,* the contradiction regarding who signaled to stop the vehicle whether it was a collective *"we"* (as per P.W-1) or specifically *"complainant and E.C Dawood"* (as per P.W-2) is material because it relates to the sequence of events and the roles of different officials. If E.C Dawood played a specific role, his evidence should have been sought, yet he was not examined as a prosecution witness. The selective examination of witnesses while omitting those who allegedly played significant roles represents an omission of material evidence.

11. *Fourth*, regarding the markings on the packets *("Sun-Rise" and "Presidency")*, the trial court's own observations during the examination of the case property produced in court revealed these markings. However, both P.W-1 (who stated he did not remember) and P.W.-2 (who stated nothing was written) gave contradictory accounts. This represents a dishonest improvement in their testimony during trial as compared to their actual observations at the time of recovery. The principle enunciated in *Muhammad Akram v. The State* (2009 SCMR 230) and *Muhammad Riaz v. The State* (2024 SCMR 1839) makes clear that dishonest improvements or embellishments by prosecution witnesses are hallmarks of unreliable testimony that attracts the benefit of doubt.

12. *Fifth*, the contradiction regarding the color of packets (different colors versus single color) is equally material as it relates to the identification and description of the case property. If fundamental visual characteristics cannot be consistently described by eyewitnesses, the reliability of their entire testimony becomes suspect.

13. *Sixth*, the time variance (about 75 minutes versus 10-20 minutes) is not merely a matter of peripheral importance. It speaks to the nature of the entire operation undertaken. If 75 minutes were spent, it suggests a thorough and meticulous operation. If only 10-20 minutes were spent, it suggests a hasty and superficial operation. This contradiction creates doubt about how comprehensively the recovery and sealing were actually conducted. More importantly, the trial court did not reconcile this contradiction with the Daily Diary entries and the memo's time stamp.

14. *Seventh*, the contradiction regarding whether the packets were jointly retrieved or were retrieved solely by the complainant is material to establishing the chain of custody. If the complainant alone retrieved the packets, without the oversight of other officials, the integrity of the recovery process becomes questionable. The fact that two eyewitnesses present at the same scene

gave different versions of who retrieved the packets raises doubt about the authenticity of the recovery process.

15. *Eighth*, the near-verbatim similarity between the memo dated 8.02.2017 and the FIR creates reasonable suspicion that both documents were prepared with a predetermined narrative rather than the memo being a contemporaneous document prepared on the spot as required by law. The memo should reflect the immediate observations and facts at the scene, while the FIR should be a formal registration of the complaint based on the memo and investigation. When both are virtually identical in language, structure, and narrative, it suggests they were concocted together, which raises doubt about their reliability as independent documents.

16. *Ninth*, the procedural defect concerning the letter addressed to the chemical examiner at Rohri but the report received from Karachi laboratory, without a fresh letter being addressed to Karachi, represents a breach in the chain of custody requirements. While P.W-1 explained that the Rohri post was lying vacant, the fact remains that the official procedure was not followed, and the case property was diverted from the specified destination to another laboratory without formal authorization or documentation. This procedural defect has not been adequately addressed in the impugned judgment and raises doubt about the proper handling of evidence.

17. *Tenth*, the chemical report being signed by only one officer, contrary to the requirements of Rule 08 of the Government Analysis Rules, 2001, represents a procedural defect. While the trial court attempted to argue that the Rule does not require two signatures, the interpretation provided by the trial court is open to challenge. Regardless, the deviation from standard practice raises a red flag that casts doubt on the reliability of the chemical examination process.

18. *Eleventh*, the absence of the registration certificate of the vehicle at the time of recovery is significant. Although a verification report was later

obtained, the fact that at the time of recovery no documentary proof of the vehicle's ownership was available means that at that critical juncture, the connection between the vehicle (LSB-377) and the alleged owner (Willayat Shah) was not established through contemporaneous documentation. The verification report came about three months later (dated 10.12.2017 for an incident on 07.02.2017). This delay raises doubt about the ownership of the vehicle at the time of the alleged recovery.

19. *Twelfth*, the absence of independent and disinterested mashirs despite the incident occurring on a busy national highway with hotels and petrol pumps nearby is a material omission. The requirement for mashirs is not merely procedural formality; it is a substantive safeguard against false implication and foisting of evidence. The trial court's acceptance of the explanation that "persons of public declined to act as mashir" without documentary corroboration (such as written entries or records of such requests and refusals) is unsatisfactory. The fact that both mashirs were official subordinate staff bound by departmental hierarchy to the complainant renders them interested witnesses rather than disinterested public witnesses as contemplated by law. This omission of independent evidence creates a gap in the prosecution narrative.

