

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.D-133 of 2023.

Shahdab v. The State.

Present:

Mr. Justice Miran Muhammad Shah.

Mr. Justice Muhammad Hasan (Akber).

Appellant : Shahdab through Mr. Sameeullah Rind, Advocate.

Respondent : The State through Mr. Shahid Ahmed Shaikh, Additional
Prosecutor General, Sindh.

Date of hearing : 20.03.2025.

Date of Decision : 20 .04.2025.

J U D G M E N T

Miran Muhammad Shah, J:- Through this Criminal Jail Appeal, appellant Shahdab s/o Abdul Majeed Buriro has called in question the Judgment dated 12.10.2023 passed by the learned Additional Sessions Judge-I/Special Judge Control of Narcotics Substance Act, Hyderabad in Special Case No.71 of 2023 (Re: The State v. Shahdab) arising out of crime / F.I.R No.33 of 2023, registered at P.S Rahoki, Hyderabad for an offence under Section 9(i) 3-C, CNS Act-2022, whereby he was convicted U/s 265-H(ii) Cr.P.C and sentenced to suffer R.I for 9 years and to pay fine of Rs.80,000/-, in case of nonpayment of fine, to suffer S.I for three (03) months more with benefit of Section 382-B Cr.P.C.

2. The facts as incorporated in the FIR are that on 10.05.2023, police party of PS Rahuki, Hyderabad headed by ASI Ghulam Abbas Sipio left PS alongwith H.C Mubeen Ahmed, PC Ghulam Akbar & DHC Muhammad Soomar in Government vehicle No.SPE-787 vide roznamcha entry No.28 for patrolling in the jurisdiction and during patrolling, when reached link road Mirpurkhas to Hyderabad near Mirza Bagh Channel Mori flyover, one suspicious person was seen on the headlight of vehicle holding black color shopper in his hand, who on seeing police party tried to escape but police party apprehended the person at about 2200 hours alongwith shopper holding by him in his hand. Due to non-availability of public mashirs, ASI associated his subordinate staff HC Mubeen Ahmed & PC Ghulam Akbar to act as mashirs and inquired about the name of apprehended person, who disclosed his name as Shahdab s/o Abdul Majeed by caste Burriro. The shopper recovered from him was checked and

found four big pieces of Charas (چرس) covered with yellow shopper. All four pieces were weight on computerized weighing machine and each was of 500 grams total 2000 grams. During personal search, two notes of 100 denominations total Rs.200/- were recovered from him. On query, the accused disclosed that he used to sell the chars, hence FIR bearing crime No.33 of 2023 for an offence under Section 9(i) 3-C, CNS Act-2022 was registered against him.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant. The formal charge was framed against the present appellant/accused, to which he pleaded not guilty and claimed trial. In order to prove a charge, prosecution examined as many as five (05) witnesses, which include complainant ASI Ghulam Abbas at Ex.3, mashir H.C Mubeen Ahmed at Ex.4, I.O SIP Gulab Ali at Ex.5, maalkhana Incharge WHC Ghulam Mushtaque at Ex.6, SHO/SIP Atta Muhammad Kaka at Ex.7, and thereafter learned ADPP submitted statement at Ex.8, whereby closed the side of prosecution evidence. All the Prosecution witnesses during evidence produced numerous documents, which were exhibited. The Statement of appellant/accused U/s 342 Cr.P.C was recorded, whereby denied the allegations of prosecution in terms of Section 342 Cr.P.C, but he neither testified on oath nor called any defense witness(s). He claimed his false implication and pleaded his innocence. According to the appellant, he was taken by police, after which he was wrongly involved in the present case. In this respect, his father had also moved an application to the court concerned on 04.05.2023 in FIR No.32 of 2023 of PS Baldia.

4. After hearing the learned State counsel, learned counsel for appellant as well as assessment of evidence available, the learned trial Court passed the Judgment dated 12.10.2023, convicted and sentenced the appellant as stated above. Hence, the appellant preferred instant appeal against the impugned Judgment.

