IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Jail Appeal No.D-31 of 2024
(Amanat alias Don Golo v. The State)

PRESENT:
Mr. Justice Arbab Ali Hakro,
Mr. Justice Muhammad Osman Ali Hadi,

Appellant : through Mr. Zafar Ali Malghani, Advocate.

State : through Mr. Sardar Ali Solangi, Deputy Prosecutor General.

Date of hearing : 12.11.2026.
Date of judgment : 26-11-2026.

JUDGMENT

ARBAB ALI HAKRO, J.- The appellant, Amanat *alias* Don son of Qadir Bux Golo, has sent this appeal from jail against the judgment dated 16.04.2024 (**'the impugned judgment'**) passed by the learned 1st Additional Sessions Judge/MCTC/Special Judge for CNSA, Shikarpur (hereinafter referred to as '**the trial court**') in Special Case No.544 of 2023, arising out of Crime No.84 of 2023 of Police Station Lakhi Ghulam Shah. By that judgment he was convicted for an offence under section 9(e) of the Control of Narcotic Substances Act, 1997, as amended in the year 2022 (hereinafter referred to as '**the Act of 1997**'), and sentenced to rigorous imprisonment for life and fine of Rs.800,000/-, in default to undergo simple imprisonment for five years more, with benefit of section 382-B of the Code of Criminal Procedure, 1898 (hereinafter referred to as '**Cr.P.C.**').

2. The prosecution case is that on 01.08.2023, ASI Ghulam Abid Unar left Police Station Lakhi Ghulam Shah at 0300 hours on patrol with PC Niaz

Ali, PC Mehtab Ali and a driver. At 0400 hours, at the Jamra bus stop, they saw the appellant standing with a black shopping bag in his hand. He tried to slip away, was caught, and the bag was found to contain charas, which, on weighing, came to twenty kilograms. A currency note of Rs.500/- was taken from his person. The charas was sealed on the spot under a memo[1] attested by the two constables, and FIR was recorded at 0500 hours by the ASI on behalf of State.

3. The investigation was conducted by SIP Syed Izhar Shah. He placed the property in the *malkhana* and, on 04.08.2023, sent it to the Chemical Laboratory, Sukkur, at Rohri, through PC Ghulam Ali. The report[2] came back positive. At trial, the prosecution examined the complainant (PW-1), the carrier of the parcel (PW-2), the *mashir* PC Niaz Ali (PW-3), the Investigating Officer (PW-4), and the *malkhana* in-charge, WHC Muhammad Aslam (PW-5). In his statement under Section 342 Cr.P.C., the appellant denied the recovery. He pleaded that the police of District Ghotki had picked him up at noon on 31.07.2023, that a relative had moved an application under Section 491 Cr.P.C. the same day, and that he was thereafter handed over to the Shikarpur police and booked in this case. He led no evidence in defence.

4. Learned counsel for the appellant submits that the charas was foisted; that the property described in the memo is not the property which the Chemical Examiner received; that its custody after analysis was never accounted for; and that the appellant was tried, heard and sentenced to imprisonment for life in a single sitting, without a fair opportunity to cross-examine the complainant.

5. Learned Deputy Prosecutor General supports the impugned judgment. According to him, the witnesses are consistent; section 25 of the Act of 1997 dispenses with private *mashirs*; safe custody and safe transmission are proved through the *malkhana* in-charge, the carrier, and the registers; the report is positive, and so large a quantity could not have been planted.

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[1] Exh.04/A.
[2] Exh.8/D, Report No.6679 dated 11.08.2023.

6. The question is whether the prosecution proved, beyond reasonable doubt, that the substance found by the Chemical Examiner to be charas was the very substance alleged to have been taken from the appellant.

7. Section 9 of the Act of 1997 punishes possession in contravention of section 6. Under section 29, once possession is shown, the Court presumes that the accused committed the offence unless he proves the contrary. That presumption does not relieve the prosecution of its first burden. It applies only after the prosecution has proved recovery and that what was recovered is a narcotic. The second limb rests on the analyst's report, which is of use only if the article analysed is shown to be the article seized. The Supreme Court has said in ***Raham Gul***[3] that where the punishment is severe, the evidence is held to a stricter benchmark, and that section 29 cannot be invoked where the prosecution's own case falls short. In ***Jeehand***[4], it was reiterated that safe custody of the property must be shown from the spot until it reaches the laboratory and thereafter the trial court.

8. Tested against that touchstone, the case does not hold. The memo of recovery, the FIR, the arrival entry in the *roznamcha*[5] and the entry in Register No.19[6] are in agreement on the property: fourteen packets each holding a slab of one kilogram, four packets each holding two pieces and two packets each holding three pieces. The Chemical Examiner describes what reached him differently. He found packets No.1 to 13 each holding two slabs, packets No.14 to 17 each holding one slab, packets No.18 and 19 each holding two pieces and a plastic *theli* No.20 holding four pieces bearing a golden stamp. No packet of three pieces is there. A *theli* of four stamped pieces, of which the police papers say nothing, is there. Seventeen packets of slabs were received against fourteen seized, and three containers of pieces against six. These are two different inventories.

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[3] *Raham Gul v. The State* 2026 SCMR 584.
[4] *Jeehand v. The State* 2025 SCMR 923.
[5] Exh.04/C, entry No.34.
[6] Exh.8/B, entry No.40.

