

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Salahuddin Panhwar  
Mr. Justice Jan Ali Junejo

## Cr. Jail Appeal No. 87 of 2023

[Niaz Ali @ Ali Pathan *versus* The State]

Appellant : Niaz Ali @ Ali Pathan through  
Mr. Habib ur Rehman Jiskani, Advocate

State : Through Mr. Ali Haider Salim,  
Additional Prosecutor General

Date of Hearing : 06.02.2025

Date of Decision : 06.02.2025

## J U D G M E N T

JAN ALI JUNEJO, J:- The appellant has challenged the judgment dated 21.04.2022 (hereinafter referred to as the *Impugned Judgment*) passed by the learned 1st Additional District and Sessions Judge, Malir, Karachi (Model Criminal Trial Court) in Sessions Case No.1382/2021 arising out of Crime No. 743/2021, registered with Police Station Shah Latif Town, Karachi, under Sections 6/9 of CNS, Act, whereby the appellant was convicted under Section 9-C of Control of Narcotic Act, 1997 and sentenced RI for ten years and fine of Rs.200,000/- an in case of default to undergo six months SI more. However, benefit of Section 382-B Cr.PC was extended to the accused.

2. Prosecution story unfolded in the FIR is that police party headed by SIP Rana Zulfiqar Ali posted at PS Shah Latif Town, Karachi were busy in area patrolling for curbing crimes on official mobile. During such patrolling received information through spy that one person is available at Hassan Panhwar Goth, who was

having *chars*. Acting on the said information, they reached at the stated place, where on pointation they found one person standing in a suspicious condition by holding a black colour shopper in his hand, who was apprehended and checked his black colour shopper and found three packets of slab like *chars*, out of which one packet *chars* was wrapped in a yellow colour tape, while two packets were wrapped in a white colour plastic. The recovered *chars* was weighed by a digital scale kept in official mobile, the weight of packet wrapped in yellow colour tape became 1070 grams, while the weight of one packet wrapped in white colour tape became 500 grams and another packet weight became 530 grams. The total weight of *chars* became 2100 grams. Therefore, the act of accused was found to have fallen within the ambit of Section 6/9-C Anti-Narcotic Control Act; hence, he was arrested as per memo and recovered *chars* was sealed up on the spot.

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.2, to which appellant pleaded not guilty. The prosecution examined the following witnesses:

- PW-1 SIP Rana Zulfiqar (Exhibit-4), who produced *Memo of Arrest of Accused* (Exhibit-6), *FIR* (Exhibit-7), *Daily Diary Report No.59* (Exhibit-8) and *Malkhana Entry* (Exhibit-9) and *Memo of Inspection* (Exhibit-10).
- PW-2 Muqarab Khan (Exhibit-11).
- PW-3 SIP Qari Ejaz (Exhibit-12), who produced *Departure Daily Diary Report No.27* (Exhibit-13), *Report No.57* (Exhibit-14) and *Letter to Chemical Examiner* (Exhibit-15), *Arrival Daily Diary Report No.29* (Exhibit-16) and *Chemical Report* (Exhibit-17).

4. After examining all relevant evidence, the prosecution concluded its case and closed its side, as recorded in Exhibit-18. The trial court then recorded the statement of accused under Section 342 Cr.P.C (Exh.19), in which he denied all the allegations leveled against him by the prosecution and claimed that he is innocent and that he was arrested from his house at Zaffar Town empty handed and police demanded bribe. On failure to pay bribe, police falsely implicated him in this false case. He however the appellant did not examine himself on oath as per provisions of Section 340(2), Cr.P.C.

5. The learned trial Court after hearing learned counsel for the parties and assessment of prosecution evidence, by virtue impugned judgment, convicted and sentenced the appellant, as stated above. Hence the present appeal.

6. 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 on fact, and is not in consonance with the evidence which is brought on record and is liable to be *set aside*, thus the appellant is entitled for acquittal. Learned counsel further contended that in point No.2 of the impugned judgment dated 21.04.2022 in first portion conviction was awarded to the appellant accused, but on the second portion of same point No.2, there is no conviction awarded to the appellant but there is name of one Salman S/o Gul Agha therefore the impugned order is not against the appellant. He further contended that 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. Learned counsel further contended that, Head Mohrer was not examined by the prosecution, therefore, safe custody of the property is doubtful.

7. 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.

