

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.345 of 2020

Present:
Mr. Justice Zafar Ahmed Rajput, CJ
Mr. Justice Jan Ali Junejo

Appellant : The State, through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh (**APG**)

Respondents : 1. Ghulam Akber Shah s/o Karam Ali Shah
2. Gul Hassan s/o Usman, both through Mr. Raza Mukhtiar Jawahery, Advocate

Date of Hearing : 05.11.2025

Date of Order : 05.11.2025

JUDGMENT

Jan Ali Junejo, J.- The present appeal has been filed by the State against the judgment, dated 07.01.2020, (“***Impugned Judgment***”) rendered in Sessions Case No.1683/2019 (*The State v. Ghulam Akber Shah & another*), arising out of FIR No. 396/2019 registered under sections 6/9-C of the Control of Narcotics Substances Act, 1997 at Police Station Steel Town, Karachi, whereby the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Malir, Karachi (“***Trial Court***”) acquitted the respondents/accused of the charge by extending them benefit of doubt.

2. The factual matrix, as narrated in the FIR and reflected in the prosecution record, may be summarized as follows:

On 04.09.2019 at about 02:10 a.m., a police party headed by SIP Jamshed Iqbal (P.W.-1) intercepted a Suzuki pickup bearing Registration No. KX-1490 near Ghaghara Phatak on the National Highway. Two individuals aboard the vehicle were apprehended, who disclosed their identities as (i) Ghulam Akbar Shah and (ii) Gul Hassan. Upon conducting a search of the vehicle, nine white sacks were recovered from its rear compartment, each containing multiple packets of alleged charas (cannabis), collectively stated to weigh 265 kilograms. The accused were arrested on the spot, certain documents and cash were seized from them, and the vehicle was taken into custody in terms of Section 550, Cr.P.C.

3. Upon completion of investigation, the challan was submitted by the police before the concerned Magistrate and the matter was thereafter transmitted to the learned Sessions Court, from where it was assigned to the Trial Court. After supply of requisite documents and statements to the respondents, a formal charge was framed, to which they pleaded not guilty and

claimed trial. In order to discharge its burden, the prosecution examined three witnesses, and the gist of their evidence is reproduced as follows:

(a) PW-01 SIP Jamshed Iqbal (Complainant) stated that on 04.09.2019, while on patrolling duty with his staff, he received spy information that a Suzuki pickup bearing No. KX-1490 carrying a large quantity of charas was travelling from Karachi towards Thatta. He called another police mobile for support and proceeded to Ghaghara Phatak where, at about 0210 hours, they intercepted the vehicle. According to him, two accused, Ghulam Akbar and Gul Hassan, attempted to escape but were apprehended. On searching the vehicle, PW-01 claimed to have recovered nine bags containing charas weighing 265 kilograms, sealed on the spot. He further stated that personal search of the accused yielded CNICs, cash, and mobile phones. The vehicle was seized under section 550, CrPC and a memo of arrest and recovery (Ex.07) was prepared. He registered FIR No.396/2019 (Ex.08), handed over the accused and property to the I.O., and accompanied him for site inspection (Ex.10). In cross-examination, he admitted corrections in the departure entry, absence of private witnesses, and that the pickup was not shown as case property. He denied the defence suggestion of false implication.

(b) PW-02 ASI Ghulam Hassan (mashir) stated that on 03.09.2019 he was on patrolling duty when he was called by PW-01 to reach Ghaghara Phatak. Upon arrival, he joined the raid, during which a Suzuki pickup was stopped at about 0210 hours, and the two accused were apprehended as they tried to alight. He confirmed recovery of nine bags of charas weighing 265 kilograms, the sealing of property by PW-01, and recovery of CNICs, cash, and phones from the accused. He identified his signature on the memo of arrest and recovery (Ex.07) and confirmed lodging of the FIR. In cross-examination, he conceded that no private witness was associated at the busy National Highway, that the accused were not handcuffed during sealing, and that the sealing consumed more than two hours. He denied the suggestion of false arrest or recovery.

