

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. CrI. Jail Appeal No. D-07 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Ali Khan son of Peroze Jamali,
Through Mrs. Fareeda, Advocate

Respondent : The State through M/s Aftab Ahmed Shar
APG and Muhammad Raza Katohar, DPG

Date of hearing : 19.08.2025
Date of short order : 19.08.2025
Reasons recorded : 20.08.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J— Through this judgment, Criminal Appeal arising from the conviction dated December 28, 2023 in Special Case No. 114/2022 by the learned Additional Sessions Judge-I/Special Judge for CNS, Khairpur, stands disposed of with detailed reasons.

2. The present appeal emanates from Special Case No. 114/2022, which originated from Crime No. 55/2021 registered at Police Station Agra under Section 9(c) of the Control of Narcotic Substances Act, 1997. The genesis of this case traces back to October 27-28, 2021, when a police party from CIA Center Khairpur, during routine patrolling and snap checking operations at Karak Shakh on the road leading from Tando Masti to Larkana, allegedly intercepted truck bearing registration No. MND-9146. The prosecution's case is that this interception resulted in the recovery of 270 kilograms of charas, leading to the arrest of the appellant Ali Khan Jamali, while his co-accused Nazir Ahmed managed to flee the scene and escape into the northern side crops.

3. The case underwent the standard judicial process wherein after the completion of investigation by SIO Manjhi Khan Jatoi, it was initially presented before the learned Judicial Magistrate-I Gambat, who after completing the necessary formalities, committed the matter to the Court of Sessions Judge, Khairpur for trial and disposal according to law. Subsequently, the case was assigned to the learned Additional Sessions Judge-I/Special Judge for CNS, Khairpur for adjudication. The co-accused Nazir Ahmed S/O Muhammad Hashim Jatoi was declared a proclaimed offender vide order dated April 7, 2022 after the completion of proceedings under Sections 87 & 88 of the Code of

Criminal Procedure, 1898. In compliance with Section 265-C of the Criminal Procedure Code, the case papers were supplied to the accused, and a formal charge under Section 9(c) of the CNS Act was framed, to which the appellant pleaded not guilty and claimed trial. The prosecution, in order to establish its case, examined six witnesses including the complainant SIP Taj Muhammad, recovery mashir HC Ghulam Qadir Shar, investigating officer SIP Manjhi Khan Jatoi, and other supporting witnesses, after which the appellant was convicted and sentenced to life imprisonment with a fine of Rs. 1,00,000/- in default thereof he was to suffer simple imprisonment for one additional year.

4. The learned counsel for the appellant has mounted a comprehensive challenge to the conviction, advancing multiple legal and factual arguments that collectively question the very foundation of the prosecution's case. The defense has contended with considerable force that the appellant has been falsely implicated in this case through a calculated conspiracy orchestrated by the police at the instance of his cousin, though no concrete evidence has been produced to substantiate this claim of family enmity. The defense argues that the substantial quantity of 270 kilograms of charas, valued at millions of rupees, has been planted upon the appellant by the complainant and his team, representing a deliberate attempt to frame an innocent person in a serious criminal offense. The defense has particularly emphasized that all the material witnesses in this case, including the complainant SIP Taj Muhammad, the recovery mashir HC Ghulam Qadir, and the investigating officer SIP Manjhi Khan Jatoi, are police officials, rendering them interested witnesses whose testimony cannot be relied upon without independent corroboration from neutral sources. The argument proceeds that these officials have a vested interest in securing a conviction to justify their actions and cover up any potential irregularities in their conduct. Furthermore, the defense has highlighted the violation of Section 103 of the Criminal Procedure Code, arguing that despite the availability of private persons in the locality, particularly considering that the interception took place on a busy road connecting Tando Masti to Larkana, no independent witnesses were associated during the crucial recovery proceedings. The defense has meticulously pointed out numerous contradictions in the evidence presented by the prosecution witnesses, arguing that these inconsistencies create substantial reasonable doubt about the veracity of the prosecution case and render it highly suspect. The defense has also challenged the authenticity and reliability of the Chemical Examiner Report, contending that it has been managed and fabricated, lacking

the essential protocols and procedures required under the Control of Narcotic Substances (Government Analysts) Rules, 2001. Most critically, the defense has argued that the prosecution has failed to establish the safe custody and safe transmission of the recovered substance from the point of recovery to the chemical laboratory, creating a fatal break in the chain of custody that renders the entire case unreliable and unsustainable.

