

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

Criminal Appeal No.D-69 of 2023

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Date	Order with signature of Judge
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***Before;***

*Mr. Justice Abdul Mobeen Lakho;*

*Mr. Justice Abdul Hamid Bhurgri.*

Appellant : Javed Ahmed son of Abdul Rehman Lashari, through Mr. Irfan Badar Abbasi, Advocate.

Respondent : The State, through Mr. Nazir Ahmed Bhangwar, D.P.G.

***Date of Hearing*** : ***22.04.2026.***

***Date of Judgment*** : ***20.05.2026.***

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

***ABDUL HAMID BHURGRI, J.-*** Through the instant criminal appeal, the appellant, Javed Ahmed son of Abdul Rehman Lashari, has called in question the judgment dated 26.09.2023 passed by the learned Sessions/Special Judge (CNSA/MCTC-II), Jacobabad, in Special CNS Case No.114 of 2022 (Re: The State v. Javed Ahmed), arising out of Crime No.62 of 2022 registered at Police Station Mouladad, Jacobabad, for an offence punishable under Section 9(1)3(c) of the Control of Narcotic Substances (Amendment) Act, 2022, whereby he was convicted and sentenced to undergo rigorous imprisonment for nine (09) years and to pay fine of Rs.80,000/-. In default whereof, to suffer simple imprisonment for one (01) year. Benefit of Section 382-B, Cr.P.C. was also extended to him.

2. Briefly stated, the prosecution case, as set out in the F.I.R. lodged by complainant ASI Balach Khan Jaffery, is that during patrolling on 14.10.2022, when at about 1600 hours, he along with his subordinate staff reached near Dangai Wah Main Road leading towards Garhi, they saw a person having a black shopper on the eastern side of the road. On seeing the police party, he tried to evade but was apprehended. He disclosed his name as Javed Ahmed. The recovered shopper was found containing three slabs of charas, each weighing 500 grams, total 1500 grams charas. His body search led to recovery of Rs.200/-. From each slab, 100 grams of charas, total 300 grams, was

separated and sealed for chemical analysis, while the remaining 1200 grams of charas was separately sealed. The cash amount was also sealed. The complainant prepared the memo of arrest and recovery in presence of mashirs, whereafter F.I.R. was lodged and investigation was carried out.

3. The learned trial Court, after supplying copies of the police papers to the accused, framed charge against him, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined complainant ASI Balach Khan (Ex.5), PC/mashir Ghulam Qadir (Ex.6), SIP Saifal Khan (Ex.7), Investigating Officer Inspector Saeed Khan (Ex.8), and WHC Manzoor Ahmed (Ex.9), and thereafter closed its side.

5. The appellant, in his statement recorded under Section 342, Cr.P.C. at Ex.11, denied the allegations leveled against him, but neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any defence evidence.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions; that no independent witness was associated; that the chain of custody has not been established; and that the evidence is not confidence-inspiring. He next contended that the contraband material was sent to the laboratory with unexplained delay, which has created serious doubt in the prosecution case and, therefore, the appellant is entitled to acquittal.

7. Learned Deputy Prosecutor General supported the impugned judgment and contended that the prosecution witnesses have fully supported the case; the charge has been proved beyond reasonable doubt; and, therefore, the impugned judgment requires no interference by this Court.

8. We have heard the learned counsel for the parties and, after reappraisal of the evidence available on record, have carefully examined the entire case.

9. From the arguments advanced by the learned counsel for the parties and the material available on record, the following point arises for determination by this Court:

“Whether the prosecution has been able to prove its case against the appellant beyond reasonable doubt and whether the conviction and sentence awarded to him by the learned trial Court are sustainable in law?”

10. Our answer to the above point is in the negative for the reasons to be recorded hereinafter.

11. It is settled law that in cases under the Control of Narcotic Substances Act, strict and transparent compliance of procedural safeguards, particularly with regard to the safe custody and prompt transmission of the recovered contraband, is of paramount importance. The prosecution is under a legal obligation to establish an unbroken chain of custody from the time of recovery till the receipt of the report of the Chemical Examiner. In the present case, the prosecution has failed to establish such an unbroken chain. According to the prosecution, on 14.10.2022 complainant ASI Balach Khan allegedly recovered 1500 grams of charas from the accused at the time of his arrest. The record further reflects that permission for sending the case property to the Chemical Examiner was obtained on 15.10.2022; however, despite such permission, the sealed parcel of charas was dispatched to the office of the Chemical Examiner on 19.10.2022 through SIP Saifal Khan by the Investigating Officer, after unexplained and inordinate delay of about five days from the date of recovery and beyond the mandatory period of 72 hours as envisaged under the Control of Narcotic Substances (Government Analysts) Rules, 2001. The relevant rule 4(2) is reproduced as under for the ready reference:-