(c) PW-03 SIP Zulfiqar Ali Arain (I.O.) stated that on 04.09.2019, he received investigation of Crime No.396/2019 from the SHO. PW-01 handed over the accused, nine sealed bags, and documents to him. He left the police station vide entry No.54 (Ex.13), visited the crime scene on the complainant's pointation, and prepared the site inspection memo (Ex.10). He recorded statements of witnesses under section 161 Cr.P.C., and on 06-09-2019 sent the recovered drugs to the chemical examiner (Ex.15), later receiving the chemical report (Ex.16). After completing the investigation, he submitted the challan. During cross-examination, he admitted that the case property remained at the police station for two days without being entered in Register No.19, the Head Moharrar was not cited as a witness, and the pickup used by the accused was neither made case property nor was its owner made a witness or accused. He further acknowledged that entries regarding receiving the case property back from the chemical examiner were not produced. He denied allegations of defective investigation.

4. Upon the closure of the prosecution evidence, which comprised three official witnesses, the statements of the respondents were recorded under Section 342, CrPC, wherein they denied the allegations, pleaded their innocence and claimed false implication by stating that they had been illegally picked up from Sakro. The respondents opted not to make a statement on oath

under Section 340(2), CrPC and did not lead any defence evidence, choosing instead to rely on the perceived fatal weaknesses in the prosecution's case. Consequently, the learned Trial Court, vide Impugned Judgment, acquitted the respondents under Section 265-H (1), CrPC, holding that the prosecution had failed to prove its case beyond a reasonable doubt due to material contradictions in witnesses' testimonies, a broken chain of custody of the recovered contraband, and a failure to prove the accused's conscious possession.

5. The present appeal challenges the Trial Court's findings and seeks conviction of the respondents, on the basis that the recovery was of an enormous quantity of contraband and the respondents were in exclusive possession of the vehicle and therefore of the contraband.

6. The fundamental principles applicable in criminal trials are settled:

(a) *The burden of proving the charge beyond reasonable doubt rests on the prosecution. If the case is shrouded with reasonable doubt, benefit must go to the accused.*

(b) *In cases of recovery of narcotics, the Courts insist upon strict proof of recovery, safe custody and unbroken chain of transmission of samples to the Chemical Examiner. Proof of deposit of recovered property in the police malkhana and production of mohrir / responsible custodian or proper malkhana entries is material to show safe custody and to exclude the possibility of tampering.*

(c) *Presence and role of mashirs/independent witnesses of standing, where feasible, is an important factor in assessing the reliability of recovery. Where private independent witnesses are absent, the prosecution must explain why they were not procured and must ensure that official witnesses are consistent.*

(d) *Contradictions in material particulars of the prosecution witnesses, gaps in investigation, omissions to call material witnesses, or failure to produce records relating to custody of exhibits, may raise reasonable doubt and may render the prosecution case untrustworthy.*

7. These legal propositions are not controversial and have been repeatedly affirmed by superior fora. The Trial Court applied these principles in reaching its decision. This Court will now examine whether the Trial Court misapplied the law or failed to appreciate material evidence.

8. The learned A.P.G. argued for conviction, contending that the Trial Court erred in ignoring the overwhelming physical evidence: the respondents were caught red-handed in exclusive possession of a vehicle containing a massive, commercial quantity of 265 kilograms of charas, which was duly sealed at the spot and confirmed to be a narcotic substance by the Chemical Examiner's report. He emphasized that the recovery memo, bearing the signatures of

official witnesses, provided concrete proof of possession, and that the absence of private witnesses or minor discrepancies in the testimonies of police officials should not be given undue weight to discard otherwise reliable evidence, especially given the admitted difficulty in procuring public witnesses at odd hours on a highway. He urged that in cases involving such substantial quantities of contraband, the presumption of conscious possession rightly applies, and the acquittal represents a gross miscarriage of justice, warranting reversal by this Court.

