

**IN THE HIGH COURT OF SINDH BENCH AT  
SUKKUR**

Special Criminal Appeal No.D-100 of 2024  
(*Waqar alias Vicky Gadehi v. The State*)

**Before:**

Mr. Justice Khadim Hussain Tunio  
Mr. Justice Riazat Ali Sahar

Mr. J.K. Jarwar, Advocate for the Appellant.  
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of hearing: **18.02.2025**

Date of Decision: **18.02.2025**

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

**RIAZAT ALI SAHAR J.,-** The appellant, Waqar alias Vicky, was tried before the learned 1st Additional Sessions Judge/Special Judge for Narcotics (MCTC), Naushahro Feroze, in Special Case No. 34 of 2024, arising out of Crime No. 43 of 2024, registered at Police Station Halani. The case was instituted under the provisions of Section 9(c) of the Control of Narcotic Substances Act, 1997. Upon the conclusion of the trial, the learned trial court, through its impugned judgment dated 12-10-2024, found the appellant guilty of the offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. Consequently, he was convicted and sentenced under section 265-H (2) Cr.P.C read with Section 47 CNS Act 1997 to undergo rigorous imprisonment for a period of nine years. In addition to the custodial sentence, he was directed to pay a fine of Rs. 100,000/- (Rupees one hundred thousand only). In the event of default in payment of the fine, he was ordered to suffer simple imprisonment for a further term of six months. Moreover, the

appellant was duly extended the benefit under Section 382-B of the Code of Criminal Procedure, thereby allowing the period of his detention during the trial to be counted towards the sentence awarded.

2. On 23-02-2024, Assistant Sub-Inspector (ASI) Muhammad Ashraf lodged a FIR, stating that while he was on routine patrol duty, accompanied by his subordinate staff, they reached a link road connecting Halani to Lakha Road. At that location, in the illumination of the vehicle's headlights, they observed an individual approaching from the direction of Halani, carrying a black-coloured plastic bag. Upon noticing the presence of the police party, the said individual attempted to flee; however, he was promptly apprehended by the police team. Upon conducting a search, the police recovered 1,128 grams of *Charas* from his possession in the presence of official witnesses, namely Head Constable Muhammad Younis and Police Constable Saghar Shah. Subsequent to the completion of all necessary legal formalities at the scene, the seized contraband, along with the apprehended accused (the appellant), was transported to the police station, where the FIR was formally registered in accordance with the law.

3. Upon the completion of the investigation, the police submitted the final challan against the appellant before the competent court of law. Subsequently, the charge was formally framed against the appellant, to which he pleaded 'not guilty' and opted to contest the trial.

In order to substantiate the charge levelled against the appellant, the prosecution presented as many as five witnesses before the trial court. These included:

1. **PW-1** – Complainant, ASI Muhammad Ashraf, who lodged the FIR.
2. **PW-2** – Head Constable Muhammad Younis, who acted as a *mashir* (witness of recovery).
3. **PW-3** – Head Constable Ghulam Siddiquie, who served as the dispatcher of the recovered property.
4. **PW-4** – Sub-Inspector Police (SIP) Bagh Ali Rind, who conducted the investigation of the case.
5. **PW-5** – ASI Mehboob Ali, who was the in-charge of *Malkhana* (official storage for case property).

Following the recording of evidence from all prosecution witnesses, the prosecution closed its side of the case.

4. Statement of appellant in terms of section 342 CrPC was recorded, wherein he denied prosecution allegations and claimed his false implication in the case on the pretext of enmity.

5. The learned counsel for the appellant vehemently contended that the appellant is entirely innocent and has been falsely implicated in the present case due to personal enmity with the police. He asserted that the impugned judgment is fraught with numerous infirmities, contradictions, legal irregularities, and material discrepancies, rendering the conviction unsustainable in law. It was further argued that the prosecution failed to produce the original entries of the daily diary (*Roznamcha*), which would have reflected the departure and arrival timings of the police party, thereby creating serious

doubts regarding the veracity of the alleged incident. Moreover, the learned counsel emphasised that no permission letter, which is a necessary procedural requirement, was produced as evidence before the trial court. He also pointed out an unjustified and unexplained delay in sending the recovered contraband for chemical analysis, which casts further suspicion on the integrity of the prosecution's case. Additionally, it was contended that there was a blatant violation of the mandatory provisions of Section 103 Cr.P.C, which require independent witnesses to be associated with the recovery process. The learned counsel further submitted that the appellant has no previous criminal record and is neither a habitual offender nor a previously convicted individual. In view of these glaring legal and factual discrepancies, the learned counsel fervently prayed for the acquittal of the appellant.

