

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

Special Criminal Appeal No.D-17 of 2023
(*Gulzar Mangnejo v. The State*)

Before:

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

Mr. Rukhsar Ahmed Junejo, Advocate for the Appellant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of hearing: **26.02.2025**

Date of Decision: **26.02.2025**

J U D G M E N T

RIAZAT ALI SAHAR J.,- This appeal emanates from the conviction and sentence awarded to the appellant, Gulzar Mangnejo, by the learned 1st Additional Sessions Judge/Special Judge (CNS), Khairpur, in Special Case No. 223 of 2022, arising out of Crime No. 120 of 2022, registered at Police Station Ranipur under Section 9(c) of the Control of Narcotic Substances Act, 1997 (hereinafter referred to as "CNS ACT"). By way of the impugned judgment dated 17.03.2023, the appellant was convicted under Section 9(c) of the CNS ACT and sentenced to rigorous imprisonment for **nine years** along with a fine of **Rs. 80,000/- (rupees eighty thousand0**, with a default stipulation of simple imprisonment for **six months**. The appellant was, however, extended the benefit of Section 382-B of the Code of Criminal Procedure, 1898 (hereinafter referred to as "CrPC").

2. The crux of the prosecution's case, as per the FIR registered by the complainant, Sub-Inspector Police (SIP) Rehmatullah, on **07.10.2022**, is that while he was on patrol duty along with his subordinate staff, he intercepted and apprehended the appellant on a link road leading from Abul Wah Piran-Wari-Pul to Gadeji near the village Ali Abad. Upon conducting a search, the police recovered **1,500 grams of Charas** from a plastic shopping bag in the appellant's possession, along with **Rs. 100/- in cash**. The prosecution claims that all **legal formalities** were observed at the scene, after which the recovered contraband was sealed, and the accused was transported to the police station, where an FIR was formally registered against him.

3. Subsequent to the registration of the FIR, the matter was investigated, and a final challan was submitted before the trial Court. The appellant was charged under Section 9(c) of the CNS ACT, to which he pleaded **not guilty** and claimed trial. In order to substantiate its case, the prosecution examined **four witnesses**:

- **PW-1:** SIP Rehmatullah (complainant).
- **PW-2:** PC Hatim Ali Wassan (eyewitness and mashir).
- **PW-3:** SIP Aijaz Ahmed Dahar (Investigating Officer).
- **PW-4:** WHC Asif Ali (Malkhana In-charge).

4. Upon completion of the prosecution's evidence, the statement of the appellant was recorded under Section 342 CrPC, wherein he denied the allegations and asserted that he had been

falsely implicated due to enmity. The trial Court, however, convicted and sentenced him as aforementioned.

5. Learned counsel for the appellant vehemently contended that the case against his client was fraught with inconsistencies, contradictions, and procedural violations, rendering the conviction unsustainable. The principal contentions of the defence were as follows: The chain of custody of the narcotics was not maintained, as there was an unexplained delay of five days in sending the contraband for chemical analysis. No plausible explanation was provided regarding the safe custody of the seized narcotics during this interim period. The prosecution witnesses contradicted one another on material particulars, casting serious doubts on the veracity of their statements. The provisions of Section 103 CrPC, which mandate the presence of independent witnesses, were not complied with, thereby vitiating the credibility of the recovery proceedings. The appellant had no prior criminal history, which ought to have been considered by the trial Court.

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 appearing on behalf of the State.

Furthermore, we have meticulously examined the material available on record. The prosecution, in its endeavour to establish the charge levelled against the appellant, has examined a total of four witnesses. The first witness produced by the prosecution is the complainant himself. His deposition is recorded as Exhibit-3, and he has been examined as Prosecution Witness No.1 (PW-1). In his testimony, he has reiterated, in its entirety, the account he previously narrated in the First Information Report (FIR). According to his statement, on 07-10-2022, he departed from the Police Station accompanied by subordinate staff for routine patrolling. During the course of patrolling at various locations, when they reached the Ali Abad link road, they observed an individual approaching from the southern direction, carrying a plastic shopping bag in his hand. Upon noticing the presence of the police, the said individual attempted to evade them; however, he was promptly intercepted and apprehended at the scene. The plastic shopping bag held by the accused was taken into custody for further examination. Due to the non-availability of private witnesses in the vicinity, two police constables, namely PC Hatim Ali and PC Lal Khan, were designated as official witnesses (mashirs) for the seizure proceedings. Upon opening the recovered plastic shopping bag, it was found to contain three separate pieces of a substance identified as charas. Additionally, a currency note of Rs.100 was retrieved from the side pocket of the appellant's shirt. The contraband, including the plastic bag, was weighed and found to be approximately 1,500 grams.

