

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Criminal Appeal No.D-39 of 2024

Present
Justice Amjad Ali Bohio.
Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant/ accused: Mubarak Ali s/o Meva Khan
Through Mr. Aziz Ahmed Laghari, Advocate,

Respondent: The State
Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing: 14.04.2025.

Date of Judgment: 14.04.2025.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: The Appellant /accused Mubarak Ali (hereinafter referred as "**Appellant**"), has filed present Criminal Appeal under section 48 of Control of Narcotics Substances Act, 1997 read with section 410 of Criminal Procedure Code, 1898, against the conviction awarded through the impugned judgment dated 26-08-2023 passed in Special Case No. 05/ 2023 by learned Additional Sessions Judge- I/MCTC/ Special Judge, Control of Narcotics Substances, Tharparkar @ Mithi, (Re: S.V Mubarak Ali), arising out of F.I.R., No.17/ 2023 under section 9(i)(3)(c) of the Control of Narcotics Substances Amendment Act, 2022 of Act, 1997 registered at P.S Chachro.

2. As per facts of the F.I.R. lodged by complainant SIP Abdul Rasheed Thebo on 03-04-2023 at 1400 hours at Police Station Chachro, are that on the same date he alongwith his subordinate staff PC Om Parkash, PC Khuda Bux and DPC Shiv Lal

left C.I.A Centre Tharparkar in official vehicle vide *roznamcha* entry No. 04 at 0930 hours for patrolling, checking and arrest of narcotic sellers. During patrolling when they reached at link road of village Sokhro Morr emerged from Chachro-Umerkot pucca road where saw that a person was standing on the road by carrying a black coloured plastic shopper, he to see police mobile tried to slip away towards Northern side of the road, but they stopped the vehicle and apprehended him being suspected person alongwith plastic shopper containing four double pieces of charas wrapped in white colored *panni*. On inquiry he disclosed his name as Mubarak Ali son of Mevo Khan Langhani Baloch resident of Khipro District Sanghar. About charas the appellant disclosed that he used to purchase the same from Sohrab Mari, resident of Khahi, District Sanghar and used to sale in Chachro city and surrounding area so also used to take the same. Due to non-availability of public mashir in presence of PC Om Parkash and PC Khuda Bux, personal search of the appellant was conducted and recovered one currency note of Rs. 500/= and two currency notes of Rs.100/= each total Rs.700/= and so also one Vego mobile phone were recovered from the side pocket of his shirt. The recovered mobile phone and cash amount were sealed in white coloured cloth bag, whereas recovered charas was weighed separately; each piece of charas became 1005 grams, total weighing 4020 grams. 100 grams charas was separated from each piece of charas, total 400 grams, and sealed the same for chemical examination while remaining 3620 grams charas was sealed separately. After preparation of such memo they brought the appellant alongwith

recovered property at police station where complainant lodged instant F.I.R.

3. After completion of the investigation, the I.O submitted Police Report/Challan under Section 173 of the Criminal Procedure Code, 1898. Subsequently, the trial Court has framed the charge against the appellant on 10-08-2023 at Ex.2-A, to which he pleaded not guilty and claimed for trial vide his plea at Ex.02-A. During the trial, the prosecution has examined P.W-01 SIP Abdul Rasheed (Complainant) at Ex.07, P.W-02 PC Om Parkash (eye witness cum mashir) at Ex.08, P.W-03 WHC Sarang (Incharge *Malkhana*) at Ex/09, P.W-4 PC Abdul Jabbar (dispatcher) at Ex.11 and P.W-5 Inspector Sher Khan (I.O) at Ex.12. They produced relevant documents, recovered articles, which were exhibited during their testimony before the trial Court. After the completion of prosecution's evidence, the statement of appellant was recorded under section 342 of Criminal Procedure Code, 1898, at Ex.14 wherein the appellant has denied the allegation of prosecution and claimed his innocence; however, he not opted for his examination on oath under section 340(2) of the Criminal Procedure Code, 1898 nor to produce his witness or adduce any evidence in his defense. After hearing arguments advanced by learned counsel for the parties, the trial Court found the appellant guilty and thereby convicted him and sentenced to suffer Rigorous imprisonment for 09 years alongwith fine Rs.80,000/- and in case of default in payment of fine amount, he would further undergo simple imprisonment for three months.