6. On the contrary, learned Additional P.G for the State, opposed the appeal.

7. We have had the opportunity to hear the learned counsel representing the appellant as well as the learned Additional Prosecutor General, Sindh appearing on behalf of state.

8. After hearing learned counsel for the parties and reappraising the evidence on record, this Court finds that the prosecution's case suffers from critical lapses. In particular, the chain of custody of the alleged narcotics was not proven to be intact, and significant contradictions in the evidence were

overlooked. It is a fundamental principle of criminal law that the prosecution must prove its case **beyond reasonable doubt**, especially in offences carrying severe punishments; any gap in proof must be resolved in favor of the accused. In narcotics cases, due to the stringent punishments provided by the Control of Narcotic Substances Act, the courts have emphasized that even greater care is needed to ensure the integrity of the evidence (often stated as “the harsher the sentence, the stricter the standard of proof”). Keeping these principles in mind, the points requiring determination in this appeal are: (i) whether the prosecution established an unbroken chain of safe custody and transmission of the case property (narcotics) from the time of recovery until production in court, as required by law; and (ii) whether the evidence on record is free of material contradictions and sufficient to uphold the conviction. Both these questions are answered in the negative for the reasons discussed below.

#### **SAFE CUSTODY AND CHAIN OF CUSTODY OF CASE PROPERTY:**

9. It is by now well-settled that in narcotics cases the **chain of custody** of the seized contraband must be meticulously maintained, from the moment of recovery until its production before the trial court. The “chain of custody” (also termed safe custody and safe transmission) begins with the seizure of the narcotic by the law enforcement officer, followed by separation of representative samples, deposit of the case property in the official **Malkhana** (storehouse) at the police station by mentioning the entry in the register no. XIX of Malkhana which is to be maintained under rule 22.70 of the Police Rules, 1934,

and then the dispatch of the sample parcels to the forensic laboratory for analysis. Each link in this chain must be secure and each handler of the evidence must be accounted for. **Any break or gap in this chain of custody – whether in safe custody at the police station or during transmission to the laboratory – renders the Chemical Examiner’s report unsafe and unreliable for purposes of conviction.** The august Supreme Court has repeatedly held that if safe custody of narcotics and its transmission through safe hands is not proved, the recovery and chemical analysis cannot be used as proof against an accused<sup>1</sup>. In *Mst. Sakina Ramzan vs. The State (2021 SCMR 451)*<sup>2</sup>, it was explicated that the prosecution must establish that the seized drug remained in **unbroken, safe, secure, and indisputable custody** at all times; otherwise, the benefit of doubt arising from a compromised chain of custody must be given to the accused. Similarly, in *Qaiser Khan vs. The State (2021 SCMR 363)*, the Supreme Court observed that where safe custody or safe transmission is not established on the record, the same **“cannot be used against the accused”**.

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<sup>1</sup> “*Ikramullah v. The State*” (2015 SCMR 1002); “*The State vs. Imam Bakhsh*” (2018 SCMR 2039); “*Abdul Ghani v. The State*” (2019 SCMR 608); “*Kamran Shah vs. The State*” (2019 SCMR 1217); “*Mst. Razia Sultana vs. The State*” (2019 SCMR 1300); “*Faizan Ali vs. The State*” (2019 SCMR 1649); “*Zahir Shah alias Shat vs. State through AG KPK*” (2019 SCMR 2004); “*Haji Nawaz vs. The State*” (2020 SCMR 687); “*Qaiser Khan vs. The State*” (2021 SCMR 363); “*Mst. Sakina Ramzan vs. The State*” (2021 SCMR 451); “*Zubair Khan vs. The State*” (2021 SCMR 492); “*Gulzar vs. The State*” (2021 SCMR 380).”

<sup>2</sup> “The chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable

10. The record in the present case reveals serious shortcomings in maintaining and proving the chain of custody. Firstly, the prosecution did not produce the **Moharrar** (the police official responsible for the Malkhana) who allegedly took charge of the sealed narcotics after its recovery. According to the prosecution witnesses, the seized substance and its sealed samples were handed over at the police station for safe keeping, yet the very officer who received and kept the case property in the Malkhana was not brought before the court. This omission is fatal, as it leaves the **safe custody at the police station unproved**. In *Muhammad Shoaib vs. The State (2022 SCMR 1006)*, for instance, the Supreme Court acquitted the accused in a narcotics case because the Moharrar who allegedly kept the sample packets in safe custody was never produced, meaning that safe custody was not established on the record.

