

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.404 of 2025

Appellants	1. Ali Bakhsh son of Moula Bakhsh. 2. Muhammad Alim son of Muhammad Rafiq. 3. Nabi Bakhsh son of Imam Bakhsh. 4. Zubair Ahmed son of Karim Bakhsh. Through Mr. Javed Ahmer Shar, Advocate.
Respondent	The State. Through Ms. Firdous Faridi, Special Prosecutor Customs.
Date of hearing	<u>25.08.2026</u>
Date of Judgment	<u>03.09.2026</u>

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J U D G M E N T

Shamsuddin Abbasi, J.- Ali Bakhsh son of Moula Bux, Muhammad Alim son of Muhammad Rafiq, Nabi Bakhsh son of Imam Bakhsh and Zubair Ahmed son of Karim Bakhsh, appellants, were tried by the learned Special Court-II (C.N.S.), Karachi, in Special Case No.96 of 2022 (FIR No.ASO-163 of 2022) registered at Police Station Customs, Karachi, for offences under Sections 6/9-C of Control of Narcotic Substances Act, 1997 ("**the Act**"). By a judgment dated 11.06.2025 they were convicted under Section 9-C of the Act and sentenced to imprisonment for life with a fine of Rs.50,000/- each and to suffer simple imprisonment for a further period of one month each in lieu of fine, however, the benefit in terms of Section 382-B Cr.P.C. was extended to the appellants.

2. Short but relevant facts of the case are that on 03.10.2022 the Headquarters of the Pakistan Maritime Security Agency (PMSA), Karachi, intimated the Customs authorities that an operation had successfully been conducted in the high seas during which contraband hashish (charas) was recovered from four occupants of a stateless fishing boat. Upon receipt of the said information, Preventive Officer Muhammad Saqlain along with his staff proceeded to PMSA Headquarters and reached there at about 3:30 pm where the Chief Intelligence Officer of PMSA handed over him the custody of four persons namely, Ali Bakhsh son of Moula Bux, Muhammad Alim son of

Muhammad Rafiq, Nabi Bakhsh son of Imam Bakhsh and Zubair Ahmed son of Karim Bakhsh, along with 28 packets of charas weighing 28 kilograms in total and after execution of the handing over/taking-over memo, Muhammad Saqlain brought the accused persons along with the recovered narcotic substance to the ASO Customs Headquarters, Karachi, whereupon the formalities of registration of the FIR were completed.

3. Pursuant to the registration of FIR, the investigation was followed and in due course challan was submitted before the Court of competent jurisdiction whereby the appellants were sent up to face the trial.

4. The appellants were formally charged under Section 9-C read with Section 14 and 15 of the Act. They pleaded not guilty to the charged offence and claimed trial.

5. At trial, the prosecution has examined as many as seven witnesses. The gist of the evidence adduced by the prosecution in support of its case is as under:-

6. PO Muhammad Saqlain (complainant) as PW.1 at Exh.8; Sepoy Muhammad Abbas as PW.2 at Exh.9, Muhammad Hamza (Boarding Officer PMSA) as PW.3 at Exh.10, Afzal Mahmood (Chief Intelligence Officer PMSA) as PW.4 at Exh.11, PO Mubashir Naveed as PW.5 at Exh.12, Anjum Rathore (Warehouse Officer) as PW.6 at Exh.13 and Sajid Mahmood (Nazir of the Special Court (CNS)] as PW.7 at Exh.14. They have exhibited certain documents in their evidence and were subjected to cross-examination by defence. Thereafter, the prosecution closed its side vide statement at Exh.15.

7. Upon closure of the prosecution evidence, the statements of the appellants were recorded under Section 342, Cr.P.C. They have denied the allegations imputed against them the prosecution, professed their innocence and stated their false implication. In support of their defence, they have produced and relied upon fishing license, documents relating to ownership of the boat and certain photographs, however, they did not opt to appear on oath in terms of Section 340(2), Cr.P.C., nor did they produce any witness in

their defence except appellant Nabi Bakhsh, who examined Khalid as his defence witness.