5. The facts of the case have been succinctly stated above, and the evidence presented before the trial court is comprehensively detailed in the impugned Judgment. To avoid redundancy, we will refrain from reiterating them here. Instead, we will address the relevant aspects in our findings.

6. The learned counsel for appellant has mainly argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that all the prosecution witnesses are interested, set up and officials; that all the material witnesses and complainant itself contradicted their version regarding the information about the incident; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court; that the arrest

of accused is shown on 10.05.2023 but in fact before present FIR, he was forcibly and illegally picked up on 04.05.2023 six days prior from the lodgment of this FIR and remained in illegal confinement of police, who during such period had also tortured him; that the witnesses have so many contradictions in their evidence recorded before learned trial Court. Notwithstanding violation of Section 103 Cr.P.C the investigating officer also failed to record statements of a single person to confirm as to whether the appellant was involved in this crime from any locality. Learned counsel further argued that alleged recovery of chars was affected from the possession of accused on 10.05.2023 but it was sent to the chemical examiner on 12.05.2023. He further argued that on 04.05.2023 his father had also moved an application before the Court of Civil Judge/J.M-IX, Hyderabad for absence of the accused/appellant Shadab as he was facing a trial in another case U/s 23 A Sindh Arms Act-2013 of PS Baldia, Hyderabad wherein he stated that “the accused is handed over by some VIPs for interrogation to CIA Centre Hyderabad. Such intimation may be kept on the file and the record the absence of accused for enumerated reason above” indicating that the appellant/accused was already picked up on the instigation of some influential personality perhaps for the false implication in another case which was done so after 6 days in the present case. He further contended that such application is incorporated here at Ex.8/A of page 65 of the paper book; that the present accused/appellant was never involved in any narcotics cases although two cases of Section 324 PPC and one case of Arms Ordinance was lodged against him at different police stations which also did not transpire confidence as to be correct. Similarly as in this case he was implicated in the other three false cases such CRO is also now part of paper book. That the location of the alleged incident is a busy highway area with hotels & patrol pumps making it unlikely that no private person was present. The area is one of the busiest road and the highway of Mirpurkhas & Hyderabad which operates 24 hours a day. This case involves a life of an innocent person, who at a young age has been wrongly held as accused and labelled as a supplier of narcotics. The absence of any private mashir in such a critical matter raises questions especially when the prosecution fails to produce neutral witnesses. The learned counsel for appellant has placed his reliance on the case laws reported as 2023 SCMR 139, 2021 SCMR 363 & 2019 SCMR 326.

7. On the other hand, Mr. Shahid Ahmed Shaikh, Additional Prosecutor General opposed the appeal on the ground that appellant has been apprehended by the police party of PS Rahuki, Hyderabad having been found in possession of 2000 grams charas which was kept by him for selling purpose. He further contended that the case at hand is a crime against society and is increasing day by day. Lastly, it is argued that though there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