4. We have heard the counsel for the appellant and D.P.G who also perused the record.

5. The Counsel for the Appellant has contended that appellant is innocent; that impugned judgment is contrary to law and principles settled by the superior courts; that the impugned judgment is result of misreading and non-reading of the evidence available on record; that the trial Court failed to consider that the sample of charas was sent to the Chemical Examiner with inordinate delay of two days; that there are lot of contradictions in the evidence of complainant and P.Ws; that though alleged place of arrest and recovery was situated on busy road near Korean hospital but no independent witness/mashir is cited in this case; that no such recovery was affected from the possession of the appellant; that appellant was arrested from his house and then police booked him by foisting charas; that prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt. Lastly he prayed for setting aside the impugned judgment and acquittal of the appellant.

6. On the other hand, the Deputy Prosecutor General strongly opposed the contentions while arguing that the sample of recovered charas was sent to the Chemical Examiner within stipulated period of 72 hours; that the report of Chemical Examiner is in positive; that Police officials are as good witnesses as others; their evidence remained unshaken during cross examination and on the basis of available record no interference is warranted by this court. Lastly he prayed for dismissal of instant Appeal.

7. We would like firstly to reproduce evidence (relevant portion) of the PW-1 and PW-2 and underline the significant contradictions. The PW-1 Abdul Rasheed deposed as under;

"Cash amount and mobile phone sealed in white cloth and recovered Charas was weighed through computerized scale of each piece of Charas separately and each weight of each piece became 1005 grams, total weight of four piece of Charas become 4020 grams. 100 grams Charas from each piece total 400 grams separately sealed for chemical analysis and remaining Charas was sealed separately along with white plastic paper/pani".

In Cross examination:-

"The Charas was weighed by me upon the bonnet of vehicle. The sealing clothes were stitched by PC Oam Parkash. 2/3 meters clothes were available in investigation kit. Small scissor was used in cutting of cloth. Firstly we sealed cash and mobile phone, then sample parcel and lastly prepared parcel of property. The seals on sealing parcels were put by me by sitting on ground in front of official vehicle. Firstly we made endorsement on sealing cloths as prepared parcels and then sealed it. The endorsement on property was made by DPC Shiv Lal on bonnet of vehicle, I see case property viz. four pieces of Charas and each place showing written mark label in golden colour, but I admit that the same is not mentioned in memo of recovery. I separated the sample parcels from recovered property by cutting with scissor. The recovered property containing four double pieces, total eight pieces and each piece separately covered with plastic pani paper. Two pieces out of eight separate pieces the sample parcel was not taken out."

The PW-2 Oam Parkash deposed as under;

Having patrolled at various places when we reached at link road of village Sokhro Morr leading from Chachro to Umerkot main road, where saw one person was standing on road having carried one black colour shopper in his hand, who on seeing our police mobile tried to slip away towards northern side, therefore, by finding him as suspect apprehended tactfully and shopper was taken into custody, checked it and found four pieces of Charas. Due to non-availability of private mashirs, I and PC Khuda Bux were appointed as mashirs and then complainant conducted body search of accused and recovered one currency note of Rs.500/- & two currency note of Rs.100/- each, total Rs.700/- and one simple mobile phone of Vegotel company from his right side pocket of shirt. Cash amount and mobile phone sealed in white cloth and recovered Charas was weighed through computerized scale of each piece of Charas separately and each weight of each piece became 1005 grams, total weight of four piece of Charas become 4020 grams. 100 grams Charas from each piece total 400 grams separately sealed for chemical analysis and remaining Charas 3620 grams was sealed separately in white cloth.

In cross examination:-

"The Charas was weighed at road by complainant. Firstly we both mashirs made our signatures on sealing cloth bags on the bonnet of police mobile and then it were sealed. DPC Shiv Lal prepared mashirnama on the bonnet of police mobile. The pieces of Charas were separated from recovered property for sample parcel through knife by complainant on ground in my presence. No any sign or written words were available on the pieces of Charas. I see the pieces of recovered Charas

present in Court and admit that word 2023 in shape of stamp with golden words are available. When we returned from place of incident property was kept at the back seat of police mobile”.