Thereafter, a sample of 20 grams was extracted from each of the three pieces for forensic analysis. The remaining contraband, along with the obtained samples, was duly sealed at the spot in accordance with legal procedure, and a seizure memo was prepared in the presence of the official witnesses. Subsequently, the accused, along with the recovered case property, was transported to the Police Station, where a formal FIR was registered against him. Upon the registration of the FIR, both the case property and a copy of the FIR were entrusted to Sub-Inspector of Police (SIO) Aijaz Ali Dahar for the purpose of investigation, as per Entry No.20 of the police diary (roznamcha). In furtherance of the investigation, the investigating officer visited the place of recovery, as indicated by the complainant, and prepared the memorandum of arrest and recovery, along with Entries No.19 and 20 in the police diary. During the course of proceedings before the Court, the investigating officer duly identified the accused and the case property as being the same as those recovered during the investigation.

8. Prosecution Witness No.2 (PW-2), Police Constable (PC) Hatim Ali, whose testimony is recorded as Exhibit-4, serves as both an eyewitness to the incident and a mashir (witness) to the recovery proceedings. In his deposition before the Court, he has narrated the entire sequence of events, and his account remains inconsistent with the version earlier provided by the complainant.

9. Prosecution Witness No.3 (PW-3) is Sub-Inspector of Police (SIP) Aijaz Ahmed, who was responsible for conducting the investigation of the case. In his testimony, he has stated that on 07-10-2022, he formally received custody of both the accused and the case property from the complainant, SIP Rehmatullah, for the purpose of investigation. On the same date, he, accompanied by the official witnesses (mashirs) and the complainant, proceeded to visit the place of recovery as indicated by the complainant. At the said location, he duly prepared the recovery memorandum in accordance with legal procedure. Furthermore, on the same day, SIP Aijaz Ahmed recorded the statements of the witnesses associated with the First Information Report (FIR). Subsequent to these proceedings, he sought formal authorisation from the competent higher authorities for the purpose of sending the obtained samples to the Chemical Examiner at Rohri for forensic analysis. In compliance with the requisite procedures, on 12-10-2022, he formally deposited the case property with the Chemical Examiner. During the pendency of the case, he subsequently received the report of the Chemical Examiner regarding the analysis of the recovered contraband.

10. Prosecution Witness No.4 (PW-4) is Asif Ali, who serves as the Writer Head Constable (WHC) and is also the in-charge of the Malkhana (official storage facility for case property). In his deposition, he has stated that on 07-10-2022, the case property was duly handed over to him for safe-keeping at the Malkhana in accordance with standard legal protocol. However, according to

arrival entry No.15, it is evident that there is no mention of investigation bag is recorded in the said entry. Even in entry No.18, which is arrival entry, it also does not make mention of quantity of Charas or investigation bag or even disclose the place of recovery so also *mashirs*.

11. Upon a thorough examination of the evidence presented by the prosecution witnesses, as well as the contents of the First Information Report (FIR), it becomes evident that the appellant was apprehended by the police on 07-10-2022, and a total of 1,500 grams of charas was allegedly recovered from his possession. However, a critical examination of the evidence furnished by Prosecution Witness No.3 (PW-3), who is the Investigating Officer (I.O.) of the case, reveals that the case property was deposited in the Chemical Laboratory, Sukkur at Rohri, on 12-10-2022, thereby reflecting an unexplained delay of five days in its transmission for forensic analysis.

12. Furthermore, PW-3 unequivocally admitted that he had neither maintained an official receiving entry regarding the investigation of the case nor had he produced any such record during the course of his deposition. This omission raises significant concerns regarding the continuity and integrity of the chain of custody of the seized narcotic substance.

13. Likewise, Prosecution Witness No.4 (PW-4), Asif Ali, who serves as the Malkhana In-Charge, admitted during his

testimony that on 12-10-2022, the case property was dispatched for chemical analysis. However, at no point in his testimony did he categorically state that the charas had been kept in safe custody within the Malkhana of the concerned Police Station. Furthermore, he also failed to depose that he had personally handed over the seized narcotic substance to the Investigating Officer for onward transmission to the Chemical Laboratory. In the case of **Mst. Sakina Ramzan v. State 2021 SCMR 451**, it has been held as follows by the Honourable Supreme Court:-

"The chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNS ACT 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 for justifying conviction of the accused".