9. Per contra, the learned counsel for the respondents supported the acquittal, arguing that the Trial Court correctly identified fatal flaws which rendered the prosecution case untrustworthy. He highlighted that the chain of custody was completely broken, as evidenced by the tampered condition of the case property in the Court with broken and missing seals, the failure to produce malkhana entries or the mohrar to account for safe storage, and the unexplained two-day delay before sending samples for analysis. He further pointed to material contradictions between the sole official witnesses on core events like the accused's attempt to flee and their restraint during sealing, the deliberate omission to investigate or examine the vehicle's registered owner which destroyed the claim of exclusive conscious possession, and the inordinate delay at the scene which belied the prosecution's story. He concluded that these cumulative lacunae created unassailable reasonable doubt, and that the appellate court must not interfere with an acquittal grounded in a plausible view of the evidence.

10. We have carefully considered the submissions of the learned APG for the State and the learned counsel for the respondents, and have examined the evidence on record with their valuable assistance. The record reveals material contradictions between the testimonies of P.W.-01 and P.W.-02. According to P.W.-01, the accused attempted to flee upon interception, suggesting consciousness of guilt; however, P.W.-02 states that the accused merely alighted from the vehicle, an irreconcilable inconsistency on a fact central to the prosecution's narrative of culpability. Likewise, while one witness claims that the accused were handcuffed at the time the case property was being sealed, the other states that they were simply sitting in the back of the police mobile without any restraint. Material contradictions on such central aspects, apprehension, sealing and physical custody of accused, erode the credibility of the recovery story. Moreover P.W.01's statement that several vehicles passed and yet no private witness could be associated, when carefully read, does not persuasively explain the absence of any private witness. These contradictions are not trivial and relate to core aspects of the alleged recovery. The I.O. (P.W.03) openly

admitted that the recovered property remained at the police station for two days, and that he did not produce entries of the malkhana (police store) nor call the mohrar or the official custodian to prove deposit and safekeeping. No entries from Register No.19 or other malkhana records were produced to show who placed or removed the property, the time of deposit, or any tamper-proof seals. No evidence was led to show safe and continuous custody between recovery and submission of samples to the Chemical Examiner. The absence of such foundational proof opens the door to a reasonable possibility of tampering or substitution. In narcotics cases the Courts require that transmission of samples to the Chemical Examiner be shown to be safe and accounted for; otherwise the reliability of the sample and the chemical report is significantly impaired.

11. Most critically, the integrity of the case property stands irreparably compromised. The learned Trial Judge has specifically recorded that, out of the nine sacks produced before the Court, only five were properly sealed, while two sacks bore broken seals and the remaining two carried no seals whatsoever. Such a condition of the case property is not merely suggestive of a possibility of tampering; rather, it constitutes conclusive evidence of a ruptured and unreliable chain of custody. When the prosecution's primary evidence is produced in a visibly altered and unprotected state, the presumption that it is the same substance allegedly recovered from the accused is entirely negated. This deficiency strikes at the root of the prosecution's case and fatally undermines the evidentiary value of the recovered material.

12. Although a chemical report was produced, the prosecution failed to produce persons (e.g., the mohrar or the official who delivered the samples) to testify to safe transmission. P.W.03 has admitted that he did not produce the head mohrar as witness and did not produce the entries by which the property was deposited and later transmitted. As a consequence, even though the chemical report is on record, the chain connecting the material recovered at the scene to the samples examined has not been satisfactorily established. The I.O. admits the pickup was registered in the name of Mumtaz Ali Brohi of Village Noor Muhammad Brohi, District Thatta; the I.O. neither made the owner party to the case, nor summoned him as a witness. The prosecution's failure to bring the owner/driver/registrant to Court to explain the vehicle's possession or to test the claim that the accused were in exclusive possession undermines the inference that the accused had knowledge and control of the contraband in the vehicle. While it is true that when an accused is driving a vehicle he may be held to be responsible for its contents if the prosecution proves knowledge or control, the converse is equally true: when ownership or custody of the vehicle

points elsewhere and the prosecution does not investigate fully or produce the owner, an adverse inference of exclusive possession cannot safely be drawn. This principle has been reaffirmed by the Honourable Apex Court of Pakistan in **Zahir Shar alias Shat v. The State through Advocate General Khyber Pakhtunkhwa (2019 SCMR 2004)**, wherein the Honourable Court held that: *"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 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".*

13. The cumulative effect of (i) material contradictions between the official witnesses, (ii) the prosecution's failure to produce malkhana entries, the mohrar, or any responsible custodian to establish safe custody and transmission of the samples, and (iii) the tampered state of the case property, two bags with broken seals and two with no seals lead to the inescapable conclusion that the prosecution case is riddled with reasonable doubt. Where such fundamental deficiencies exist, it is wholly unsafe for a Court to record a conviction on the basis of such evidence.