5. The learned Deputy Prosecutor General for the State has vigorously defended the conviction by presenting a detailed counter argument that seeks to address each of the defense contentions systematically. The State's position is that the prosecution witnesses have given consistent, coherent, and confidence-inspiring testimony that fully supports the prosecution case without any material contradictions. The DPG has argued that PW-1 SIP Taj Muhammad and PW-3 HC Ghulam Qadir Shar have corroborated each other's testimony on all material aspects of the case, creating an unshakeable foundation for the prosecution's version of events. Regarding the objection about official witnesses, the learned DPG has contended that police officials are as competent and credible as private witnesses, particularly in narcotics cases where Section 25 of the CNS Act, 1997 specifically excludes the application of Section 103 of the Criminal Procedure Code. The State has argued that this legislative exclusion recognizes the practical reality that private persons are reluctant to participate in narcotics cases due to fear for their personal safety and the dangerous nature of drug trafficking networks. The DPG has emphasized that the recovery of 270 kilograms of charas represents such a substantial quantity that it could not feasibly be planted by police officers from their own resources without any proven motive or personal enmity against the appellant. The State has further argued that the positive Chemical Examiner Report provides scientific confirmation of the narcotic nature of the recovered substance, establishing beyond doubt that the material seized from the truck was indeed charas as alleged by the prosecution. The DPG has highlighted that the appellant belongs to District Shikarpur while the prosecution witnesses belong to District Khairpur, thereby negating any possibility of local bias, personal animosity, or cross district conspiracy. The State's position is that all prosecution witnesses successfully withstood lengthy and rigorous cross-examination without any material contradictions being established, demonstrating the reliability and truthfulness of their testimony.

6. Upon conducting a thorough and meticulous examination of the entire record, including the detailed depositions of all witnesses, the cross-examination

proceedings, and the documentary evidence presented, we find that the prosecution case suffers from multiple fundamental defects that collectively create substantial reasonable doubt about the appellant's guilt. The analysis of the complainant's evidence reveals several concerning aspects that undermine the credibility of the prosecution's version of events. The witness SIP Taj Muhammad testified that the police party left CIA Center Khairpur at 2300 hours on October 27, 2021, for patrolling duties, but the alleged recovery occurred at 0630 hours on October 28, 2021, creating a gap of about 7.5 hours during which the patrolling activities lack proper explanation and documentation.

7. The complainant's testimony regarding the receipt of "spy information" about the truck bearing registration No. MND-9146 containing charas raises serious questions about the authenticity of this intelligence. The prosecution has failed to disclose the source of this information, the method of its receipt, or any corroborating evidence to establish its reliability. This creates a significant gap in the prosecution's narrative and suggests the possibility that the entire operation may have been pre planned rather than being the result of genuine intelligence based policing. The fact that the police party allegedly did not pursue the fleeing accused Nazir Ahmed, despite having multiple officers present and the accused being clearly visible, runs contrary to normal police procedure and creates doubt about the genuineness of the entire encounter.

8. The examination of the recovery mashir HC Ghulam Qadir's testimony reveals critical flaws that further undermine the prosecution case. As a police official and member of the same force that conducted the alleged recovery, his status as an independent witness is highly questionable. The witness admitted that despite the recovery taking place on a busy road, no private persons were willing to act as mashirs, which contradicts the fundamental principle that private citizens should be available and willing to witness police actions in public places. The procedural irregularities highlighted during cross-examination, including the admission that the entire formalities at the place of incident consumed about one hour, yet critical details about proper sealing, marking, and documentation of the recovered contraband are conspicuously absent from the record.

