

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-47 of 2024

Date	Order with signature of Judge
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Before;

*Mr. Justice Adnan Iqbal Chaudhry;
Mr. Justice Abdul Hamid Bhurgri.*

Appellant : Ali Raza son of Muhammad Bux Abro,
through Mr. Muhammad Afzal Jagirani,
Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro
D.P.G.

Date of Hearing : **04.03.2026.**
Date of Judgment : **19.05.2026.**

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant criminal appeal, the appellant, Ali Raza son of Muhammad Bux Abro, has called in question the judgment dated 05.07.2024 passed by the learned Sessions/Special Judge (CNSA), Jacobabad, in Special Narcotics Case No.107 of 2023 (Re: The State v. Ali Raza), arising out of Crime No.01 of 2023 registered at Police Station Excise, Jacobabad, whereby he was convicted and sentenced for offence punishable under Section 9-3(d) CNS Act (Second Amendment Bill 2022 of CNS Act-1997) to undergo Rigorous Imprisonment for twenty (20) years and to pay fine of Rs.8,00,000/-. In default whereof, to suffer Simple Imprisonment for five (05) months. 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 is that on 05.08.2023 at 06.20 pm, the complainant Excise Inspector Zulfiqar Ali Leghari together with his subordinate staff arrested accused Ali Raza alongwith a black bag near Soomra Shakh on Quetta road, Jacobabad when he was coming on a motorcycle from Balochistan. His bag was found containing 10 plastic packets (20 slabs of charas), which were weighed to be 10 K.G. Case property i.e. 10 slabs weighing 05 K.G were sealed for chemical analyst and remaining charas was separately sealed. His body search led to recovery of cash Rs.1100/- and his CNIC. Motorcycle was also recovered. Such memo of arrest and recovery was prepared. Same day at 07.10 pm FIR was lodged.

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 Inspector Zulfiqar Ali (Ex.6) and PW/EC/mashir Asif Majid (Ex.7). Thereafter side of prosecution case was closed.

5. The appellant, in his statement recorded under Section 342, Cr.P.C at Ex.09, 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 also contended that the bag produced in Court containing the narcotics, was different from the one described in the FIR. 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 safe custody and 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. In this case, the complainant himself is the Investigating Officer and according to him recovered property was kept in Almirah lying at Excise PS and in this regard no roznamcha entry has been produced during evidence or available on record. Moreover, there is nothing on record with regard to safe custody of contraband material recovered from possession of accused and in whose custody it was since from its recovery till transporting the same to the chemical analyst. Besides, letter at Ex.6/G, which is stated to be a Road Certificate is also silent as to wherefrom the property was took out for sending the same to chemical analyst. Therefore, in view of this position, it can safely be concluded that the safe custody of case property was compromised. These omissions create a serious gap in the prosecution case and render the safe custody of the contraband doubtful. Reliance in this regard is placed on ***Jeehand v. the State (2025 SCMR 923)*** and ***Muhammad Nasir v. the State (2026 SCMR 224)***.

12. It is the noble duty of the Court within the permissible limit to find out the truth. It means no innocent person should be punished but on the other hand to see no person committing an offence should get scot-free. There is no calculated formula through which the truth of the

prosecution or the defence case could be made definite. It would depend upon the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a Judge aroused by the evidence on record. Prosecution in order to prove its case beyond a reasonable doubt has examined only two witnesses i.e. the complainant Excise Inspector Zulfiquar Ali and Excise Constable Asif Majeed. To know the truth and to reach a fair conclusion, we have gone through the evidence adduced by the prosecution and after perusal thereof, we have found it carrying major contradictions and material discrepancies discussed below:

13. The complainant Excise Inspector Zulfiquar Ali Leghari in his examination in chief stated that when they reached at Quetta Road, Soomra Shakh Jacobabad, they started snap checking; this version of the complainant is not supported by the FIR and the mashir, who did not depose so. The contention of snap checking alleged by the complainant does not find place in the FIR and most importantly, he was belied by the Excise Constable Asif Majeed, who stated in his examination in chief that they reached at Soomra Shakh, Quetta Road, Jacobabad, where they saw a person was coming on a motorcycle. The complainant stated that they opened recovered bag and found 10 packets of blue and yellow colours while mashir stated that they opened the recovered black bag and found 10 packets of yellow and brown colours whereas chemical analyst in his report has shown sealed cloth parcel containing ten black brown coloured patties wrapped in peli (yellow) plastic pani. The complainant in his examination in chief stated that on 11.08.2023 under entry No.02 at about 07.00 am, EC Asif Majeed left PS and went to Chemical Laboratory Sukkur @ Rohri and received/taken the chemical report of sample parcel from chemical laboratory. He also received verification report, thereafter, he returned back at PS under entry No.04 at 05.30 pm and handed over to him whereas, EC Asif Majeed did not depose so and remained silent regarding receiving of chemical and verification reports by him.

14. The complainant during his cross examination deposed that their departure entry No.3 was written by him in the relevant register while mashir deposed that their departure entry No.3 was written by him under instructions of the complainant in the relevant register. The complainant deposed that they checked about 15 to 20 vehicle at place of occurrence; those were checked by EC Mir Jeand and Defedar Ghulam Sarwar while mashir deposed that those vehicles were checked by all of them jointly. The complainant denied suggestion that there were village of Bughias and Langhas beside place of occurrence while mashir admitted that there was village of Bughias beside place of occurrence, however, he denied availability of village Langhas there. The complainant deposed that recovered charas was sealed in two sealed parcels by EC Mir Jeand under his directions while mashir deposed that recovered charas was sealed in two sealed parcels by the complainant and EC Mir Jeand, by latter was not examined. Thereby, the prosecution evidence suffers from material contradictions and when considered cumulatively, materially impairs the reliability and credibility of the prosecution witnesses.

15. Record reflects that the accused was arrested at 06.20 pm, at which time the memo of arrest and recovery was also prepared; by 07.10 pm, the arresting party reached the Excise Police Station and the FIR was lodged immediately. However, prosecution's narrative is inconsistency with the timings reflected in the record and the testimony provided by prosecution witnesses. Neither the complainant nor the mashir testified to the specific time of arrest or the recovery from the accused while the FIR and the memo of arrest both list the time of occurrence and preparation as 06.20 pm. Moreover, according to the complainant and mashir, they consumed about 45 to 50 minutes at place of occurrence in completing whole proceedings. Given that the place of occurrence is stated to be 15 minutes away from the PS and, therefore, it is improbable for the arresting party to arrive at the station

with the accused and the seized property at 07.10 pm. This unfeasibility regarding the registration of the FIR at the stated time creates serious doubt regarding the veracity of the prosecution's case.

16. 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.

17. 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)***.

18. 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 and the conviction and sentence awarded to the appellant is not sustainable; thus, the point is answered in the negative.

19. Consequently, this Criminal Appeal is allowed, the conviction and sentence awarded to the appellant through the impugned judgment dated 05.07.2024 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