

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No. D-49 of 2024

Appellant : Jamaluddin alias Shadoo Gulwani
Through Mr. Shakeel Ahmed G. Ansari,
Advocate

Respondent : The State
Through Mr. Nazeer Ahmed Bhangwar, DPG

Date of hearing : 22-07-2025
Date of Judgment : 29.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J—Appellant Jamaluddin alias Shadoo, challenges the judgment dated August 7, 2024, passed by the learned Sessions Judge/Special Judge (CNSA), Jacobabad in Special Case No.121 of 2023, emanating out of FIR No.92/2023, registered at Police Station B-Section Thul, for offence under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the said judgment, the appellant was convicted for offence under Section 9(3)(d) of the Act and sentenced to 14 years' rigorous imprisonment along with a fine of Rs.400,000/-, in default whereof, he was directed to undergo further S.I for six months, with benefit of section 382-B Cr.P.C.

2. Briefly stated, the prosecution case is that on October 10, 2023, complainant SIP Ali Raza Mahar, while patrolling, acting on spy information, apprehended the appellant and his co-accused Muhammad Younis Jakhrani on Link Road Karampur. From the possession of the appellant, a plastic shopper allegedly containing five slabs of Charas weighing 5050 grams was recovered, while an unlicensed TT pistol was recovered from co-accused Muhammad Younis. After completing legal formalities, FIR was registered, and

upon conclusion of investigation, the challan was submitted. The appellant was subsequently convicted in the aforementioned terms.

3. Learned counsel for the appellant argued that the impugned judgment is contrary to the law, facts, and record. He contended that nothing was recovered from the appellant, and the case property was foisted upon him by the police due to prior enmity with SHO Ghulam Qadir Chandio. He pointed out contradictions in the testimonies of prosecution witnesses, particularly regarding the departure entry (citing WPC Hidayatullah vs. WHC Niaz Leghari) and the distance between the place of information and incident. He emphasized that no private mashirs were associated despite the location being a populated area, and all prosecution witnesses were police officials. A significant ground raised was the non-production and non-examination of the Chemical Examiner at trial, which he argued was a fatal flaw. The learned counsel further contended that the appellant was arrested in the same memo of arrest and recovery (mashirnama) along with co-accused Muhammad Younis, who was subsequently acquitted by the learned Additional Sessions Judge, Thul in Sessions Case No. 17 of 2024 vide judgment dated May 20, 2025. He argued that if one court had treated the same memo as dubious and acquitted the co-accused, then the same benefit of doubt should be extended to the appellant. He also referred to another acquittal of the present appellant in Crime No.91/2023 of the same police station, under Sections 409, 399, 353, and 324 PPC, in Sessions Case No. 163 of 2024, wherein the appellant was acquitted by the learned Additional Sessions Judge, Thul, vide judgment dated March 27, 2025, and sought the benefit of parity.

4. Conversely, learned DPG for the State opposed the appeal and argued that the prosecution has successfully proved the charge against the appellant beyond a shadow of doubt through reliable ocular and documentary evidence. He submitted that the chemical

report supports the prosecution's case and the minor contradictions pointed out by defence are inconsequential, not affecting the core of the prosecution's case. He stressed that the witnesses, despite being police officials, had consistently supported the prosecution's version and refuted the claim of false implication, noting the absence of any concrete evidence to support the alleged enmity.

5. We have carefully examined the evidence available on record, the impugned judgment, and rival contentions. The prosecution examined five witnesses, including the complainant, mashir, dispatch rider, Head Mohrar, and investigating officer. Complainant SIP Ali Raza Mahar (PW-01) and mashir HC Qalandar Bux (PW-02) both corroborated each other regarding the arrest, recovery, seizure, weighing, and sealing of the contraband. The property was properly transmitted to the chemical examiner, as proved by the dispatch rider and Head Mohrar/Malkhana In-charge. Learned trial court has fairly given the opportunities of cross examination to the learned advocate for the appellant but despite availing same, nothing favorable come on surface and the departure, police movements, arrest, seizure, weighing, sealing and onwards transmission remained consistent.