8. Upon culmination of the trial, the learned trial Court after evaluating the evidence available on record found the appellants guilty of the offence charged with and, thus, convicted and sentenced them as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

9. It is contended on behalf of the appellants that the prosecution has failed to prove conscious possession of the alleged 28 kilograms of charas against appellants beyond reasonable doubt. It is next submitted that the alleged recovery was not effected by the Customs officials from the appellants rather the PMSA claimed to have recovered the substance in the high seas and thereafter handed over the appellants and the alleged narcotics to Custom authorities. The prosecution, therefore, was required to establish an unimpeachable chain of custody, which has not satisfactorily been established. It is also submitted that the prosecution has failed to produce the complete record of the PMSA operation including the search and recovery proceedings and no independent witness has been associated with the alleged recovery or handing over proceedings. Learned counsel has submitted that mere presence of the appellants on the fishing boat could not by itself establish their conscious possession of the narcotic substance. It is argued that material deficiencies existed in the prosecution evidence regarding the recovery, sealing, custody and transmission of the narcotic substance for chemical examination. It is argued that the learned trial Court has failed to properly appreciate the evidence in its true prospectus and has wrongly convicted the appellants. On these grounds, learned counsel has prayed for acceptance of the appeal, setting aside of the impugned judgment and acquittal of the appellants.

10. In contra, the learned Special Prosecutor Customs has supported the impugned judgment and contended that the prosecution has successfully proved the charge through the consistent evidence of PMSA and Customs officials. It is next submitted that the appellants were found aboard the stateless fishing boat from which 28 kilograms of charas contained in 28 packets were recovered during the maritime operation and the appellants were thereafter formally handed over to Custom authorities along with the

recovered narcotics through a duly executed handing over/ taking-over memo. It is also submitted that the prosecution has established the recovery as well as the safe custody and subsequent transmission of the narcotic substance to the office of chemical examiner and that no material contradiction or infirmity has been extracted from the prosecution witnesses during cross-examination. The plea of false implication of the appellants is a bare assertion, unsupported by any plausible explanation for the presence of such a substantial quantity of narcotics on the boat. It is argued that the documents produced by the appellants relating to the fishing license and ownership of the boat did not rebut the prosecution case or explain the presence of the contraband. Minor discrepancies, if any, are inconsequential and did not affect the core of the prosecution case. The learned trial Court has correctly appreciated the evidence and rightly convicted the appellants. She, therefore, prayed for dismissal of appeal and maintaining conviction awarded to the appellants.

11. We have given our anxious consideration to submissions of both the sides and perused the entire material available on record with their able assistance.

12. The present case pertains to the recovery of 28 packets of charas weighing 28 kilograms from a stateless fishing boat in the open sea during an operation conducted by the Pakistan Maritime Security Agency (PMSA) on 27.09.2022 wherein four persons were apprehended. PO complainant Muhammad Saqlain appeared as PW.1 at Exh.8. He deposed that on 03.10.2022 the Customs authorities received information from PMSA that they have successfully conducted an operation in the open sea during which a stateless fishing boat carrying contraband charas had been intercepted and four accused persons had been apprehended. Upon receipt of the said information, a Customs team was constituted under his supervision, whereafter he along with other officials proceeded to the PMSA Headquarters and reached there at about 3:15 pm. According to him, at about 3:30 pm the Chief Intelligence Officer of PMSA handed over him the custody of four accused persons, 28 packets containing charas bearing the label "JC Anti Dust Therapy Mask" as well as one stateless fishing boat through a receiving certificate and handing-over/taking-over receipt, produced at Exh.8/A. The complainant has further deposed that he examined the 28 packets at the

