

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No. D-35 of 2024

Before:

*Mr. Justice Shamsuddin Abbasi,
Mr. Justice Ali Haider 'Ada'*

Appellant : Zameer son of Wahiyal Jatoi
through Mr. Aamir Ali Sohoo, Advocate.

Respondent : The State
through Mr. Ali Anwar Kandhro, Additional
Prosecutor General

Date of Hearing : 06.08.2025.

Date of Decision : 20.08.2025.

J U D G M E N T

Ali Haider 'Ada':J . – Through the instant Criminal Jail Appeal, the appellant has assailed the judgment dated 25.04.2024, passed by the learned Sessions Judge/Special Judge for Control of Narcotic Substances, Larkana, in Special Case No.16 of 2024, arising out of Crime No.04 of 2024, registered at Police Station Dokri, for the offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. By the impugned judgment, the learned trial Court convicted and sentenced the appellant to suffer rigorous imprisonment for nine (09) years, and to pay a fine of Rs.80,000/- (Eighty Thousand Rupees), and in case of default in payment of fine, the appellant was ordered to further undergo simple imprisonment for three (03) months. However, the benefit of Section 382-B, Cr.P.C. was extended to him.

2. As per the case of the prosecution, on 14.01.2024 at about 1500 hours, complainant ASI Muktiar Ali Unar, while on patrolling duty along with his subordinates, reached at Gujar Link Road near Barrage of Rice Canal, where they noticed one person carrying a black-colored plastic shopper. On seeing the police party, the said person allegedly tried to escape, but on suspicion he was apprehended at the spot. Upon checking the black-colored shopper in his possession, it was found to contain two (02) kilograms of charas in slab form, divided into three pieces. On further personal search of the accused, an amount of Rs.100/- (two currency notes

of Rs.50/- each) was also recovered. Thereafter, a memo of arrest and recovery was prepared on the spot in presence of police witnesses, and the accused along with the case property was brought to the police station, where the FIR was lodged. Subsequent to registration of the FIR, investigation was conducted in the usual manner, and after completion thereof, the accused was sent up to face trial through submission of challan before the learned trial Court.

3. After completion of investigation, the learned trial Court took cognizance and framed charge against the appellant on 29.02.2024, to which the appellant pleaded not guilty and claimed trial. The prosecution was then directed to adduce its evidence. In order to prove the charge, the prosecution examined five witnesses: PW-01 ASI Mukhtiar Ali (complainant) deposed in line with the contents of FIR and exhibited the memo of arrest and recovery, copy of FIR, and relevant Roznamcha entries regarding his movement. PW-02 Muhammad Mour was examined, who produced the memo of place of incident. PW-03 Sikandar Ali, shown as dispatch rider, produced Roznamcha entry regarding his movement. PW-04 Imtiaz Ali, the Investigating Officer, produced Roznamcha entries of his movement as well as the Chemical Examiner's report. PW-05 Talib Hussain, Incharge of Malkhana, produced the entry maintained in Register No.19 regarding deposit of case property. Thereafter, learned State Counsel submitted a statement dated 22.03.2024, closing the side of prosecution.

4. The appellant/accused was then examined under Section 342 Cr.P.C. He denied the allegations and professed his innocence. He did not examine himself on oath, nor did he opt to produce any defence evidence. Consequently, after hearing both sides, the learned trial Court passed the impugned judgment dated 25.04.2024, convicting and sentencing the appellant as detailed hereinabove.

5. Learned counsel for the appellant contended that the prosecution has miserably failed to establish the case against the appellant beyond reasonable doubt. It was argued that the case suffers from fatal infirmities, primarily relating to the safe custody and safe transmission of case property, as a clear break in the chain of custody has come on record. It

was further submitted that although Section 25 of the CNS Act, 1997 places an embargo upon joining private witnesses, the same does not authorize the police to deliberately exclude independent witnesses, particularly when the alleged place of incident was a thickly populated area. This non-association of private mashirs casts serious doubt upon the prosecution story. Learned counsel therefore prayed for acquittal of the appellant.

6. Conversely, learned State Counsel argued that the case property was recovered from the exclusive possession of the appellant and there was no plausible motive for the police officials to falsely implicate him. It was further contended that the Chemical Examiner's report was positive and corroborated the ocular account. It was therefore argued that the prosecution has successfully established its case and the conviction recorded by the trial Court does not call for interference.

7. Heard the respective submissions advanced by learned counsel for the parties and have carefully perused the material available on record with utmost judicial scrutiny.

8. The prosecution case commences with the deposition of the complainant, who admitted during cross-examination that the alleged place of incident was situated in an area where shops and other establishments were located. This fact also stands affirmed by the mashir of memo of recovery/arrest and place of incident. However, despite such availability of independent persons at the spot, the complainant offered no plausible explanation as to why no effort was made to associate any private witness in support of the recovery proceedings. It is true that Section 25 of the Control of Narcotic Substances Act, 1997 places a restriction on the defence to raise objections merely on the ground of non-association of private witnesses; however, the same provision cannot be construed to mean that the police are permitted to deliberately exclude independent witnesses when they are readily available at the place of occurrence. When such independent sources are available, the prosecution is under an obligation to associate them in order to inspire confidence in the recovery proceedings and to establish the guilt of the accused beyond reasonable doubt. The omission to do so, without offering any convincing

explanation, creates a serious dent in the veracity of the prosecution case. In this regard, guidance can be sought from the judgment of the Division Bench of this Court in the case of *Danish v. The State* (2025 YLR 1355), wherein it was held that:

11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.