6. The integrity of evidence, particularly the safe custody and transmission of recovered narcotic substances, is paramount in cases prosecuted under the Control of Narcotic Substances Act, 1997. The prosecution bears a stringent burden to meticulously establish every link in the chain of custody, from the recovery of the contraband, to the making of sample parcels, their safe custody, and their safe transmission to the concerned laboratory. A failure to prove any single link in this chain necessitates the extension of benefit of doubt to the accused, as consistently held by the Supreme Court in numerous pronouncements, including *Javed Iqbal v. The State* (2023

SCMR 139), *Mst. Sakina Ramzan v. The State (2021 SCMR 451)*, and *Qaiser Khan v. The State (2021 SCMR 363)*.

7. A crucial aspect of this chain is the transmission of samples to the Chemical Examiner. The prosecution is under a bounden responsibility to produce the witness tasked with this specific duty. The Supreme Court, in cases such as *Abdul Ghafoor v. The State (2022 SCMR 819)* and *Muhammad Shoaib v. The State (2022 SCMR 1006)*, has underscored that the failure to produce such a witness can have "devastatingly appalling with unredeemable consequences that cast away the entire case."

8. Furthermore, strict adherence to statutory timelines and procedural rules is imperative. Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules 2001 explicitly mandates that "Samples may be dispatched for analysis under the cover of a Test memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked "Secret Drug Sample/Test memorandum"." Any violation of this seventy-two-hour rule, without a plausible explanation, can vitiate the prosecution's case, as highlighted in *Asif Ali and another v. The State (2024 SCMR 1408)* where samples dispatched beyond this stipulated period led to the acquittal of the petitioners.

9. Beyond the initial dispatch, the secure maintenance of the case property at the police station is equally vital. Rule 22.70 of the Police Rules, 1934, dictates the maintenance of Register No.XIX in Form 22.70, wherein every article placed in the store room (Malkhana) must be entered, and its removal duly noted. Any omission or lack of explanation regarding entries in this register, particularly concerning the date, month, and year of the case property, can create reasonable doubt in the prosecution's narrative, as demonstrated in *Asif Ali and another v. The State (2024 SCMR 1408)*.

10. While minor procedural or technical lapses may be overlooked in the larger interest of justice, especially in narcotics cases where the guilt is otherwise substantially proven, as articulated in *Ismail v. The State (2010 SCMR 27)*, fundamental infirmities related to the unbroken chain of custody cannot be disregarded. The Supreme Court in *Hasrat Khan v. The State (PLD 2024 Supreme Court 911)* affirmed a conviction where safe custody and transmission were proven and a positive chemical report was obtained, but reduced the sentence due to gross negligence in sample collection from multiple packets. This highlights that while proof of safe custody is essential for conviction, procedural lapses in sampling can impact the severity of the sentence. The case emphasized that samples must be separated from each and every packet of the narcotic substance recovered and each such sample tested separately, a principle earlier laid down in *Ameer Zeb v. The State (PLD 2012 SC 380)*.

11. Conversely, when the prosecution successfully discharges its burden by producing consistent documentary evidence and the testimonies of relevant witnesses, meticulously corroborating the lawful seizure, proper handling, and subsequent examination by the chemical laboratory, the chain of custody is deemed established. In such circumstances, as observed in *Yameen v. Din Muhammad Chand (Criminal Appeal No.D-50 of 2023)*, the chemical examiner's report, confirming the presence of narcotics and dispatched within the statutory 72 hours under Rule 4(2) of the CNS Act, 1997, solidifies the prosecution's case. Furthermore, the testimony of police officials, even as members of the raiding party, cannot be discarded merely on the ground that they are law enforcement personnel. The applicability of Section 103 Cr.P.C. in narcotics cases is expressly excluded by Section 25 of the Control of Narcotic Substances Act, 1997, meaning the non-inclusion of any private witness is not a serious defect to

vitiating the conviction, as reiterated in *Zafar v. The State* (2008 SCMR 1254) and *Shabir Hussain v. The State* (2021 SCMR 198).