No official entry or documentary evidence has been placed on record to satisfy the Court that the recovered contraband remained in safe custody within the Malkhana during the intervening period between its initial recovery and its eventual submission for forensic examination.¹

¹ **Mst. Sakina Ramzan v. The State (2021 SCMR 451)**-*"Such facts revealed that the chain of custody had been compromised and was no more safe and secure, therefore, reliance could not be placed on the Report of the Chemical Examiner to support conviction of the accused."*

14. Additionally, a perusal of the testimonies of the prosecution witnesses reveals a conspicuous silence on the crucial aspect of where the case property was stored and under whose custody it remained during the said intervening period. This unexplained gap in the chain of custody significantly undermines the reliability and evidentiary value of the alleged recovery². In light of these glaring lapses, it is apparent that the chain of safe custody of the narcotic substance stands compromised, thereby casting serious doubts on the integrity and probative value of the prosecution's evidence.

15. In this regard, reliance is placed upon the principles enunciated by the Honourable Supreme Court in the cases of *Qaiser Khan v. The State (2021 SCMR 363)*, *The State v. Imam Bakhsh (2018 SCMR 2039)*, and *Ikramullah and others v. The State (2015 SCMR 1002)*³, wherein it was emphatically held that maintaining an unbroken chain of custody for case property is imperative to ensure the credibility of the prosecution's case. Any failure in preserving the integrity of the

² **Zahir Shah alias Shat v. The State (2019 SCMR 2004)**- "*Safe custody and safe transmission of drugs from the spot of recovery till its receipt by Narcotics Testing Laboratory must be satisfactorily established. Such chain of custody was fundamental as report of Government Analyst was the main evidence for the purpose of conviction.*"

Muhammad Shoaib and another v. The State (2022 SCMR 1006)- "*Prosecution failed to establish safe custody and safe transmission of the sample parcels to the concerned quarter, and the prosecution could not give any plausible explanation for not producing said important witnesses.*"

Ishaq v. The State (2022 SCMR 1422)- "*Neither the safe custody nor the safe transmission of the sealed sample parcels to the concerned laboratory was established by the prosecution.*"

³ "*Prosecution was not able to establish that after alleged recovery of substance, so recovered was either kept in safe custody or that samples taken from recovered substance had safely been transmitted to the office of Chemical Examiner without the same being tampered with or replaced while in transit.*"

chain of custody gives rise to serious doubts regarding the authenticity of the recovered substance, thereby rendering the prosecution's case unsafe for conviction.

16. Furthermore, in view of the aforementioned deficiencies in the prosecution's case, we have meticulously scrutinised the evidence presented by the prosecution witnesses. Upon careful evaluation, it is apparent that their testimonies are fraught with numerous inconsistencies and contradictions, which inevitably cast serious doubt upon the veracity of the prosecution's version of events. It is also significant to note that no private individual was requested or engaged to act as a mashir (witness) for the arrest and subsequent recovery proceedings. The non-association of an independent and disinterested private witness constitutes a grave violation of the mandatory provisions of Section 103 Cr.P.C, which is specifically designed to ensure transparency and sanctity in the process of investigation. While it is true that Section 25 CNS ACT provides an exception to the general rule under extraordinary circumstances, this statutory exception does not dispense with the fundamental necessity of involving private individuals as mashirs, particularly in situations where such participation is practicable. The absence of independent witnesses in this case raises serious concerns regarding the fairness and credibility of the prosecution's version.

17. It is a well-established principle in the dispensation of criminal justice that the benefit of doubt must be extended to the

accused where warranted. Importantly, it is not a prerequisite that multiple circumstances must exist to create doubt; rather, even a single circumstance that gives rise to a reasonable doubt in the prudent mind regarding the guilt of the accused is sufficient to entitle the accused to the benefit of doubt. This entitlement of benefit of doubt is not granted as a matter of grace or concession, but rather as a matter of legal right. In this regard, reliance is placed on the authoritative pronouncement of the Honourable Supreme Court in the case of **Muhammad Hassan and Another v. The State (2024 SCMR 1427)**⁴ wherein it was unequivocally held that if any reasonable doubt arises regarding the guilt of the accused, the benefit of such doubt must be extended to the accused as a fundamental principle of criminal jurisprudence.

18. In light of the foregoing discussion, we are of the considered opinion that the prosecution has miserably failed to establish its case against the appellant beyond the shadow of reasonable doubt. Consequently, in view of the aforementioned

⁴ "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."

observations of the Honourable Apex Court, the benefit of such doubt is required to be extended to the appellant as a matter of legal right, rather than as an act of judicial discretion or concession. Accordingly, through our short **order dated 26-02-2025**, we set aside the conviction and sentence awarded to the appellant pursuant to the impugned judgment passed by the learned Trial Court. Consequently, the instant appeal was **allowed**, and the appellant was acquitted of the charge.

The foregoing constitute the reasons in support of our short order dated 26-02-2025.

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