11. Secondly, the person who transported the samples from the police station to the Chemical Examiner's laboratory was also not examined in this case. The Investigating Officer claims to have sent the sealed samples for chemical analysis through a police constable, but that constable was neither named during the investigation nor produced at trial. There is **no testimony to verify that the samples remained sealed and untampered during transit** from the Malkhana to the laboratory. This gap in evidence is of critical importance. In *Muhammad Shoaib's* case (supra), the Honourable Supreme Court noted that the constable tasked with delivering the sample to the lab was not produced, and **held that in such eventuality the prosecution failed to establish safe transmission of the samples**. Likewise,

in *Ishaq vs. The State (2022 SCMR 1422)*, the Supreme Court set aside the conviction when it was found that **neither the Moharrar nor the dispatching constable was produced at trial**, and the prosecution had given no explanation for these missing links. In that case, the sample parcels were received at the forensic lab *three days* after the recovery, with the prosecution completely silent on where the samples remained during those three days – a scenario in which “*the element of tampering was quite apparent*”. Similarly, in the present case, the prosecution has not accounted for the custody of the narcotics during the period between seizure and testing, nor proved who had possession of the exhibits at various stages. Such **unexplained delays and missing links** in the chain of custody give rise to an inference that the integrity of the sample could have been compromised. It would be unsafe in the extreme to uphold a conviction in these circumstances.

12. Besides judicial insistence on an unbroken chain, the **Police Rules, 1934** (applicable to police investigations) provide a comprehensive mechanism to ensure safe custody of case property. These rules have the force of law and are aimed at plugging exactly the sort of gaps observed in this case. Rule 22.49 of the Police Rules, 1934 requires that all events at the police station, including the **arrival and dispatch of case property**, must be recorded in the Daily Diary (Register No. II). Moreover, Rule 22.70 mandates that every item of case property seized in an investigation **must be promptly entered in the Station’s Store-Room Register (Register No. XIX)**, commonly known as



the **Malkhana Register**, and that any movement of such property (such as sending samples to the laboratory) be duly noted in the appropriate columns of that register. The purpose of these requirements is to maintain a documented trail of custody at each stage, thereby ensuring that when the case property is produced in court it can be confidently asserted to be in the same condition as when first recovered. **Thus, the Police Rules mandate that case property be kept in safe custody in the Malkhana and that entries of its deposit and removal be recorded in Register No.19 (XIX) of the police station.** This procedure under the Rules is designed to ensure that the narcotic exhibits remain untampered until production before the Court, and that there is a written record identifying each person who handled the exhibits. Any deviation or non-compliance with these safeguards must be viewed with suspicion. The Hon'ble Supreme Court has affirmed that compliance with the Police Rules regarding safe custody is indispensable – it observed that “*a complete mechanism is provided in the Police Rules qua safe custody and safe transmission of case property to the concerned laboratory and then to the trial Court*”<sup>3</sup>

**13.** In the case at hand, there is clear non-compliance with the above police procedures. The Investigating Officer admitted (and the record confirms) that **no entry was made in the Daily Diary (Roznamcha) at the time of handing over the recovered narcotics and sample parcels for safe custody.**

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<sup>3</sup> *Ahmed Ali & another vs. The State*” (Criminal Appeal No.48 of 2021)

The *Roznamcha* of the relevant date does not reflect the movement or deposit of the case property, contrary to what is required by Section 44 of the Police Act, 1861 and Rule 22.49 of the Police Rules, 1934. It was the **prime duty of the officer incharge of the investigation to promptly enter the fact of having taken possession of the case property, along with details of whom it was handed for custody, in the station diary (Register No. II)**. Failure to do so is a serious lapse. As noted by the learned High Court in another case, the omission to make such mandatory diary entries “proved fatal to the prosecution case”. Likewise, the prosecution in the present matter did not produce the **Malkhana Register (Register No. XIX)** or any certified extract of it to demonstrate that the recovered narcotics were ever deposited in the store-room on the day of recovery. No official from the Malkhana (such as the Moharrar) was called to testify that he received the sealed parcels and kept them in safe custody. The **absence of these official records and witnesses** casts a profound doubt on whether the contraband was handled in accordance with law, or whether it might have been accessible to tampering. This court must regrettably observe that the investigative officers **failed to follow the prescribed chain-of-custody protocols in letter and spirit**, and such failure goes to the root of the prosecution’s case.