12. In essence, while courts adopt a dynamic and pragmatic approach to ensure justice, especially against the menace of drug trafficking, the prosecution's fundamental duty to establish the unbroken chain of custody through reliable evidence, including timely and proper transmission of samples, remains a cornerstone for securing a conviction in narcotics cases.

13. The Chemical Report dated October 25, 2023 (Exh. 08/A), issued by the relevant laboratory, confirmed the recovered substance to be Charas. Although the Chemical Examiner was not examined, the report, being a public document under Article 76 of QSO 1984, was tendered through the investigating officer without effective challenge by the defence. No request for summoning the expert was made by the defence. The alleged contradictions pointed out by the defence, such as discrepancies concerning who wrote the departure entry or the exact distance between the places, are minor in nature and do not go to the root of the prosecution's case.

14. It is a well-established principle that the testimony of police officials cannot be discarded merely because they are law enforcement personnel. As rightly held by the trial court, and supported by precedents such as 2003 P.Cr.L.J Peshawar 106(b) and 2003 P.Cr.L.J Lahore 1011(c), police officials are as credible witnesses as any other citizen unless malice or false implication is established. In the present case, despite the appellant's claim of enmity with SHO Ghulam Qadir Chandio, no substantial or reliable evidence was led to prove this assertion or to suggest any motive for false implication by the complainant or other prosecution witnesses. The statements of the complainant and mashir regarding the refusal of private persons to act as witnesses also remain unchallenged by any concrete evidence. Reference in this regard can also be drawn from the cases

of *Zafar Vs. The State (2008 SCMR 1254)*, *Asif Vs. The State (2020 SCMR 610)*, and *Nazir Ahmed Vs. The State (2023 SCMR 1299)*.

15. As regards the argument based on the acquittal of co-accused Muhammad Younis in Sessions Case No. 17/2024 on May 20, 2025, it may be observed that the judgment in that case was delivered about nine months after the impugned conviction of the appellant. It is a settled principle that each case must be adjudicated upon its own facts, evidence, and evaluation thereof by the trial court. Merely because both the appellant and the co-accused were arrested through a joint mashirnama does not necessarily mean that a finding of benefit of doubt in one case is to be automatically extended to another. The fact that the mashirnama of arrest was joint for both the appellant and his co-accused regarding their respective recoveries, while perhaps not ideal practice, does not, in itself, vitiate the recovery proceedings, especially when the recoveries are distinct and clearly attributed to each individual, and the witnesses have consistently deposed to this effect. It is not the mere commonality of mashirnama that governs guilt or innocence; it is the quality of evidence relating to each individual accused. The learned trial court has assessed the ocular account, documentary record, and chain of custody of the recovered narcotics in light of the law and found the prosecution case against the present appellant to be established beyond reasonable doubt. No material irregularity, misappreciation of evidence, or miscarriage of justice has been pointed out.

16. The reliance on acquittal in another case (Crime No.91/2023) is also misplaced. That case pertained to different offences, different facts, and was adjudicated upon distinct evidence and witnesses. The doctrine of parity does not imply universal applicability when the subject matter, legal provisions, and evidence differ materially. Reference may be made to the principles enunciated consistently by the Honourable Supreme Court that judgments in

other cases do not *ipso facto* justify acquittal or identical treatment unless facts and evidence are identical and indistinguishable. Moreover, the contention regarding suspiciousness of the joint mashirnama has no bearing in the face of coherent, corroborated, and credible testimony of official witnesses, whose presence at the scene was justified and unshaken in cross-examination. The appellant's plea of false implication due to alleged enmity was neither substantiated through any independent source nor confronted effectively during the trial.

17. In view of the foregoing discussion and having considered the entirety of evidence and case law, we find no merit in the appeal. The impugned judgment dated August 7, 2024, is based on sound reasoning and a correct application of the law. Accordingly, the appeal is dismissed. The conviction and sentence awarded to the appellant Jamaluddin alias Shadoo for offence under Section 9(3)(d) of the Control of Narcotic Substances Act, 1997, are hereby maintained. The appellant shall serve out the remainder of his sentence in accordance with law.

The copy of the judgment be transmitted to the learned trial court for information and record.

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Asghar Altaf/P.A