14. The learned Trial Court considered the above defects and concluded that the prosecution case is doubtful and acquitted the accused under Section 265-H (1), CrPC. Having independently examined the record and the legal principles, this Court finds no misreading or non-reading of material evidence by the Trial Court. In fact, the Trial Court applied correct legal standards and properly evaluated the discrepancies and omissions which go to the root of the prosecution case.

15. It was urged by the State that the quantity of contraband (265 Kgs) and the fact that it was recovered from the back of a pickup manned by the accused, together with presence of seals and signatures on memo of recovery, ought to be sufficient to convict. But while quantity and memo are relevant, they cannot substitute for the mandatory proof of chain of custody and absence of tampering. The law requires a holistic assessment: a large quantity raises the seriousness but not the standard of proof. The prosecution here failed to show safe custody and transmission, and left unexplained material contradictions.

16. The Appellate Court's power to interfere with an acquittal is limited, as an acquitted accused enjoys a reinforced presumption of innocence. Interference is permissible only when the Trial Court's findings are shown to be perverse, based on misreading of evidence, or resulting in a miscarriage of justice. In the present case, the Trial Court's acquittal, grounded in material contradictions, lack of corroboration, and failure to prove the charge beyond reasonable doubt, was a plausible and justified view. As the appellant failed to demonstrate any illegality or misreading of evidence, no basis exists for interference. This approach aligns with the principle affirmed by the Honourable Supreme Court in Case of ***Muhammad Riaz v. Khurram Shehzad (2024 SCMR 51)*** wherein it was observed that: *"It is a well-settled exposition of law that in an appeal against acquittal, the Court would not ordinarily interfere and would instead give due weight and consideration to the findings of the Court acquitting the accused which carries a double presumption of innocence, i.e. the initial presumption that an accused is innocent until found guilty, which is then fortified by a second presumption once the Court below confirms the assumption of innocence, which cannot be displaced lightly".*

17. For the reasons given above, this Court is satisfied that:

- (i) *The prosecution has failed to establish a safe and unbroken chain of custody of the alleged recovered narcotics from the moment of seizure to their delivery to the Chemical Examiner and onward production in Court. No mohrar, malkhana entries, or other custodial officials were produced to demonstrate proper storage or transmission.*
- (ii) *Material contradictions exist in the prosecution evidence—particularly between the complainant and the mashir—on key aspects of the alleged recovery and sealing process, thereby undermining the reliability of the prosecution's case.*
- (iii) *The case property itself was produced in a tampered condition, with two sacks bearing broken seals and two sacks carrying no seals at all.*
- (iv) *The prosecution failed to examine the registered owner of the vehicle, whose testimony was essential to clarify possession, control, and the circumstances in which the contraband was being transported.*
- (v) *In the totality of the circumstances, reasonable doubt persists regarding the identity, continuity, and safe custody of the alleged contraband, as well as whether the accused had knowledge of, or control over, the same.*

18. The Apex Court of Pakistan has, in a catena of judgments including case of ***Muhammad Riaz and others v. The State (2024 SCMR 1839)***, reiterated the principle that if a single circumstance creates reasonable doubt in the prosecution case, the benefit must go to the accused, for the presumption of innocence is a fundamental right. It was observed that "to extend the benefit of

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 person.

19. For the foregoing reasons and in view of the analysis of the evidence on record: (i) The instant Criminal Acquittal Appeal filed by the State, being devoid of substantive merit, is hereby dismissed; and (ii) The Impugned Judgment passed by the learned Trial Court is maintained. These constitute the detailed reasons for our Short Order dated 05.11.2025.

JUDGE

CHIEF JUSTICE