PMSA office and found each packet to be weighing 1000 grams. He drew three samples of 10 grams each from every packet and completed the sampling process through a mashirnama prepared at the spot in the presence of mashirs Mushtaq Ahmed and Muhammad Abbas, produced at Exh.8/B. According to him, the samples were separately placed in polythene bags fitted with locks, thereafter enclosed in brown envelopes and duly sealed. The samples were arranged in three separate parcels whereas the remaining narcotic substance was packed in two bags and the entire process of examination, sampling and sealing was completed at about 7:00 pm. He also prepared an inventory of the case property at the time of handing over/taking-over, produced at Exh.8/C. Thereafter, he brought the accused persons and the case property to the ASO Customs Headquarters, Karachi, where the FIR was lodged at about 11:30 pm. According to complainant, on 04.10.2022 he transported the remaining case property along with 56 samples from the ASO Customs Headquarters to the State Warehouse whereas the stateless fishing boat was berthed at the Customs jetty. He further deposed that on the same day he took 28 samples to the Sindh Forensic Laboratory for chemical examination, but as the laboratory had already closed due to the late hour, the samples could not be deposited. He took the samples again to the Sindh Forensic Laboratory on 05.10.2022 and got the same deposited for chemical analysis.

13. A careful examination of the evidence of the complainant reveals a material and unexplained gap in the prosecution case regarding the safe custody and transmission of the representative samples to the Chemical Examiner. It is an admitted position that on 04.10.2022 the complainant took 28 samples from the State Warehouse for deposit at the Sindh Forensic Laboratory, however, as the laboratory was found closed, the samples could not be deposited on that day. The prosecution has not produced any evidence whatsoever to establish where the samples remained from the time they could not be deposited on 04.10.2022 until their alleged deposit on 05.10.2022. There is no evidence to show whether the samples were brought back to the Customs Headquarters, re-deposited in the State Warehouse, placed in a malkhana or retained in the personal custody of the complainant. Significantly, no official record, register, roznamcha entry, warehouse receipt, malkhana entry or any other document has been produced to establish the safe custody of the samples during the intervening

period. The prosecution has also failed to examine any witness who could establish the custody and safe keeping of the samples after they could not be deposited on 04.10.2022 and before their eventual deposit in the laboratory on 05.10.2022. The evidence is, therefore, completely silent as to who remained in possession of the samples overnight where they were kept and whether their seals and contents remained intact and secure during the said period. This omission assumes considerable significance in a narcotics case where the prosecution is under a strict obligation to establish through reliable and cogent evidence an unbroken chain of custody from the time of recovery until the representative samples reach the office of the Chemical Examiner.

14. It is a well settled that the report of the Chemical Examiner can safely be relied upon only when the prosecution establishes that the samples examined were the very same samples allegedly drawn from the recovered narcotic substance and that their identity and integrity remained unimpaired throughout. The prosecution is required to establish each link in the chain of custody through affirmative evidence so as to reasonably exclude the possibility of substitution, tampering, or manipulation. A missing or unexplained link particularly concerning the custody of samples before their deposit with the Chemical Examiner strikes at the root of the prosecution case. In the case in hand, the prosecution has neither produced documentary evidence regarding the custody of the 28 samples during the intervening period nor examined any person responsible for their safe keeping. Mere statement of complainant that he took the samples to the laboratory on 04.10.2022 and deposited them on the following day is insufficient to establish their uninterrupted and secure custody particularly when it is admitted that the samples could not be deposited on the first occasion. The prosecution was required to explain through positive and reliable evidence what happened to the samples after the laboratory was found closed and how and where they remained preserved until they were again produced for deposit on the following day. This material omission has remained wholly unexplained. It is further significant to note that the prosecution has not brought on record any evidence regarding the condition of the seals at the time the samples were received by the Chemical Examiner nor has it established that the seals affixed at the time of sampling were compared and found intact upon receipt. In the absence of such evidence,

the possibility of tampering, substitution, or interference cannot be safely ruled out. The Court cannot presume safe custody merely because the samples were ultimately deposited in the laboratory.