*“4(2) Samples may be dispatched for analysis under the cover of a Test memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked “Secret Drug Sample/Test memorandum”.*

12. Moreover, the Road Certificate does not disclose the name of the official who actually transmitted the case property to the office of the Chemical Examiner. These omissions create a serious dent in the prosecution case and render the safe custody and transmission of the contraband highly doubtful. Reliance in this regard is placed on ***Jeehand v. the State (2025 SCMR 923)*** and ***Muhammad Nasir v. the State (2026 SCMR 224)***.

13. Apart from the above, the prosecution evidence suffers from material contradictions affecting the credibility of the witnesses. The complainant deposed that the accused was standing on the eastern side of the road at the place of occurrence and they were going from north to south of the road, whereas the mashir deposed that the accused was standing on the western side of the road and they were going from north to west of the road. The complainant deposed that the accused was holding the plastic shopper in his left hand, whereas the mashir deposed that he was holding it in his right hand. The complainant stated that the computerized scale was of steel colour having red-coloured digits, whereas the mashir stated the same to be of steel colour having black-coloured digits. The complainant deposed that after arrest of the accused, his custody was handed over to PC Basheer, whereas the mashir deposed that the complainant had handed over the custody of the accused to him. The complainant deposed that they weighed the recovered charas by placing the computerized scale on the road from the left/driver side and consumed about 10 minutes, whereas the mashir deposed that the complainant had weighed the recovered charas by placing the computerized scale on the officer-side seat of the police mobile and consumed about 5/6 minutes. The complainant deposed that they consumed about 20 minutes in the entire proceedings at the place of occurrence, whereas the mashir deposed that they consumed about 30/35 minutes. The complainant deposed that the F.I.R. was written by WHC under his dictation, who consumed about 30 minutes, and that

firstly he lodged the F.I.R. and then kept the accused in the lockup of the police station, whereas the mashir deposed that the complainant himself wrote the F.I.R. in about 15 minutes and that the accused was locked up before registration of the F.I.R. The complainant deposed that after registration of the F.I.R., he called the SHO through cell phone and he came to the police station within five minutes, whereas the mashir deposed that after registration of the F.I.R., the SHO came voluntarily. The Investigating Officer, in his cross-examination, deposed that he himself came to the police station after about one hour of registration of the F.I.R. The complainant deposed that they reached the site for inspection within 10/15 minutes, whereas the mashir deposed that they reached within 30/35 minutes, while the Investigating Officer deposed that he covered the distance between the place of occurrence and the police station within 25/30 minutes. The complainant deposed that the Investigating Officer wrote the memo of vardhat in standing position by placing paper on a clipboard and consumed about 15 minutes, whereas the mashir deposed that he wrote the same while sitting on the front seat of the police mobile and consumed about 20/25 minutes. These contradictions, when considered cumulatively, materially impair the reliability of the prosecution witnesses.

14. The conduct of the Investigating Officer further weakens the prosecution case when, in his cross-examination, he stated that the place of occurrence is not a busy area and vehicles crossed rarely, and that none was present there; hence, he did not ask any independent person to act as mashir. On the other hand, the complainant admitted the suggestion that the place of occurrence is a busy area, though at that time no private person was available to be associated as mashir. This contradiction further creates doubt regarding the fairness of the alleged recovery proceedings.

15. The deficiencies discussed above are not minor in nature but go to the root of the prosecution case. The cumulative effect of these

infirmities creates serious doubt regarding the genuineness of the recovery and the truthfulness of the prosecution version.

16. It is by now well-settled that if a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, he is entitled to the benefit thereof as a matter of right and not of grace. Reliance is placed on ***Tariq Pervez v. the State (1995 SCMR 1345)***, ***Muhammad Akram v. the State (2009 SCMR 230)*** and ***Muhammad Mansha v. the State (2018 SCMR 772)***.

17. In view of the above discussion, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt; thus, the point is answered in the negative.

18. Consequently, this Criminal Appeal is allowed, the conviction and sentence awarded to the appellant through the impugned judgment dated 26.09.2023 are set aside, and he is acquitted of the charge. He shall be released forthwith, if not required in any other custody case.

*JUDGE*

*JUDGE*