8. We have carefully considered the submissions of both parties and meticulously examined the entire material available on record. Upon a thorough review, it appears that the charge against the appellant/accused was framed based on the recovery of *chars*, with a recorded weight of 2100 grams mentioned in Exhibit-2. PW-1, Rana Zulfiqar, testified in his examination-in-chief that the total weight of the recovered *chars* was 2130 grams. Similarly, PW-2, PC Muqarab Khan, stated during his examination-in-chief that 2130 grams of *chars* was recovered from the appellant's possession. However, the memo of arrest and recovery, along with the chemical report, indicates that the recovered *chars* weighed 2100 grams. This inconsistency and contradiction between the depositions of the complainant and the witness, as compared to the memo of arrest and recovery regarding the weight of the case property, are significant and detrimental to the prosecution's case. Furthermore, the complainant stated that the case property was handed over to the Head Mohrar, yet the latter was not examined as a witness. The Head Mohrar was a crucial prosecution witness,

as his testimony was essential to establishing the safe custody of the case property and ensuring an unbroken chain of custody. The failure to examine him substantially weakens the prosecution's case. This principle has been reaffirmed by the Honourable Apex Court of Pakistan in *Zahir Shah alias Shat v. The State through Advocate General Khyber Pakhtunkhwa* (2019 SCMR 2004), wherein the Honourable 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"*.

9. SIP Qari Muhammad Ajmal, the Investigating Officer (Exhibit-10), stated in the memo of inspection that the crime scene is located on the main street running north-south, with the national highway situated to the north. It is an admitted fact that the incident took place in a densely populated area, and the Complainant/SIP acted on a prior tip-off. However, no independent witnesses were associated with the arrest and recovery. While Section 25 of the Control of Narcotic Substances Act, 1997, excludes the mandatory application of Section 103 of the Cr.P.C., allowing police officials to be considered competent witnesses, this does not absolve the Complainant of the responsibility to involve independent public witnesses. The absence of such witnesses raises concerns regarding the potential false implication of the accused.

Reliance may be placed on the legal principles established by this Court in *Ghulam Shabbir and Another v. The State* (2023 YLR 153).

10. In the landmark case of *Muhammad Riaz and others versus the State* (2024 SCMR 1839), the Hon'ble Supreme Court of Pakistan delivered a significant judgment reiterating the fundamental principle of criminal jurisprudence that the benefit of doubt must be accorded to the accused if there is any reasonable suspicion regarding the credibility or authenticity of the prosecution's case. It has been further observed by the Apex Court as under:-

***“To extend the benefit of doubt it is not necessary that there should be so many circumstances... if one circumstance is sufficient to discharge and bring suspicion in the mind of the court that the prosecution has faded up the evidence to procure conviction then the court can come forward for the rescue of the accused person. Denial Boyd (muslim name Saifullah) and another versus the State 1992 SCMR 196. Mst. Asia Bibi versus the State and others (PLD 2019 SC 64) and Muhammad Imran versus the State (2020 SCMR 857).”***

11. The Hon'ble Supreme Court, in the case of *Muhammad Imran versus the State* (2020 SCMR 857), has emphatically ruled that if even a single circumstance, derived from the record, casts doubt on the integrity or credibility of the prosecution's case, the benefit of such doubt must be unequivocally extended to the accused without any reservation. This principle underscores the judiciary's commitment to ensuring fairness and upholding the presumption of innocence, particularly in situations where the prosecution's case is weakened by inconsistencies or questionable evidence. The Court's observation highlights the importance of meticulously scrutinizing the record to safeguard the rights of the

accused and maintain the integrity of the judicial process. Regarding the contention raised by the learned counsel for the Appellant concerning the incorrect mention of the Appellant's name in the concluding paragraph of the Impugned Judgment, it appears to be a clerical error. This error has no bearing on the merits of the case and has not resulted in any miscarriage of justice. The Appellant's name is correctly stated in the title of the Judgment. Furthermore, the parties were free to bring such clerical errors to the attention of the learned trial Court for rectification, in accordance with the provisions of Section 369 of the Code of Criminal Procedure, 1898.

12. In light of the foregoing discussion, we have no hesitation in concluding that the prosecution's case is plagued by substantial inconsistencies and contradictions, as previously outlined, which have significantly weakened its credibility. Consequently, we find that the prosecution has completely failed to substantiate its case against the appellant. Furthermore, the trial Court did not properly evaluate the evidence in accordance with established legal principles. The possibility of the appellant being falsely implicated cannot be disregarded. Accordingly, through our Short Order dated 06.02.2025, we allowed this appeal, overturned the conviction and sentence imposed by the trial Court, and acquitted the appellant of all charges. These constitute the reasons for our Short Order dated 06.02.2025.

**JUDGE**

**JUDGE**

Dated: 10.02.2025  
B-K Soomro