

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.D-72 of 2023

***Present: Mr. Justice Shamsuddin Abbasi
Mr. Justice Jan Ali Junejo***

Appellant: Attaullah son of Amanullah Chachar,
through Messrs Safdar Ali Bhutto &
Farhat Ali Bugti, Advocates

For Respondent/State: Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh

Date of hearing: 08-04-2025

Date of Judgment: 13-05-2025

JUDGMENT

Jan Ali Junejo, J.-- This criminal appeal arises from the judgment dated 30.09.2023 (hereinafter referred to as the "*Impugned Judgment*") passed by the learned 1st Additional Sessions/MCTC/Special Judge for CNS Cases, Kandhkot (hereinafter referred to as the "*Trial Court*"), in Special CNS Case No. 34/2023 (Crime No. 34/2023 P.S Guddu), whereby the appellant was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to rigorous imprisonment for 07 years and fine of Rs. 100,000/- , or in default, to undergo simple imprisonment for 06 months, the benefit of section 382-B Cr.PC. was also extended to appellant.

2. As per prosecution, on 10.07.2023 at about 1600 hours, a police party headed by ASI Mukhtiar Ahmed Choliyani apprehended the appellant Attaullah Chachar at Zahir Peer, Bridge while he was allegedly carrying a sack containing 15,000 grams of hemp (bhang). Arrest and recovery were witnessed by police officials HC Mughem Khan and PC Shaiq Ali, who also acted as mashirs. Case property was seized, sealed on spot, and FIR was registered upon return to P.S Guddu.

3. Upon conclusion of the investigation, a challan was submitted before the competent court, whereafter the trial commenced with the framing of charge against the appellant. In order to substantiate the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997, the prosecution examined a total of five witnesses:

1. PC Mughem Khan (PW-1) – Eye Witness / Recovery Witness / Mashir, Produced Documents:

- Mashirnama of Arrest and Recovery (Ex.3/A)
- Site Inspection Memo (Ex.3/B)

Key Evidence:

- He corroborated the version of the complainant ASI Mukhtiar Ali regarding the spot arrest of the appellant from Zahir Peer bridge.
- Testified that the appellant was found with a sack containing hemp weighing 15,000 grams.
- Claimed he personally witnessed and acted as mashir in both arrest and recovery processes.

Cross-Examination:

- Maintained consistency with complainant about the timeline, place, and procedure of arrest.
- Defense pointed out absence of private mashirs from nearby residential area, but the witness insisted no private person was willing to participate.

2. ASI Mukhtiar Ali Choliyani (PW-2) – Complainant Produced Documents:

- DD Entries No. 9, 4, and 12 (Ex.4/A)
- FIR (Ex.4/B)

Key Evidence:

- Stated that he received spy information during patrolling and proceeded to arrest the appellant.
- Gave detailed narrative of the chase, arrest, recovery, sealing of the contraband, and preparation of mashirnama.

- Confirmed proper registration of FIR and submission of property in Malkhana.

Cross-Examination:

- Faced questions on failure to associate independent witnesses.
- Consistently maintained that procedures followed were per law, and there was no prior enmity with accused.

3. WHC Muhammad Hassan Bangwar – Malkhana Incharge Produced Document:

- Malkhana Register 19 (Ex.5/A)

Key Evidence:

- Confirmed receiving and securing case property (hemp sack) in police Malkhana.
- Supported prosecution claim regarding safe custody of narcotic substance after recovery.

Cross-Examination:

- Did not face any major contradiction; confirmed storage as per standard procedures.

4. PC Barkat Ali – Dispatch Rider, Produced Document:

- RC No.73 (Ex.6/A)

Key Evidence:

- Testified that he transported the sealed case property to the Chemical Laboratory Rohri.
- Confirmed dates and times of dispatch and delivery under DD entries 16 and 19.

Cross-Examination:

- Defense focused on delay in sending sample; witness admitted delay but emphasized that chain of custody remained intact.

5. SIP Mashooque Ali Lashari – Investigating Officer (I.O), Produced Documents:

- DD Entries 13, 14, 16, 19 (Ex.7/A)
- Letter to SSP
- Chemical Examiner's Report (Ex.7/D)

Key Evidence:

- Conducted further investigation after FIR.
- Confirmed handing over case property to Malkhana and its later dispatch to Chemical Lab.
- Produced chemical report showing presence of cannabis traces.