15. The foregoing circumstances when examined cumulatively cast serious doubt upon the identity and integrity of the representative samples allegedly transmitted for chemical examination. In a narcotics case, the prosecution is not merely required to establish the recovery of the alleged contraband, it must further prove through reliable and affirmative evidence that the recovered substance was preserved in safe custody and that the representative samples examined by the Chemical Examiner remained intact and free from any possibility of tampering, substitution, or interference throughout the entire process. The law on the subject is by now well settled. The Hon'ble Supreme Court, in a consistent line of authorities including *Ikramullah and others v. The State* (2015 SCMR 1002), *Amjad Ali v. The State* (2012 SCMR 577), *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039), *Mst. Razia Sultana v. The State* (2019 SCMR 1300), *Qaiser Khan v. The State* (2021 SCMR 363), *Javed Iqbal v. The State* (2023 SCMR 139), *Said Wazir and another v. The State* (2023 SCMR 1144), *Lal Jan v. The State* (2023 SCMR 1009), *Asif Ali v. The State* (2024 SCMR 1408), and *Sarfaraz Ahmed v. The State* (2024 SCMR 1571), has repeatedly emphasized that the prosecution must establish an unbroken chain of safe custody and transmission of the recovered substance and its representative samples. The underlying principle is that the prosecution must affirmatively establish that the substance subjected to chemical analysis was the very substance allegedly recovered from the accused and that its identity, seals, and integrity remained unimpaired throughout. It is equally well settled that an accused is not required to prove that tampering or substitution actually took place. The burden rests exclusively upon the prosecution to establish every material link in the chain of custody in a manner that reasonably excludes such possibility. Where a material link remains unproved or unexplained, the resulting doubt must necessarily operate in favour of the accused.

16. In the case in hand, the prosecution has failed to account for the custody of the representative samples after they could not be deposited in the laboratory on 04.10.2022. The evidence is completely silent as to where

the samples were kept overnight, who retained their custody, under whose supervision they remained, and what safeguards were adopted to preserve the integrity of their seals. In the absence of such affirmative evidence, it cannot safely be concluded that the samples ultimately deposited with the Chemical Examiner on 05.10.2022 were the same samples allegedly drawn from the recovered substance. This omission is not a mere procedural irregularity or technical defect rather it goes to the very root of the prosecution case. The positive report of the Chemical Examiner derives its evidentiary value only when the prosecution first establishes, through an unbroken chain of custody, the identity and integrity of the samples sent for analysis. Once a material gap emerges in such custody, the connection between the alleged recovery and the substance examined by the Chemical Examiner becomes doubtful. Consequently, the chemical analysis report cannot safely be relied upon to sustain the conviction.

17. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. Mere probabilities, however strong, cannot take the place of legal proof. The finding of guilt must rest firmly upon reliable evidence and the irresistible inference flowing therefrom, and not upon conjectures or presumptions. Where a reasonable doubt arises from the evidence, the accused is entitled to its benefit as a matter of right and not as a concession. The rule of benefit of doubt occupies a pivotal place in the administration of criminal justice. It is essentially a rule of prudence intended to ensure that no person is convicted unless the prosecution establishes guilt beyond reasonable doubt. The principle finds support in the well-recognized maxim that it is better that guilty persons may escape punishment than that an innocent person be wrongly convicted. The Hon'ble Supreme Court, in *Ayub Masih v. The State* (PLD 2002 SC 1048), while emphasizing the importance of this principle, observed that the rule of benefit of doubt is a golden rule of criminal jurisprudence and must be rigorously applied for the safe administration of justice.

18. The epitome of the above discussion is that the prosecution has failed to establish, through reliable and affirmative evidence, an unbroken chain of safe custody and transmission of the representative samples. The unexplained gap regarding the whereabouts and custody of the samples between 04.10.2022 and 05.10.2022 creates a reasonable doubt regarding

their identity and integrity. This material infirmity strikes at the root of the prosecution case and renders the positive report of the Chemical Examiner unsafe to rely upon for sustaining the conviction. We are, thus, of the view that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Accordingly, the appeal is allowed. The convictions and sentences awarded to the appellants through the impugned judgment dated 11.06.2025 are set aside and they are acquitted of the charge by extending them the benefit of doubt. The appellants shall be released forthwith if not required to be detained in connection with any other case.

19. The Criminal Appeal No.404 of 2025 stands allowed in the foregoing terms.

JUDGE

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