Further guidance is available from the judgment of this Court in the case of *Mir Muhammad and others v. The State* (2024 PCr.LJ 370), wherein a Division Bench of this Court has held that:

“...It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. 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.”

9. It further appears from the deposition of the Investigating Officer that after registration of FIR, the complainant handed over the accused, case property, and relevant papers to him for investigation. The Investigating Officer claimed that he deposited the case property in the

Malkhana, and in support thereof, an extract from Register No.19 was produced. However, upon careful perusal of the said entry, it is evident that the same does not conform to the prescribed proforma. Significantly, the column relating to the date of deposit (Column No.3) was not available, and the entry itself was prepared on a plain paper instead of the prescribed register format.

10. Furthermore, the Incharge Malkhana, during his examination, deposed that he himself kept the case property in the Malkhana, which is clearly contradictory to the claim of the Investigating Officer and is in direct conflict with the documentary evidence. Such discrepancy creates a serious dent in the chain of custody and renders the safe custody of the case property highly doubtful. For ready reference, *Rule 22.70 of the Police Rules, 1934* provides:

22-70. Register No. XIX:- This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

FORM No. 22-70

POLICE STATION _____ DISTRICT _____

Register No. XIX. Store - Room Register (Part-I)

- Column 1, -- Serial No.
- 2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.
3. -- Date of deposit and name of depositor.
- 4.-- Description of property.
5. -- Reference to report asking for order regarding disposal of property.
6. -- How disposed of and date.
- 7.-- Signature of recipient (including person by whom despatched).
8. -- Remarks.

11. From the record, it is manifest that the prosecution has failed to establish strict compliance with the provisions of the Police Rules

regarding safe custody and deposit of narcotics. The defective entry, absence of prescribed format, and contradictory statements of the I.O. and Malkhana incharge lead to the irresistible conclusion that the chain of safe custody and safe transmission of the narcotics sample is broken. Once the chain of custody is compromised, the sanctity of the Chemical Examiner's report also becomes doubtful, as it cannot be said with certainty that the very case property allegedly recovered from the accused was transmitted and examined. In this context, reliance is placed upon the case of *Muhammad Qaseem vs The State* 2025 P Cr. L J 328, as it was held that:

6. In order to substantiate the safe custody and transmission of the narcotics, the prosecution produced Muhammad Hassan Head Constable (PW-3). He testified that on 01.12.2022, Masood Ahmed IO (PW-4) handed over him parcels Nos.1 to 40 and 1-A to 40-A, whereof he made entry in Register No.19 at serial No.1102 and that on 03.12.2022, at 11:00 am, he handed over back parcel Nos.1 to 40 to IO (PW-4) for onward transmission to the Federal Narcotics Testing Laboratory Balochistan, Quetta ("FNTL, Quetta") for chemical analysis. He produced copy of relevant page of Register No.19 as (Ex.P/3-A). The perusal column Nos.5, 6, 7 and 8 of the said page of Register No.19 shows that the same have been left blank, which raises questions with regard to the evidentiary value of such documents as it offends Rule 22.49 of Police Rules, 1934.

12. In these circumstances, when the safe custody and safe transmission of the narcotics are not proved, and the quantity is itself doubtful, the very foundation of the prosecution case stands shaken. Consequently, the benefit of doubt must be extended to the appellant, which is his vested right. Reliance is placed upon the case of *Javed Iqbal vs The State* 2023 SCMR 139, *Zafar Khan and another vs the State* 2022 SCMR 864 and *Ishaq vs The State* 2022 SCMR 1422.

13. Moreover, another material irregularity is apparent from the recovery proceedings. The prosecution has failed to establish the separate weight of each slab/piece of charas allegedly recovered from the appellant. Instead, the narcotics were weighed collectively and shown to be two (02) kilograms. The failure to do so creates further doubt about the actual quantity and identity of the alleged narcotics. In this regard reliance

is placed upon the case of *Qalandar Shah vs The State and another* 2021 YLR 2349.

14. It is by now a well-settled proposition of law that where the prosecution case suffers from doubts, even a single circumstance creating reasonable doubt in the prudent mind regarding the guilt of the accused is sufficient to extend benefit of such doubt in favour of the accused. The rule of benefit of doubt is not a concession in criminal jurisprudence, but a substantive right which cannot be denied to the accused. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of *Ahmed Ali v. The State* (2023 SCMR 781).

15. In view of the foregoing reasons and discussion, the instant Criminal Jail Appeal is allowed. Consequently, the appellant Zameer Jatoi is acquitted of the charge. The judgment dated 25.04.2024 passed by the learned trial Court, whereby the appellant was convicted and sentenced, is hereby set aside. The appellant shall be released forthwith from custody if not required in any other case. The Jail Authorities are directed to comply accordingly, while the office is directed to issue the release writ. Resultantly, the instant Criminal Jail Appeal stands disposed of.

JUDGE

JUDGE