

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Salahuddin Panhwar

Mr. Justice Jan Ali Junejo

## Cr. Appeal No. 717 of 2024

[ Danish versus The State ]

Appellant : Danish through Mr. Nadeem Ahmed Azar, Advocate

State : Through Mr. Ali Haider Saleem, Additional Prosecutor General a/w SIP Saleem Akhtar, CRO Branch

Date of Hearing : 03.02.2025

Date of Decision : 03.02.2025

## J U D G M E N T

**JAN ALI JUNEJO, J:-** Through instant appeal, Appellant has assailed his conviction and sentence recorded by learned I-Additional Sessions Judge/Special Court/Model Trial Court, Karachi Central, by judgment dated 08.10.2024, passed in Sp. Case No.291 of 2021, arising out of Crime No.84 of 2021 for offence under Section 6, 9(C) CNS Amended Act, 2022 registered with P.S Gulbahar, Karachi. On conclusion of trial, Accused was found guilty for committing the offence under Section 6 of Control of Narcotic Substances Act, 1997, however, by taking lenient view the learned trial Court convicted and sentenced the Appellant/Accused under Section 265-H(ii) Cr.P.C for committing the offence under Section 6, 9-b of Control of Narcotic Substances Act, 1997, to suffer S.I for ten (10) years with fine of Rs.500,000/- (rupees five lac) and in case of default to pay the fine, he was ordered to suffer S.I for 30 days more. However, benefit of Section 382-B Cr.P.C. was extended to the Appellant.

2. Prosecution story unfolded in the FIR is that the police party headed by SI Riaz Ahmed of PS Gulbahar, Karachi was busy in patrolling for suppression of crime and during the patrolling they received spy information that one person is selling chars behind Qureshi Colony gate, opposite Lyari Expressway Haji Mureed Goth Gulbahar Karachi. On such information, they reached at the spot on 05.03.2021 at 1600 hours and apprehend one person in suspicious condition on the pointation of spy and apprehended him, who disclosed his name as Danish S/o Zaheeruddin and during his personal search three slabs of chars, out of them two slabs were wrapped in white color foil and one slab was wrapped in pink color foil, were recovered from inside blue color plastic shopper, which was weighed through digital scale and found 1480 grams, so also Rs.5,500/- were also recovered from him. The recovered chars was seized on the spot and sealed accordingly.

3. After completing the investigation, challan was submitted against the accused under the above referred sections. Then, trial court framed charge against him at Exh.4, to which Appellant pleaded not guilty, as recorded in his plea at Exhibit 4/A. The prosecution examined the following witnesses:

- **PW-1 ASI Rasheed Ahmed** (Exh.5), who produced *Memo of Arrest and Recovery* (Exhibit-5/A) and *Memo of Site Inspection* (Exhibit-5/B).
- **PW-2 IO/SIP Ali Sher** (Exh.6), who produced *Entry No.24 dated 5.3.2021* (Exhibit-6/A), *Entry No.25 dated 5.3.2021* (Exhibit-6/B), *four pictures* (Exhibit-6/C), *Entry No.28 dated 5.3.2021* (Exhibit-6/D), *Entry No.31 5.3.2021* (Exhibit-6/E), *CRO* (Exhibit-6/F), *Entry No.33 5.3.2021* (Exhibit-6/G), *Entry No.7 dated 6.3.2021* (Exhibit-6/H), *Entry No.12 dated 6.3.2021* (Exhibit-6/I), *Entry No.7 dated 8.3.2021* (Exhibit-6/J), *Letter to Chemical Examiner for depositing of case property* (Exhibit-6/K), *Letter to In-Charge CRO* (Exhibit-6/L), *CRO record* (Exhibit-6/M), *Entry No.22 dated 8.3.2021* (Exhibit-6/N) and *Chemical Report* (Exhibit-6/O).
- **PW-3 Complainant Riaz Ahmed** (Exh.7), who produced *Entry No.13 5.3.2021* (Exhibit-7/A), *FIR* (Exhibit-7/B) and *Entry No.22 dated 5.3.2021* (Exhibit-7/C).

- **PW-4 HM Ali Akber** (Exh.8), who produced *Entry No.24/2021* (Exhibit-8/A).

After examining all relevant evidence, the prosecution concluded its case and closed its side of the evidence, as recorded in Exhibit-9. The trial court then recorded the statements of accused under **Section 342 Cr.P.C** (Exh.10), in which he denied all the allegations leveled against him by the prosecution and claimed that he has been falsely implicated in this case. He however did not examine himself on oath.

4. The learned trial Court after hearing learned counsel for the parties and assessment of evidence, by judgment dated 08.10.2024, convicted and sentenced the Appellant, as stated above. Hence the present appeal.