9. This Court finds that the prosecution has fundamentally failed to establish the crucial chain of custody that is essential in narcotics cases. The Supreme Court of Pakistan in the landmark case of *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039) has categorically held that the chain of custody is "pivotal" in narcotics cases and that "Any break

in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction." This principle has been consistently followed by the superior courts and represents the settled law on the subject.

10. The evidence presented in this case reveals multiple critical gaps in the chain of custody that collectively render the prosecution case unreliable and unsustainable. While PW-5 WHC Ali Hassan testified about receiving the case property for storage in the malkhana, his cross-examination revealed a fatal admission that "the time of receiving and taken of case property is not mentioned in entry No.68 of register 19." This creates an unexplained and unaccounted gap in the custody chain that makes it impossible to determine with certainty when the property was received, how long it remained in the malkhana, and when it was dispatched for chemical analysis. Such gaps in documentation create opportunities for tampering, substitution, or contamination of the evidence.

11. Crucially, copy of register No. 19 produced as Ex.10-A shows the property to deposit with the chemical examiner was handed over to ASI Abdul Rasheed Narejo, but the chemical report produced as Ex.9-E suggest that it was received from ASI Masood Ahmed, and no explanation has been furnished by the prosecution in this context, as such safe custody and safe transmission of property to the chemical examiner has been compromised. This represents a critical missing link in the custody chain, as there is no evidence to establish who transported the samples, under what conditions they were transported, whether the seals remained intact during transportation, and whether the samples were delivered to the laboratory in the same condition in which they were dispatched from the police station. The absence of such testimony creates reasonable doubt about the integrity of the samples that were eventually analyzed by the chemical examiner.

12. The Chemical Examiner Report presented in this case suffers from significant deficiencies that render it unreliable for the purpose of sustaining a conviction. Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, mandates that the report of the Government Analyst must contain "full protocols of the test applied" for the examination of narcotic substances. The Supreme Court in *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039) has clearly held that "Non-compliance of

Rule 6, in this context, will render the Report of the Government Analyst inconclusive and unreliable."

13. The Chemical Examiner Report in the present case merely states a positive result confirming the substance as charas without providing any details about the specific tests conducted, the scientific methodology employed, the reagents used in the analysis, the procedures followed during the examination, or the scientific parameters and standards used for evaluation. The report lacks essential information about whether presumptive tests were conducted before confirmatory tests, what specific chemical reactions were observed, what control samples were used for comparison, and what quality assurance measures were employed to ensure the accuracy of the results. This absence of detailed protocols deprives the defense of the opportunity to verify the accuracy and reliability of the analysis and renders the report fundamentally flawed from a scientific and legal perspective.

14. A detailed analysis of the cross-examination proceedings reveals multiple contradictions and admissions by the prosecution witnesses that severely damage their credibility and create reasonable doubt about the truthfulness of their testimony. The complainant SIP Taj Muhammad made several damaging admissions during cross-examination, including his inability to remember the specific time when snap checking commenced, his admission that the police party did not pursue the fleeing accused despite having the opportunity and manpower to do so, his failure to inquire from the appellant about the source or ownership of the alleged charas, and his admission that no marks or stamps were fixed on individual packets of the recovered contraband for identification purposes. PW-2 ASI Masood Ahmed, who was responsible for registering the FIR and maintaining the initial custody of the case property, made equally damaging admissions during cross-examination. He admitted that SIP Taj Muhammad did not disclose the complete facts of the case to him during FIR registration, that he could not remember the colors of the sealed bags containing the alleged charas, and that he failed to produce a copy of register No. 19 during his testimony. These admissions suggest a lack of attention to detail and proper documentation that is essential in criminal cases, particularly those involving substantial quantities of narcotics. The testimony of PW-3 HC Ghulam Qadir, the recovery mashir, contains several inconsistencies that undermine his credibility as an independent witness. He could not remember the specific time when the spy information was received, admitted that the police party consumed

about 2.5 hours during the checking process without adequate explanation, and confirmed that no private mashirs were willing to participate in the proceedings. Most significantly, he admitted that each packet of recovered charas was covered by thin shoppers and that no specific marks or stamps were fixed on any packet for identification purposes, which creates serious doubts about the chain of identification and the possibility of tampering or substitution.