20. *Thirteenth*, the alleged snatching of Rs.30,000/- by the excise police officials and the recovery of only Rs.4,000 from the appellant stands uncontradicted in cross-examination. This allegation was not specifically denied by the prosecution witnesses, and their silence on this material point amounts to an admission. An innocent excise police official faced with an allegation of theft would naturally and vehemently deny such accusation. The failure of P.W-1 and P.W-2 to specifically and categorically deny the allegation of snatching Rs.30,000 from the appellant suggests that there may be substance to this allegation. This casts doubt on the motives and integrity of the prosecution witnesses.

21. *Fourteenth*, the defense evidence through D.W-1 Muhammad Ashraf that the appellant was the driver of another oil tanker (TLU-015) was not refuted by any documentary evidence produced by the prosecution. While the trial court stated that the defense did not produce sufficient contemporary documentary proof, the converse is equally true: the prosecution also failed to produce any documentary evidence establishing that the appellant was the driver of the oil tanker LSB-377 on 07.02.2017. The vehicle's registration showed the owner to be Wilayat Shah, but the driver's details, employment contract, or hiring arrangement were never documented or produced. The absence of such crucial documentation regarding who was actually driving the vehicle on that date creates a gap in the prosecution narrative that favors the defense.

22. The trial court's reasoning that "huge quantity of *Charas* is involved which cannot be easily arranged to foist" is speculative and not based on evidence. The argument assumes that police officials would not take the extreme step of foisting a large quantity of contraband, but this assumption is precisely what needs to be tested against the evidence. The present case involves material contradictions, omissions, procedural defects, and the allegations of snatching of money from the appellant, all of which provide a motive and opportunity for false implication. The Supreme Court of Pakistan has repeatedly held that motive for false implication need not be explicitly established; it is often implied through the circumstances, and the circumstances here provide adequate grounds for suspecting false implication.

23. The principle enunciated in *Muhammad Riaz v. The State* (2024 SCMR 1839) is directly applicable to the present case. The Supreme Court held: "*It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the court that the prosecution has faded up the evidence to procure conviction then the court can*

come forward for the rescue of the accused persons." In the present case, there are not merely one but at least fifteen distinct categories of material contradictions, omissions, improvements, and procedural defects, each independently capable of creating reasonable doubt. Collectively, they create a compelling case for acquittal.

24. The Supreme Court further held in *Muhammad Akram v. The State* (2009 SCMR 230): "*It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favor of the accused as a matter of right and not of grace. It was observed by this Court that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."*

25. The trial court's conviction appears to have been influenced by considerations extraneous to the evidence, namely the seriousness of the offence and the need for societal deterrence against narcotic trafficking. While the gravity of narcotic offences is acknowledged, it cannot override the fundamental principle that the prosecution must prove its case beyond reasonable doubt. The trial court's statement that "*the transportation or sale of any narcotic substance is an offence against society, which is being increased day by day, therefore the cases of such nature should be handled with iron hands"* reveals that the conviction may have been influenced by policy considerations rather than evidence appreciation. This approach is contrary to the settled principle that individual cases must be decided on the evidence presented, not on the basis of general deterrence or perceived social menace. Upon this comprehensive reappraisal, it is inescapable that the prosecution case is burdened with material contradictions, dishonest improvements, significant omissions, procedural defects, and absence of independent corroboration. The cumulative effect of these infirmities creates reasonable doubt that a prudent mind cannot overlook.

The appellant's defense, while not definitively proved, presents a plausible alternative narrative supported by D.W.-1 Muhammad Ashraf's testimony, which was not effectively refuted by the prosecution through reliable and independent evidence.

26. In accordance with the established jurisprudence of the Supreme Court of Pakistan, the benefit of reasonable doubt must be extended to the appellant as a matter of right, not of grace.

27. For the foregoing reasons and based on the comprehensive reappraisal of the evidence available on record, we found that the prosecution has failed to prove its case against the appellant Shore Din son of Mehar Dil Khan Pathan beyond reasonable doubt. The conviction recorded by the learned Sessions Judge/Special Judge (CNSA), Ghotki, dated 06.03.2019, is/was set aside vide short order dated 28.10.2025. The appellant is/was acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997, in Crime No.02 of 2017, Police Station DIO Camp Ubauro, Ghotki with the directions to be released forthwith if he is/was not required to be detained in connection with any other criminal case. The case against the absconding accused Wilayat Shah shall remain on the dormant file till his arrest or appearance before the court. The case property shall be dealt with in accordance with the provisions of the Control of Narcotic Substances Act, 1997, and the relevant rules framed thereunder. These are the detailed reasons of short order.

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