8. We have carefully heard learned counsel for the parties and scanned the entire evidence as well as the record.

9. In our considered view, prosecution has failed to prove its' charge against the appellant/accused for the reasons enumerating that per FIR, the complainant party was on patrolling when saw that one person available and was having black colour polythene bag in his hand and on seeing police mobile, he became puzzled and tried to escape. Police party alighted from mobile, encircled and apprehended that person at about 2200 hours. Due to non-availability of public mashirs, ASI Ghulam Abbas Sipio enquired and searched the apprehended person in the presence of his subordinates, in which he disclosed his name as Shadab Burriro s/o Abdul Majeed Burriro (present appellant) and from his hand, ASI Ghulam Abbas Sipio secured one polythene bag and upon checking, he found charas therein, thereafter ASI Ghulam Abbas weighed secured charas through digital scale which became 2000 grams (two kg). Record shows that much before the registration of the case, the appellant's father had moved an application before the court of learned Civil Judge/J.M-IX, Hyderabad in Crime No.32 of 2023 regarding his absence in the case which was dated 04.05.2023, while the alleged arrest of the appellant/accused in present crime was shown on 10.05.2023, it means about six (6) days before the arrest of appellant/accused an application was moved by his father wherein some critical wording has been agitated that his son is handed over by some VIPs upon instigation to CIA Centre Hyderabad. Father of appellant also stated that such intimation may be kept on the file and the record. According to said application, the appellant was handed over to CIA police by some influential person about 15 days before. Yet the IO has failed to examine this plea during investigation and the trial Court similarly disregarded the defense evidence without providing the cogent reason for doing so. This omission raises significant alarms regarding the credibility and thoroughness of the investigation especially when scrutinized in the context of the serious allegations against the appellant. The importance of this charge becomes even more significant when we consider that the appellant is a youngman who was allegedly kidnaped 15 days before the alleged incident. This critical detail, if true, casts substantial doubt on the version of the prosecution and calls into question whether the appellant was in police custody or otherwise he was unavailable to commit the alleged crime. The failure to investigate this aspect of the case adequately, or to discuss it during the trial, brutally dents the prosecution's stance. In such a serious matter, where the life and liberty of a person are at stake, it is essential that every aspect of the case, including any claims of wrongful detention or abduction, be fully discovered and substantiated. The absence of such investigation constitutes a significant inaccuracy in the prosecution case, which ought to be given due weight in the appraisal of the evidence. In these circumstances, we observe that when there is allegation that firstly the appellant was picked up by the law enforcement agency, as

such, it can be presumed that he was subsequently handed over to the CIA police, who then handed him over to the regular police who had falsely implicated him in the instant case.

10. Regarding the alleged recovery of evidence from the possession of the accused, it was essential for the complainant to involve a private witness from the locality to act as a mashir, being an independent witness, to watch the recovery process. The failure to do so raises questions about the authenticity of the recovery process and the truthfulness of the evidence adduced by the prosecution. It is not sufficient for the prosecution to rely solely on the testimony of police officials without any corroborative evidence from an independent source. Nothing has come on record to show that the police had attempted to involve a private person in the recovery proceedings. The argument of the learned A.P.G. Sindh that public witnesses may be unwilling to come forward due to the potential risks to their safety and liberty does not absolve the police of their responsibility to ensure transparency and impartiality in their actions. It is the duty of law enforcement agencies to make genuine efforts to involve neutral witnesses in order to uphold the integrity of the recovery process. The lack of such efforts not only raises doubts about the credibility of the recovery but also casts doubt on the overall fairness of the investigation. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. Record shows that the charas was recovered from possession of appellant/accused and was kept in Malkhana and the same was sent to Chemical Examiner after the delay of two days, hence it had not been proved that it was a safe transit case. In a case of *Ikramullah and others v. The State* (2015 SCMR 1002), the Honourable Supreme Court of Pakistan had observed as under;

“5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit.”

11. Resultantly, in our considered view, prosecution has failed to prove that the charas was in safe custody for the aforementioned period. Even positive report of the chemical examiner would not prove the case of prosecution. There are also several circumstances which created doubt in the prosecution case. It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In this regard, reliance can be placed upon case of **“Tariq Parvez v. The State”** [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that;

“...For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

12. In light of these serious deficiencies and the failure to investigate crucial aspects of the case, it is clear that the prosecution has not met the required standard of proof beyond a reasonable doubt and in such a case, the defense plea should be given careful consideration. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them as held in the case of **Itaf Hussain versus The State** (1996 SCMR 167). Relevant portion is reproduced as under:

“The argument that public witnesses do not come forward to support such like recoveries because of risk to their life and liberty, nonetheless could not absolve the Police of their heavy responsibility to produce witnesses from public. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them, in case, they aided the law-enforcers to curb the crimes in the best interest of the society as a whole. There may be cases where public witnesses could not be produced because of their non-availability due to odd hours of the night or the day or where the, recovery was effected from a deserted place or during the dead of night. The position in this case was just the reverse because, admittedly, recovery was effected from a populated area where several other people who saw the recovery of kalashnikov were present but no efforts were made to join them to witness the occurrence. We, accordingly, hold that evidence of Police witnesses who are, in a way, the complainant could not solely be accepted to be relied upon to convict the appellant, especially, when the aforesaid public witness was abandoned without any rhyme or reason. The possibility that the appellant was implicated with some ulterior motive could not be ruled out. For all these reasons, we have no alternative but to acquit the appellant by setting aside his conviction and sentence by giving him benefit of doubt. He is on bail and as such, shall be discharged from the liability of his bail bond. The appeal succeeds and is allowed.”

13. Furthermore, while recording a statement under section 342 Cr.P.C, the appellant has produced a copy of application at Ex.8/A and stated that the case is managed one as prior to this case he was apprehended by police on 04.05.2023, upon which his father moved an application to the court of concerned in FIR No.32 of 2023, but all the above material have not been considered by the Trial Court while awarding conviction. Since, the appellant was already in the custody of officials and subsequently handed over to the police, as such, the question of recovery of Charas from his possession does not appeal to the prudent mind. That part of statement of accused is reproduced as under;

"I am innocent and have falsely been booked in this case. Nothing was recovered from my possession as alleged. The instant case is a managed one. Prior to this case dated 10.05.2023, I was apprehended by police on 04.05.2023 whereon my father moved an application to the court concerned on 04.05.2023. I produce application for absence dated 04.05.2023 moved by my father to the court concerned in FIR No.32/2023 of police station Baldia as marked at 8/A which is same and correct. I pray for justice and my honourable acquittal."

14. In this case, we found deficiencies in the investigation, the lack of transparency in the recovery process and the absence of consideration for critical defense claims, which manifestly create a cloud of doubt over the prosecution case. In light of these significant faults, the prosecution has failed to establish the case beyond a reasonable doubt and the accused is entitled to the benefit of this doubt. It is a known principle of appreciation of evidence that the benefit of all favourable circumstances in the prosecution evidence must go to the accused regardless of whether he has taken any such plea or not. Reliance is placed on the case of **Muhammad Nawaz and another v. The State and others** (PLD 2005 Supreme Court 40).

15. We further place our reliance on the case of **Abdul Ghafoor v. The State & another** reported as 2022 SCMR 819, wherein the Honourable Supreme Court of Pakistan had observed as under;

"3. Heinousness of the charge and huge quantity of the alleged contraband, notwithstanding, the prosecution was under a bounden responsibility to drive home the charge by proving each limb of its case that essentially included production of the witness, tasked with the responsibility of transmitting the samples to the office of Chemical Examiner. Failure is devastatingly appalling with unredeemable consequences that cast away the entire case. Petition is converted into appeal and allowed; the impugned judgment is set aside; the appellant shall be released forthwith if not required to be detained in any other case."

16. In light of the above discussion, we have thoroughly examined the evidence brought on record along with the various infirmities and inconsistencies as highlighted above and after careful consideration, we have come to the firm conclusion that the prosecution has failed to prove its case against the appellant beyond any shadow of

doubt. The prosecution has not been able to establish the guilt of the accused with the necessary level of confidence required for a conviction and several critical aspects of the case have raised reasonable doubt including the failure to investigate key defense claims and the lack of independent verification of crucial evidence. In such circumstances, we find that the conviction and sentence awarded to the appellant by the Trial Court through the impugned Judgment are not sustainable.

17. Consequently, the conviction and sentence awarded to the appellant **Shahdab Burriro** through impugned Judgment dated 12.10.2023 passed by learned 1st Additional Sessions Judge/Special Judge Control of Narcotics Substance Act, Hyderabad are **set-aside** and as a result, whereof, he is **acquitted** of the charge. He is ordered to be released forthwith if not required in any other custody case. Instant Criminal Appeal stands allowed.

JUDGE

JUDGE

Ali.