5. Learned counsel for the Appellant contended that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law, so also, bad in law as well as on facts, and is not in consonance with the evidence which was brought on record and is liable to be *set aside*, thus the Appellant is entitled for acquittal. Learned counsel further contended that the appellant is innocent and he has been falsely implicated in this case, whereas, the learned trial Court has miserably failed to appreciate the evidentiary value of evidence and also failed to prove its case against the Appellant beyond shadow of doubt, as there are many discrepancies and contradictions in the statements of PWs. Learned counsel further contended that there is three days delay in sending the case property to the chemical examiner. Counsel next submitted that the Appellant is sole bread earner of his family and is of young age. Lastly, he prayed for acquittal of the Appellant.

6. On the other hand, learned Additional Prosecutor General Sindh, has fully supported the impugned judgment and contended that the trial Court has rightly convicted the accused on the basis of evidence

brought on record by the prosecution. Hence, he prayed for dismissal of the present appeal.

7. We have heard learned counsel for both the parties and scanned the entire evidence available on record.

8. We have given our anxious considerations to the submissions of both the sides and perused the entire material available on record with their able assistance. *PW-1 ASI Rasheed Ahmed* deposed that his duty time was from 0700 to 1900 hours. He was on patrolling duty and during patrolling at 1300 hours, he was called back at PS. Accordingly, in the cross examination he deposed that, he did not remember the cell number from which he received the call for visiting PS. Moreover, he also stated that as per spy information, one person was selling “Chars” but as per the prosecution case no any purchaser was found. *SIP Ali Sher PW-2, EX-6* testified that he submitted a final challan before trial Court without collecting final chemical examiner report. In addition, he deposed that SIP firstly prepared memo of arrest and thereafter, sealed the property. Whereas, in cross examination he admitted that in the *Mushir Nama*, SIP firstly sealed the property and then wrote *Mushir Nama*. The *PI- Riaz Ahmed, PW-3 at EX-7* testified that the time 1600 hours mentioned in the body of the memo of arrest and recovery is overwriting. This discrepancy casts significant doubt on the credibility of the evidence and undermines the prosecutions assertions.

9. *Ali Akber HC, PW-4, EX-8* testified that he received case property in the evening time at about 8:30 PM on **05-03-2021** and IO took property from him on **06-03-2021** for depositing to chemical examiner and he again returned to him in evening time on the same day and again IO took the property on **08-03-2021** in morning time. The prosecution has failed to provide a satisfactory explanation for 3 days delay which the sample was unaccounted for the lack of documentation

or eye witness testimony to clarify the whereabouts of the evidence during this period creates a significant risk of tempering which cannot be overlooked.

10. Established case law holds that failure to maintain a secure and verifiable chain of custody necessitates acquittal, as the prosecution cannot prove the integrity of the evidence. The absence of a secure and documented chain of custody severely undermines the prosecution's case. Given the significant inconsistencies in the witnesses' testimonies, the compromise chain of custody and the failure to ensure the secure transmission of evidence, the prosecution has not satisfied the burden of proof. As a result, the accused should be acquitted of all charges as the evidence fails to meet the requisite standard of proof beyond reasonable doubt. This assertion is supported by the principle established by the Honourable Apex Court of Pakistan in the case of *Zahir Shah alias Shat v. The State through Advocate General Khyber Pakhtunkhwa (2019 SCMR, 2004)*, wherein, the Honorable Apex Court held that *"This court has repeatedly held that 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, unsuspecting, 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 analyst, thus, rendering it incapable of sustaining conviction"*.

11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery

which is clear violation of the provisions of Section 103 Cr.PC. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.

12. Review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court, which are sufficient to create shadow of doubt in the prosecution story. It is settled law that for creating doubt, many circumstances are not required and if a single circumstance creates a reasonable doubt in a prudent mind, then its benefit must be given to the Accused not as matter of grace or concession but as a matter of right. In the case of Muhammad Mansha vs. The State (2018 SCMR 772), the Hon'ble Supreme Court has observed as follows:-

**“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that then guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”**

13. For what has been discussed above, we have no hesitation to hold that there are several infirmities in the prosecution case, as highlighted/discussed above, which have created doubt, therefore, we reached to an irresistible conclusion that the prosecution has utterly failed to prove its case against the Appellant and the trial Court failed to appreciate the evidence according to the settled principles of law. False

implication of the Appellant could not be ruled out. Resultantly, this appeal was allowed by our short order dated 03.02.2025, whereby conviction and sentence recorded by the learned trial Court were *set aside* and the Appellant was acquitted of the charge.

14. These are the reasons of our short order dated 03.02.2025.

JUDGE

JUDGE

Dated: 10.02.2025  
B-K Soomro