9. The weights tell the same story. The complainant says he weighed every packet on a digital scale, and each came to exactly one kilogram. The laboratory records the gross weight of the parcel at 19 kilograms 590 grams, so, wrappers and all, it was 410 grams lighter than the charas alone is said to have been. The same report then gives the net weight as 19 kilograms 930 grams, which is more than the gross. No witness was asked to explain either figure, and no explanation is on record.

10. There is, further, an improvement which cannot be overlooked. PW-1 and PW-3 both deposed that what was sealed was "19 printed pani packets and one plastic theli". That description does not appear in the memo, the FIR, or any register. It appears in the report of the Chemical Examiner, which was prepared ten days after the recovery. Witnesses who describe the property in the language of the laboratory rather than in their own memo do not lend it assurance.

11. Nor is the parcel itself identified. The memo and the witnesses do not state how many seals were affixed or with what impression, though the laboratory notes three. The report requests that the remaining property be collected from the laboratory by an authorised person. Who collected it, on what date, where it lay for the eight months before it was shown to PW-1 in Court on 09.04.2024, and under whose seal it then was, is not in evidence; the deposition only records that it was "de-sealed". PW-3 admitted that the black shopping bag was not produced, although the Chemical Examiner had found every packet lying in it. In ***Abdul Raheem***,[7] where twenty-two kilograms of charas were involved, the Supreme Court set aside a sentence of imprisonment for life because the prosecution had not shown who received the parcels back from the laboratory, where they were kept, and that what was produced in Court was what had been recovered and analysed. In ***Tariq Sajjad Khan***[8], the weight and appearance of the

[7] *Abdul Raheem v. The State* 2026 SCMR 1516.
[8] *Tariq Sajjad Khan v. The State* 2026 SCMR 1215.

property were found to belie the memo of recovery, and that was held to raise serious doubt in the prosecution case.

12. Learned Deputy Prosecutor General is right that the *malkhana* in-charge and the carrier were examined, and that the road certificate and the registers were produced. That evidence proves that a sealed parcel moved from the police station to the laboratory in time. It does not prove what the parcel contained when it was sealed, and the prosecution's own documents speak with two voices on that point. The size of the recovery does not help either; the larger the quantity, the heavier the sentence and the more exact the proof must be.

13. The manner of trial adds to the difficulty. On 09.04.2024, a second counsel was appointed for the appellant at State expense, and on the same date PW-1 and PW-2 were examined. The cross-examination of PW-1, the only officer who claims to have made the recovery, runs to four suggestions. On 16.04.2024, the appellant engaged his own counsel, who applied under section 540, Cr.P.C., for the recall of the two witnesses. The request was declined. Three more witnesses were examined, the statement under section 342 Cr.P.C. was recorded, arguments were heard, and the judgment was announced, all on that one day.

14. Expedition is a virtue, but not at the expense of the defence. In ***Sher Hassan***[9], the Supreme Court held that cross-examination is a vital part of the material on which a criminal court decides, and that the right to a fair trial under Article 10-A of the Constitution is violated if an accused is deprived of the opportunity to cross-examine a witness deposing against him. An opportunity that exists in form but not in substance is no better. The testimony of PW-1, never properly tested, cannot be given the weight needed to override the documentary discrepancies noted above.

15. The defence plea also received short shrift. The Investigating Officer admitted that the appellant had filed a constitutional petition before this

[9] *Sher Hassan v. Gul Hassan Khan* 2022 SCMR 1360.

Court while the investigation was in progress, yet made no inquiry into the alleged detention in District Ghotki and said only that he did not know of it. The trial court rejected the plea because it was not raised during the investigation or at the charge. That overlooks the petition and the fact that the plea was put to PW-1 and PW-4 in cross-examination. In ***Tariq Sajjad Khan***, the failure of the investigating agency to look into a specific plea of false implication was counted against the prosecution. An accused is not required to prove his plea to the hilt; it is enough if, with the rest of the record, it leaves the Court in doubt.

16. One further observation is warranted. In paragraph 17 of the impugned judgment, the trial court referred to the prevalence of the drug trade in Shikarpur and to what "even public knows", and treated the appellant as one engaged in it. The record of his previous cases[10] shows none under the Act of 1997, and PW-4 conceded that this was the first. A finding of guilt must rest on the evidence in the case and on nothing else.

17. Section 423(1)(b), Cr.P.C. empowers this Court, on appeal from a conviction, to reverse the finding and sentence and acquit the accused, or to order his retrial. In ***Tariq Sajjad Khan***, the Supreme Court explained that the appellate court must itself peruse the record and decide the appeal on the evidence. Had the denial of effective cross-examination been the only defect, a remand for that limited purpose would have been the proper order. It is not the only defect. Doubt as to the identity of the property arises from the memo of recovery, the registers and the report of the Chemical Examiner, all prosecution documents, and no further cross-examination can remove it. A retrial would merely give the prosecution a second chance to mend its case, while the appellant has already been in custody since 01.08.2023. As observed in ***Abdul Raheem***, the benefit of the slightest doubt arising in the prosecution case must go to the accused, as of right.

[10] Exh.8/C.

18. For these reasons, the prosecution has not proved the charge beyond reasonable doubt. The appeal is **allowed**. The impugned judgment dated 16.04.2024 is set aside, and the appellant, Amanat *alias* Don, son of Qadir Bux Golo, is acquitted of the charge, with the benefit of the doubt extended to him. He shall be released forthwith, unless required in any other custody case. The office shall communicate this judgment to the Superintendent of the prison concerned for compliance and for the information of the appellant.

JUDGE

JUDGE

Qazi Tahir PA/*