14. Our conclusion on this point finds strong support in recent precedents. The superior courts have not hesitated to extend the **benefit of doubt** to accused persons where the prosecution could not satisfactorily prove safe custody or safe transmission of

the seized narcotics. In *Zahir Shah alias Shat vs. The State (2019 SCMR 2004)*, the Supreme Court reiterated that **the chain of custody of the drug from the spot of recovery till its receipt in the laboratory must be convincingly established**, calling it “*fundamental*” to the proof of the offence, since the entire case hinges on the Chemical Examiner’s report. Any break or suspect link in this chain “*impairs and vitiates the conclusiveness and reliability of the report of the Government Analyst, thus rendering it incapable of sustaining conviction*”. In the case *Ikramullah and others vs. The State (2015 SCMR 1002)*, the prosecution’s failure to even name or produce the police official who took the samples to the chemical examiner, and to prove that the samples remained untampered, led the Supreme Court to conclude that **the safe custody and safe transmission of the recovered narcotics were not established**, and consequently the accused were acquitted. Likewise, in a plethora of other cases – e.g., *Abdul Ghani vs. The State (2019 SCMR 608)*, *Kamran Shah vs. The State (2019 SCMR 1217)*, *Mst. Razia Sultana vs. The State (2019 SCMR 1300)*, *The State through ANF vs. Imam Bakhsh (2018 SCMR 2039)*, *Amjad Ali vs. The State (2012 SCMR 577)* – courts have consistently refused to uphold convictions in narcotics matters where the **prosecution failed to prove an unbroken chain of custody**. Most recently, in *Muhammad Ishaq vs. The State (2022 SCMR 1422)*, the Supreme Court emphasized that when the prosecution “**was silent as to where**” the drug samples remained for days after the recovery, and key custodial witnesses were missing, the “**element of tampering**” becomes

obvious, and such a case could not be proved beyond reasonable doubt. In sum, maintaining the chain of custody is not a mere technicality but a core component of the prosecution's burden; a lapse in this regard is a lapse in proof of the guilt itself. This Court is bound to follow the guidance of the Hon'ble Supreme Court and apply it to the facts at hand.

### **Contradictions and Lapses in the Prosecution's Case**

15. Apart from the chain of custody issues, the prosecution's evidence in this case is marred by **material contradictions and inconsistencies** that further dilute its reliability. It is a settled principle that when witnesses make conflicting statements on important aspects, or when the documentary evidence does not corroborate the oral evidence, the benefit of such contradictions must go to the accused. In the present matter, several glaring discrepancies raise doubt about the veracity of the prosecution's version. Notable contradictions and lapses include the following:

- a. **Inconsistent Handling of Samples:** The manner in which the sample parcel was dispatched to the laboratory is unclear and contradictory. The Investigating Officer ("IO") in his testimony claimed that he sent the sample through a particular police constable (PC Talib), yet the **Forensic Science Laboratory report records that the sample was delivered by a different person (Head Constable Arshad)**. This contradiction was highlighted by the defense at trial and remains unexplained by the prosecution. Such an inconsistency in a critical link of evidence (who carried

the sample) seriously undermines the prosecution's case, as it suggests that the chain of custody was misreported or mishandled.

b. **Contradictory Documentation:** The official paperwork maintained during the investigation contains self-contradictions. For example, the **“Road Certificate” (Exh. 3-A)** – a document supposed to accompany the case property during its transit – bears a date that does not align with the entry in the Malkhana Register. The Road Certificate was dated 24-10-2022, whereas the entry of the case property in Register No. XIX was dated 07-10-2022. This discrepancy indicates that the documents were not prepared contemporaneously or accurately; in fact, it gives the impression that the record was manipulated after the fact, calling into question the integrity of the evidence handling process. When confronted with such an anomaly, the prosecution had no convincing explanation. This kind of documentary contradiction erodes confidence in the entire recovery operation.

c. **Variations in Oral Testimony:** There were also **inconsistencies in the oral accounts of the prosecution witnesses** regarding the circumstances of the recovery. For instance, the complainant and the Investigating Officer gave slightly divergent descriptions of the route and location of the patrol during which the narcotics were seized. While minor discrepancies can occur, but in the instant case the variations pertained to the very

timeline and manner of the alleged crime in which the law enforcement party moved and eventually intercepted the accused. Such inconsistencies, though perhaps not by themselves conclusive, contribute to the doubt surrounding the prosecution's narrative when viewed cumulatively with other flaws.