8. As per Certificate of Test/Analysis Exh.12/D it reveals that one sealed cloth parcel of four dark brown pieces each piece weight 100 grams were received at the Chemical Laboratory, Karachi. Conversely, the evidence of PW-1 Raiding Officer, Recovery Officer and Arresting Officer has completely bulldozed the case of prosecution. The PW-1 deposed ***“I produce sealed parcel of Charas as Article “A”. I also produce second sealed parcel containing mobile phone and cash amount as Article “B”. ... I see article “A” containing four pieces of Charas and article “B” containing cash of Rs.700/- & one mobile phone of Vegotel company present in the Court are same.”*** The prosecution has claimed recovery of 4020 grams of Charas and same is mentioned in the Memorandum of Recovery Exh.7/B and FIR Exh.7/C. However, the prosecution has produced article “A” having only **400 grams** of charas during evidence before the trial Court.
9. The prosecution failed to prove the unimpeachable safe custody of case property. The description and color of Case property as claimed in the Memorandum of Recovery & Arrest so also in the FIR four pieces of charas having 1005 grams each culminating total into 4020 grams were inaccurate as admitted by the PW-1 during his cross-examination deposed ***“I see case property viz four pieces of Charas and each piece showing written mark label in golden colour, but I admit that the***

same is not mentioned in the Memo of Recovery.” The second interesting admission of the PW-1 during his cross-examination is about the quantity of case property. He deposed *“I separated the sample parcels from recovered property by cutting with scissor. The recovered property containing four double pieces, total eight pieces and each piece separately covered with plastic pani- paper. Two piece out of eight pieces the sample parcel was not taken out...”*

10. The Honourable Supreme Court in ***“Zahir Shah v. The State” (2019 SCMR 2004)*** held: -

“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 Analysis, thus, rendering it incapable of sustaining conviction.”

11. The prosecution is thus required to demonstrate that the custody of the recovered substance remained uninterrupted, free from suspicion, and protected from the possibility of tampering, failing which the accused is entitled to the benefit of doubt. ***Reliance can be place on “Sarfraz Ahmed v. The State” (2024 SCMR 1571).***

12. It is well-settled that in cases of narcotics possession, the prosecution must establish that the seized substance was kept in a tamper-proof condition from the time of recovery until it was analyzed by the forensic laboratory, failing which the reliability of

the entire case is compromised ***“Sarfraz Ahmed v. The State”, (2024 SCMR 1571)***.

13. It is a settled principle that where any link in the chain of evidence remains doubtful, the benefit thereof must accrue to the accused, as held in ***“Javed Iqbal v. The State”, (2023 SCMR 139)***.
14. The prosecution was under a bounded duty to establish each stage of the recovery, storage, and transmission of case property with unimpeachable certainty, and its failure to do so renders the conviction unsustainable ***“Muhammad Hazir v. The State”, (2023 SCMR 986)***.
15. Any anomaly or defect in investigation may usually led to draw a negative inference reckon definite reason of either unskillfulness—capacity building—or malafides. The Police Rules, 1934 impose comprehensive duty and burden to the Investigation Officer for seizure, recovery of case property and its safe handling and production before the Court whilst linchpin supervisor of investigation with further responsibility of legal scrutiny by the prosecutor. The guidance can be taken from the dictum laid down by Hon'ble Supreme Court of Pakistan in case ***“Ahmed Ali & another vs. The State” (2023 SCMR 58) (Criminal Appeal No.48 of 2021)***. The relevant portion is reproduced:

The Rule 22.16 of the Police Rules, 1934

(“The Police Rules”) deals with the —case property. Sub-rule (1) thereof provides, inter alia, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal

cases, and take charge of property which is unclaimed.

Sub-rule (2) thereof provides, *inter alia*, that each weapon, article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.

Sub-rule (3) thereof provides, *inter alia*, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, *inter alia*, that motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan.

Rule 22.18 of the Police Rules deals with —custody of property.

Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments,

food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses.”

The Hon’ble Supreme Court in the case “*Ahmed Ali & another case (supra)*” held that:

“Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tempered with until that time. **A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.**”

16. It is mandatory for the Prosecution to undergo two tests for —case property. Firstly, to recover, seize, present in charge sheet or challan and to establish safe custody by preparation of documents flawless in description, accuracy, deposit in save custody with proper status and secondly, safe transmission of it under proper documents from save custody to Chemical Lab and from Chemical laboratory to the Police and production before the Court as an admissible evidence. Any violation of it would lead to draw a negative inference that led basis for

acquittal of an accused. Reliance can be placed on the cases *“Qaiser and another v. The State”* (2022 SCMR 1641); *“Ikramulah v. The State”* (2015 SCMR 1002), *“The State v. Imam Bakhsh”* (2018 S'CMR 2039), *“Abdul Ghani v. The State”* (2019 SCMR 608), *“Kamran Shah v. The State”* (2019 7 SCMR 1217), *“Mst. Razia Sultana v. The State”* (2019 SCMR 1300), *“Faizan Ali v. The State”* (2019 SCMR 1649), *“Zahir Shah alias Shaf v. State through AG KPK”* (2019 SCMR 2004), *“Haji Nawaz v. The State”* (2020 SCMR 687), *“Qaiser Khan v. The State”* (2021 SCMR 363), *“Mst. Sakina Ramzan v. The State”* (2021 SCMR 451), *“Zubair Khan v. The State”* (2021 SCMR 492), *“Gulzar v. The State”* (2021 SCMR 380).