Cross-Examination:

- Acknowledged delay in sending contraband for analysis but maintained that property was secure.
- Faced no challenge regarding authenticity of chemical report.

4. In his statement recorded under Section 342, Cr.P.C., the accused Attaullah Chachar categorically denied the allegations leveled against him and asserted his innocence, stating that the alleged contraband was foisted upon him by the police after he refused to pay illegal gratification. He further claimed that he was arrested arbitrarily while traveling with his wife from Lahore and that the police snatched his belongings including a mobile phone, CNIC, and cash. However, despite raising this defense, the appellant neither opted to examine himself on oath under Section 340(2), Cr.P.C., nor did he produce any witness in his support to substantiate his plea of false implication. The trial court, in its judgment dated 30.09.2023, while convicting the appellant under Section 9(c) of the CNS Act, 1997, held that the prosecution had successfully proved the recovery of 15,000 grams of hemp from the appellant's possession through consistent oral and documentary evidence, including the mashirnama, FIR, Malkhana records, and the chemical examiner's positive report. The trial court found no plausible reason to disbelieve the police witnesses and rejected the appellant's defense plea as unsubstantiated, ultimately sentencing him to seven years of rigorous

imprisonment and a fine of Rs. 100,000, with benefit of Section 382-B Cr.P.C. extended.

5. Learned Counsel for the Appellant, contended that the appellant has been falsely implicated in the case due to arbitrary police action or potential personal enmity, without any independent corroboration. He emphasized that the prosecution case suffers from material contradictions among the statements of official witnesses, particularly regarding the time and place of arrest and recovery. It was further submitted that despite the alleged incident taking place in a populated area, no private witness was associated in the recovery proceedings, raising serious doubts about the transparency and veracity of the investigation. The learned counsel highlighted the unexplained delay of eight days in sending the seized contraband to the chemical laboratory, casting a shadow on the chain of custody and integrity of the recovered substance. Additionally, the appellant's defense, that he was traveling with his wife and was arbitrarily arrested, was supported by production of a bus ticket, even though the same was not name-tagged. He concluded that the entire prosecution case is riddled with doubt and untrustworthy evidence, thus failing to meet the standard of proof beyond reasonable doubt. He prayed that the appeal be allowed, the impugned judgment be set aside, and the appellant be acquitted of the charge.

6. On the other hand, the learned Additional Prosecutor General (APG) for the State strenuously opposed the appeal, submitting that the prosecution has fully discharged its burden by presenting cogent and consistent evidence. It was argued that the depositions of the complainant and recovery mashirs were mutually corroborative and supported by documentary evidence

including police station entries, mashirnama, FIR, Malkhana register, and Road Certificate (RC) concerning transmission of case property. The learned APG further emphasized that the delay in sending the contraband to the chemical examiner does not adversely affect the case, as the safe custody and transportation were sufficiently proven through official witnesses and entries. The chemical examiner's report confirmed the presence of hemp material, thus substantiating the charge. Additionally, it was contended that the appellant failed to establish any malafide on the part of the police or produce credible evidence to support his version; the bus ticket produced lacked identification and remained uncorroborated. He prayed that the appeal being devoid of merit and not maintainable under the law, be dismissed accordingly.

7. We have carefully considered the arguments advanced by the learned counsel for the Appellant as well as the learned Additional Prosecutor General for the State. I have also meticulously examined the entire evidence available on record with utmost judicial care and circumspection. A perusal of the record reveals that the alleged incident occurred on 10.07.2023 at around 1600 hours. The contents of the FIR, the mashirnama of arrest and recovery, and the testimonies of the prosecution witnesses collectively indicate that the case property was sealed at the spot and handed over by the complainant, ASI Mukhtiar Ali, to the Investigating Officer SIP Mashooque Ali Lashari on the same date. However, PW-03, WHC Muhammad Hassan, who was the Malkhana incharge, confirmed having received the case property on 10.07.2023 but failed to disclose when the same was dispatched for chemical examination. On the other hand, SIP Mashooque Ali claimed to have forwarded the case property to the Chemical Laboratory on 12.07.2023, indicating a delay of two days. In stark contrast, the Chemical Examiner's

