

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

***Criminal Appeal No.D-18 of 2026.***

**Before:  
Mr. Justice Riazat Ali Sahar,  
Mr. Justice Ali Haider 'Ada'**

Appellant: Ghulam Abbas s/o Muhammad Bachal  
Menik Through Mr. Abdul A. Rehman  
Bhutto, Advocate.

The State: Through Mr. Sardar Ali Solangi, Deputy  
Prosecutor General, Sindh.

Date of Hearing: 24.09.2026.

Date of Decision: 24.09.2026.

Date of Reasons: 30.09.2026.

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

**Ali Haider 'Ada':J .-** Through the instant Criminal Appeal, the appellant, Ghulam Abbas Menik, has assailed the judgment dated 31.03.2026, passed by the learned Special Judge for CNS/Sessions Judge, Kashmore @ Kandhkot, in Special Case No.09 of 2026, titled *The State v. Ghulam Abbas Menik*, arising out of FIR No.01 of 2026, registered at Police Station RD-109, District Kashmore @ Kandhkot, for an offence punishable under Section 9(i)(3)(c) of the Sindh Control of Narcotic Substance (Amended) Act, 2024, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for ten (10) years and to pay a fine of Rs.300,000/-. In default of payment of fine, he was directed to suffer simple imprisonment for a further period of two months. The benefit of Section 382-B, Cr.P.C. was also extended in his favour. Being aggrieved by the said judgment, the appellant has preferred the instant appeal.

2. The prosecution case, in brief, is that on 02.01.2026, a police party headed by the complainant, SIP Mehar Ali Jakhrani, was on patrolling duty and, on receipt of spy information, reached near Wilayat Bridge, where the present appellant was allegedly

apprehended. From his possession, a black-coloured shopper containing Charas in three pieces was allegedly recovered. On weighing, the recovered Charas was found to be 1100 grams. After completion of the necessary codal formalities, the recovered narcotic substance was taken into possession and the present FIR was registered against the appellant on behalf of the State.

3. After completion of the investigation, challan was submitted before the competent Court. The learned trial Court took cognizance of the offence and supplied copies of the relevant documents to the appellant/accused in compliance with Section 265-C, Cr.P.C. Thereafter, charge was framed against him on 23.02.2026, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined the complainant, SIP Mehar Ali Jakhrani, as PW-1, who produced the relevant departure and arrival entries of the Roznamcha, memo of arrest and recovery and copy of the FIR. Thereafter, PW-2, PC Ghulam Abbas, the mashir of arrest and recovery, was examined, who produced the memo of site inspection. PW-3, Malkhana Incharge/PC Iltaf Hussain Jakhrani, was examined, who produced the relevant entry of Register No.19. PW-4, Dispatch Rider/PC Barkat Ali, was examined, who produced the road certificate along with the receipt showing delivery of the case property to the Chemical Laboratory. Subsequently, the Investigating Officer, SIP Kamand Khan, was examined as PW-5, who produced the relevant Roznamcha entries, letter addressed to the SSP seeking permission for chemical examination, road certificate and the report of the Chemical Examiner. Thereafter, the prosecution closed its side.

5. The statement of the appellant under Section 342, Cr.P.C. was then recorded, wherein he denied the allegations levelled against him, claimed his innocence and stated that he had been falsely implicated in the present case. After hearing the parties, the learned trial Court convicted and sentenced the appellant through the impugned judgment.

6. Learned counsel for the appellant has contended that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. According to learned counsel, the evidence of the prosecution witnesses suffers from material contradictions and inconsistencies which go to the root of the prosecution case and make the alleged recovery doubtful. Learned counsel further contended that the appellant had been apprehended by the police four days prior to the date of his alleged arrest shown in the present case and was subsequently implicated by foisting the narcotic substance upon him. In support of this contention, learned counsel referred to an application under Section 491, Cr.P.C, allegedly filed by the father of the appellant against his wrongful confinement.

7. Conversely, learned Deputy Prosecutor General, Sindh, supported the impugned judgment and submitted that the prosecution has successfully proved its case through reliable oral as well as documentary evidence. He contended that 1100 grams of Charas was recovered from the exclusive possession of the appellant and there was no plausible reason for the police to falsely foist such a substantial quantity of narcotic substance upon him.

8. Heard learned counsel for the appellant and learned Deputy Prosecutor General, Sindh, and perused the material available on the record.

9. The prosecution case is that the appellant was apprehended with the alleged contraband, namely Charas, in three pieces, weighing 1100 grams in total, and after completion of the necessary codal formalities, the FIR was registered against him. On the other hand, the specific plea of the appellant is that on the same day, at an early hour, an application under Section 491, Cr.P.C. was filed by his father before the learned Ist Additional Sessions Judge, Kandiaro, alleging his illegal confinement by the police. According to the appellant, thereafter the police managed the matter and, in order to justify his custody, lodged the present FIR on the same day at about 3:40 p.m.

10. Upon careful examination of the entire record, the above circumstance, coupled with the other aspects of the prosecution case, creates reasonable doubt regarding the alleged arrest and recovery from the appellant. The prosecution case, therefore, requires careful scrutiny, and the following circumstances have emerged from the record which renders the case doubtful.