17. PW-01 SIP Abdul Rahseed deposed during cross-examination *“I separated the sample parcels from recovered property by cutting with scissor.” “Case property was lying in front seat of mobile.”* PW-02 Oam Parkash deposed during cross-examination: *“the piece of charas were separated from recovered property for sample parcel through knife by complainant on ground.” “When we returned from place of incident property was kept at the back seat of police mobile.”* In cases where material discrepancies arise between the prosecution's oral testimony and documentary evidence, the benefit of such doubt must be extended to the accused. The prosecution is under duty to prove case without reasonable doubt and without contradictions. Reliance can be placed on cases *“Muhammad Hazir v. The State”,*(2023 SCMR 986); *“Javed Iqbal v. The State”,* (2023 SCMR 139).

18. We are mindful that conviction can be awarded to an Accused or maintained by this Court on the basis of direct oral evidence of only one eye-witness if same is reliable, trustworthy and confidence-inspiring as has been held by the Supreme Court of Pakistan in cases reported ***“Muhammad Ehsan vs. The State” (2006 SCMR 1857)*** and ***“Niaz-Ud-Din v. The State” (2011 SCMR 725)***. However, the Hon'ble Supreme Court has greatly emphasized in narcotics cases reported as ***“Ikramullah Vs. The State” (2015 SCMR 1002)*** ***“Amjad Ali Vs. The State” (2012 SCMR 577)***, ***“Haji Nawaz Vs. The State” (2020 SCMR 687)*** and ***“Qaiser Khan Vs. The State” (2021 SCMR 363)*** that safe custody or safe transmission of the Narcotics to be considered and focused carefully and if it is not substantiated or based on unpersuasive evidence, the Report of Government Analyst becomes doubtful and unreliable. The prosecution is under mandatory duty to prove its case not only beyond reasonable doubt but also lays with burden of proof of safe-custody and safe-transmission of case property under Article 117 of the Qanun-e-Shahadat Order, 1984. The Supreme Court of Pakistan held in cases ***“Javed Iqbal v. The State” (2023 SCMR 139)***; ***“Mst. Sakina Ramzan v. The State” (2021 SCMR 451)*** and ***“Qaiser Khan v. The State” (2021 SCMR 363)*** that the chain of events—series of things linked, connected or associated together, would have to demonstrate and prove by the prosecution and if any link is missing or division occur, the benefit would go in favor of the accused.

19. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as *“Tajamal Hussain v. the State”* (2022 SCMR 1567), *“Sajjad Hussain v. the State”* (2022 SCMR 1540), *“Abdul Ghafoor v. the State”* (2022 SCMR 1527 SC), *“Kashif Ali v. the State”* (2022 SCMR 1515), *“Muhammad Ashraf v. the State”* (2022 SCMR 1328), *“Khalid Mehmood v. the State”* (2022 SCMR 1148), *“Muhammad Sami Ullah v. the State”* (2022 SCMR 998), *“Bashir Muhammad Khan v. the State”* (2022 SCMR 986), *“The State v. Ahmed Omer Sheikh”* (2021 SCMR 873), *“Najaf Ali Shah v. the State”* (2021 SCMR 736), *“Muhammad Imran v. the State”* (2020 SCMR 857), *“Abdul Jabbar v. the State”* (2019 SCMR 129), *“Mst. Asia Bibi v. the State”* (2019 PLD 64 SC), *“Hashim Qasim v. the State”* (2017 SCMR 986), *“Muhammad Mansha v. the State”* (2018 SCMR 772), *“Muhammad Zaman v. the State”* (2014 SCMR 749 SC), *“Khalid Mehmood v. the State”* (2011 SCMR 664), *“Muhammad Akram v. the State”* (2009 SCMR 230), *“Faheem Ahmed Farooqui v. the State”* (2008 SCMR 1572), *“Ghulam Qadir v. the State”* (2008 SCMR 1221), *“Riaz Masih alias Mithoo v. The State”* (1995 SCMR 1730), and *“Tariq Pervaiz v. the State”* (1995 SCMR 1345).

20. These were reasons of our short order dated 14 04 2023

JUDGE

JUDGE

Saleem