Report (Exh.7/D) explicitly states that the case property was received by the Chemical Laboratory Sukkur @ Rohri only on 18.07.2023—after an inordinate and unexplained delay of eight days. Notably, none of the key prosecution witnesses—neither the complainant ASI Mukhtiar Ali, nor WHC Muhammad Hassan, nor SIP Mashooque Ali—offered any explanation or even appeared to be aware of this substantial delay in the transmission of the case property. This glaring lapse in maintaining the continuity and integrity of the chain of custody during the unexplained eight-day period is not only unaccounted for but is also materially detrimental to the prosecution’s case. It casts serious doubt on the safe custody and authenticity of the contraband allegedly recovered from the appellant. This deficiency alone is sufficient to render the prosecution’s case unreliable. The significance of this failure is underscored in the judgment of the Honourable Supreme Court of Pakistan in ***Zahir Shah alias Shat v. The State through Advocate General Khyber Pakhtunkhwa (2019 SCMR 2004)***, wherein it was categorically held that any unexplained delay or break in the chain of custody fatally undermines the credibility of the prosecution’s case. It was observed 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”*.

8. The learned trial Court has failed to appreciate a critical inconsistency in the prosecution's case regarding the weight of the recovered contraband. The FIR, mashirnama of arrest and recovery, and the testimonies of prosecution witnesses uniformly state that the case property weighed 15,000 grams at the time of recovery. However, the Chemical Examiner's Report (Exh.07/D) contradicts this by indicating that the **gross weight** of the received case property was **14,610 grams**, and the **net weight** was **14,460 grams**, thereby reflecting a shortfall of 540 grams from the originally claimed weight. Notably, the report specifies that only 200 grams were consumed during chemical analysis, and the remaining material was returned. This unexplained variation in weight undermines the integrity of the prosecution's claim regarding the exact quantity of narcotic substance allegedly recovered. While prosecution witnesses asserted that the case property remained sealed, their depositions are conspicuously silent on whether the sealed parcel was de-sealed in open court and exhibited before them for identification during trial. Furthermore, the statement of the appellant under Section 342 Cr.P.C. does not reflect whether the case property (i.e., bhang) was ever shown to him or confronted as incriminating material. The absence of such essential procedural steps creates a substantial doubt about the evidentiary handling and presentation of the case property, raising questions about its continuity and authenticity. In view of these glaring discrepancies and procedural lapses, the prosecution has failed to establish its case beyond reasonable doubt, and thus, the conviction of the appellant is not sustainable on the basis of the evidence on record.

9. It is an established fact that the alleged incident occurred in broad daylight, and the complainant, ASI Mukhtiar Ali, acted upon prior information

received through a tip-off. Despite being forewarned and therefore having ample opportunity to ensure transparency in the recovery proceedings, the complainant failed to associate any independent private witnesses at the time of arrest and recovery of the alleged narcotic substance. This omission is particularly glaring given that the incident took place in a densely populated area where the presence of neutral witnesses could reasonably have been secured. While it is correct that Section 25 of the Control of Narcotic Substances Act, 1997 relaxes the mandatory requirement of Section 103, Cr.P.C., and permits reliance on police witnesses, this statutory relaxation does not absolve the investigating officer of his duty to adopt fair, impartial, and prudent measures to dispel any apprehension of false implication or fabrication. The deliberate exclusion of independent witnesses, despite the availability of such opportunity, casts doubt on the credibility of the recovery proceedings. In this regard, reliance may be placed on the principles laid down by this Court in *Ghulam Shabbir and Another v. The State (2023 YLR 153)*, wherein the Court emphasized the need for associating independent witnesses to ensure impartiality and fairness in criminal proceedings, particularly in narcotics cases. Furthermore, in the recent and authoritative judgment of the Hon'ble Supreme Court of Pakistan in *Muhammad Riaz and Others v. The State (2024 SCMR 1839)*, the Apex Court has reaffirmed the foundational principle of criminal jurisprudence that when any reasonable doubt arises with respect to the credibility or authenticity of the prosecution's case, such benefit must unavoidably be extended to the accused. The Apex Court observed:

“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)”.

10. In light of the foregoing findings and legal deficiencies identified in the prosecution’s case, this appeal is hereby allowed. Consequently, the impugned judgment dated 30.09.2023 passed by the learned trial Court is found to be legally unsustainable and is accordingly set aside. The appellant, Attaullah son of Amanullah, is hereby acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997. He shall be released forthwith, if not required to be detained in any other case.

JUDGE

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