11. **Firstly**, the complainant, during his cross-examination, admitted that he had received spy information regarding the presence of the accused at the relevant place and, on receipt of such information, proceeded towards the said place along with his police companions. However, this particular aspect of the prosecution case has not been corroborated by any other prosecution witness. Where specific spy information is claimed to have been received regarding the presence of an accused at a particular place, the association of independent persons from the locality, where available, is a fair and desirable practice, particularly when the alleged place of recovery is situated in a busy area.

12. In the present case, the prosecution witnesses themselves admitted that the place of occurrence was a busy area; nevertheless, no private or independent person was associated with the alleged recovery proceedings. No satisfactory explanation has been furnished by the prosecution as to why, despite the availability of private persons at the spot, none was associated as a witness to the recovery proceedings. The prosecution cannot be expected to associate private witnesses in every case as an absolute rule; however, where such witnesses are admittedly available and the circumstances permit their association, failure to do so without any satisfactory explanation may affect the evidentiary value of the recovery proceedings. Reliance in this regard is placed upon **Niaz Ali v. The State**, reported as **2026 MLD 215**, **Muhammad Aslam v. The State**, reported as **2011 SCMR 820**, **Ghulam Shabir and another v. The State**, reported as **2023 YLR 153**, and **Arshad Ali and another v. The State**, reported as **2024 PCr.LJ 1183**.

13. **Secondly**, the complainant, during his deposition, stated that the recovered Charas had turned red in colour, whereas the contraband produced before the learned trial Court was black in colour. This discrepancy assumes significance when considered in the light of the report of the Chemical Examiner, wherein the colour of the substance was described as blackish-brown. Furthermore, the prosecution case is that the recovered Charas consisted of three separate pieces. However, the prosecution did not produce any evidence showing that each individual piece was separately weighed and measured. Rather, the three pieces were collectively weighed and their total weight was shown as 1100 grams. In a case involving a specific quantity of narcotic substance, the manner in which the recovered material is weighed, secured, sealed and subsequently produced before the Court is a relevant circumstance for determining the identity and safe custody of the case property. Similar views have been expressed in **Bahawal Shaikh v. The State**, reported as **2025 MLD 840**, **Sadam Khan v. The State**, reported as **2025 YLR 327**, **Ahmed Khan v. The State**, reported as **2025 PCr.LJ 756**, **Qalandar Shah v. The State**, reported as **2021 YLR 2349**, and **Ansar Abbas alias Pakori v. The State and another**, reported as **2021 PCr.LJ 138**.

14. **Thirdly**, another important aspect of the case relates to the safe custody of the alleged case property. The Malkhana Incharge deposed that he received the recovered property from the Investigating Officer for its deposit in the Malkhana. However, the record reveals that the alleged Register No.19, which was relied upon to establish the deposit and safe custody of the case property, was not produced in its proper official form. Rather, the document placed on record does not appear to be the Register No.19, and even the name of the person who allegedly deposited the case property is noticeably absent. Recently, the Honourable Supreme Court of Pakistan, in **Irshad Khan v. The State**, reported as **2026 SCMR 87**, has specifically deprecated the practice of proving Register No.19 through plain papers instead of producing the original official register.

15. **Fourthly**, The prosecution was required to establish an unbroken chain from the time of recovery of the alleged contraband, its deposit in the Malkhana, its safe custody, its subsequent dispatch to the Chemical Laboratory and its receipt there. Any material gap in such chain assumes significance because the identity and integrity of the case property must remain beyond reasonable doubt throughout. In this regard, the safe custody and safe transmission of the case property become doubtful in the facts and circumstances of the present case. The prosecution evidence does not satisfactorily establish that the very same property allegedly recovered from the appellant remained secured and intact until its examination by the Chemical Examiner. Such deficiency, therefore, goes to the root of the prosecution case. Reference in this respect may safely be made to **Muhammad Iqbal v. The State**, reported as **2025 SCMR 704**, **Abdul Haq v. The State**, reported as **2025 SCMR 751**, **Asif Ali and another v. The State**, reported as **2024 SCMR 1408**, **Javed Iqbal v. The State**, reported as **2023 SCMR 139**, **Qaisar Khan v. The State**, reported as **2021 SCMR 363**, **Mst. Sakina Ramzan v. The State**, reported as **2021 SCMR 451**, and **Zubair Khan v. The State**, reported as **2021 SCMR 492**.

16. It is a settled principle of criminal law that the prosecution is required to prove its case against an accused beyond reasonable doubt. The accused is not required to prove his innocence; rather, the burden remains upon the prosecution throughout the trial. Once a material loophole or lacuna appears in the prosecution case, the benefit thereof must necessarily go to the accused. Even a single circumstance creating reasonable doubt is sufficient to entitle an accused to the benefit of doubt as a matter of right and not as a matter of grace or concession. In this regard, reliance may be placed upon **Muhammad Hassan v. The State**, reported as **2024 SCMR 1427**.

17. In view of the foregoing discussion and the circumstances noted above, Consequently, the appellant is entitled to the benefit of doubt. Accordingly, vide short order dated **24.09.2026**, the instant appeal was allowed, the impugned judgment passed by the learned

trial Court was set aside and the appellant was acquitted of the charge. The Jail Authorities were directed to release the appellant forthwith, if he was not required in any other custody case. These are the detailed reasons in support of the aforesaid short order.

***JUDGE***

***JUDGE***