d. **Failure to Produce Key Officials:** In addition to not producing the Moharrar and the courier constable as discussed, the prosecution also did not examine the official who took the seal impressions or prepared certain memos, etc. For example, if a **gazetted officer or Magistrate supervised any part of the seizure or sampling process (as sometimes required for transparency), no such testimony was presented.** The chain of command in handling the case property appears to rest solely on the I.O's word, with no supporting testimony from other officials. This one-dimensional evidence – hinging entirely on police witnesses who are colleagues of the I.O – demanded careful scrutiny. Any **dishonesty or mistake** on their part could not be detected because no outside or corroborative evidence was brought. This too is a lapse that weakens the evidentiary value of the prosecution's case.

16. The above contradictions and omissions strike at the vitals of the prosecution's case. When the evidence is tainted by such discrepancies, it ceases to be the kind of "credible and persuasive"

proof required to uphold a conviction, especially for an offence that carries severe punishment. It is a fundamental tenet of criminal justice that the **onus is on the prosecution to prove the charge beyond reasonable doubt**; the burden never shifts to the accused until initial burden is proved by the prosecution,, and a conviction cannot be upheld on mere conjectures or high probabilities. The cumulative effect of the prosecution's failures – an unverified chain of custody, contradictory documents, inconsistent testimonies, and non-compliance with procedure – creates, at the very least, a strong reasonable doubt about the guilt of the accused.

17. Our legal system recognizes that **even a single reasonable doubt** entitles an accused to acquittal. The Hon'ble Supreme Court famously expounded in *Muhammad Hassan and Another v. The State (2024 SCMR 1427)*<sup>4</sup> that it is not necessary for there to be multiple glaring defects in the prosecution's case; **if one circumstance creates a reasonable doubt in a prudent mind about the guilt of the accused, the accused must be given the benefit of that doubt as of right.**<sup>5</sup> In the present case, we have identified more than one

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<sup>4</sup> "According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused." See also, Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

*Tariq Pervez v. The State (1995 SCMR 1345)*; For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."

<sup>5</sup> *Tariq Pervez v. The State (1995 SCMR 1345)*, *Riaz Masih alias Mithoo v. The State (1995 SCMR 1730)*, *Muhammad Akram v. The State*

reason to doubt the prosecution's story – in fact, the case is replete with uncertainties at every critical step. Therefore, it would be wholly unsafe to allow the conviction to stand.

18. In light of the analysis above, this Court is of the firm view that the prosecution failed to prove its case against the appellant beyond reasonable doubt. The chain of custody of the narcotics was compromised and not established in accordance with law, and the evidence was rife with contradictions and procedural lapses. These deficiencies go to the root of the case and fatally undermine the prosecution's version. Consequently, the conviction and sentence of the appellant cannot be sustained. **Giving him the benefit of doubt**, the appeal is allowed. The impugned judgment of the Trial Court is set aside and the appellant is **acquitted of the charge**. He shall be released from custody forthwith if not required in any other case.

19. Before parting with this judgment, this Court deems it pertinent to underscore the importance of adhering to the Police Rules and proper chain of custody protocols in future investigations. The Investigating Agencies must ensure scrupulous compliance with the procedure for handling case properties – including timely diary entries and maintenance of Malkhana registers – as neglect of these requirements not only jeopardizes the prosecution of offenders but also erodes the integrity of the criminal justice process. Robust adherence to the law and rules by the police is the first step in ensuring that guilty

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*(2009 SCMR 230), and Hashim Qasim and another v. The State (2017 SCMR 986).*



offenders are convicted and innocent persons are not subjected to wrongful punishment. It is expected that the department will take appropriate measures to educate and enforce these protocols among its ranks. Only then can the courts confidently rely on the evidence presented to them and uphold convictions in deserving cases. In summary, the appeal is **accepted**, the appellant's conviction and sentence are set aside, and he is **acquitted**. The appellant be set at liberty forthwith if not required to be detained in any other matter. The case property shall be dealt with as per law, and the record be returned to the Trial Court.

**20.** These are the reasons for our short order dated 18-02-2025 announced in the open court, whereby the **appeal was allowed** and the **appellant was acquitted** of the charge. The office is directed to send a copy of this judgment to the Provincial Police Headquarter for information and necessary action regarding compliance with the noted Police Rules in investigations.

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