15. The principle of benefit of doubt occupies a fundamental position in criminal jurisprudence and represents a cornerstone of fair trial rights guaranteed under Article 10-A of the Constitution of Pakistan. The Supreme Court in *Muhammad Mansha v. The State* (2018 SCMR 772) has established the settled legal position that "While giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right." This principle reflects the fundamental presumption of innocence that forms the basis of our criminal justice system.

16. In the present case, multiple circumstances create reasonable doubt about the appellant's guilt that must be resolved in his favor as a matter of constitutional and legal right. The broken chain of custody from the point of recovery to the chemical laboratory creates the primary circumstance of doubt, as it makes it impossible to establish with certainty that the substance analyzed by the chemical examiner was the same substance allegedly recovered from the appellant's possession. The defective Chemical Examiner Report, lacking proper protocols and detailed methodology as required under Rule 6 of the CNS Rules 2001, creates a secondary circumstance of doubt about the scientific reliability of the evidence. More significantly, the details of recovered property mentioned in memo of arrest and recovery and FIR are quite different than that of the chemical report (Ex. 9-B). Memo shows details of property as 07 different colored gunny bags of charas, each of six bags contained 40/40 packets and one bag contained 30 packets, total 270 packets of charas having weight of 270 kilograms. However, the chemical report acknowledges parcel 1 to 6 each contains forty printed panne packets each containing two black brown colored patties wrapped in plastic panne kept in plastic katta and parcel No. 7 contains 30 printed panne packets each containing two black brown colored patties wrapped in plastic panne kept in plastic katta. This discrepancy is not minor and makes the entire recovery

highly doubtful. Not only this, but contradictory evidence has been furnished by the prosecution witnesses regarding preparation of memo of arrest and recovery, as the complainant Taj Muhammad in examination in chief claims to have prepared such a document being back bone of the case, but contradicting such own version in cross examination testified that it was prepared by PC Gulfam. Again, contradictory evidence is furnished by mashir HC Ghulam Qadir, as he claims the memo was prepared by the complainant himself. Glance on such piece of evidence shows that not only contradictory evidence is furnished, but the author of such an important document has not been examined, therefore, testimony of these witnesses is not confidence inspiring on the important aspect of the case.

17. The fact that all material witnesses are police officials from the same force, without any independent corroboration from neutral sources, creates a tertiary circumstance of doubt about the impartiality and truthfulness of the testimony. The procedural violations, including the non-association of private witnesses despite their apparent availability on a busy public road, create additional doubt about the transparency and genuineness of the recovery proceedings. The timing discrepancies and unexplained gaps in the sequence of events, coupled with the failure of the police to pursue the fleeing accused, create further circumstances that collectively establish reasonable doubt beyond any shadow of uncertainty.

18. Article 10-A of the Constitution of Pakistan guarantees the fundamental right to fair trial for every person, which includes the right to be presumed innocent until proven guilty, the right to adequate legal representation, the right to cross-examine prosecution witnesses, and the right to have the prosecution prove guilt beyond reasonable doubt through legally admissible and reliable evidence. In the present case, the appellant's constitutional rights have been compromised due to the prosecution's failure to produce material witnesses who could have provided crucial testimony about the chain of custody, the reliance on defective and unreliable scientific evidence, and the breach of established legal procedures during the investigation and recovery process.

19. The principle of fair trial also encompasses the Islamic concept of justice, which emphasizes the protection of the innocent over the punishment of the guilty. The Holy Prophet (Peace Be Upon Him) has said that the mistake of a judge in releasing a criminal is better than his mistake in punishing an innocent person. This principle has been consistently recognized and applied by Pakistani

courts as held in *Ayub Masih v. The State* (PLD 2002 SC 1048), reflecting the constitutional and Islamic foundations of our legal system that prioritize the protection of individual rights against state excesses.

20. Recent judgments of the Supreme Court of Pakistan provide strong precedential support for acquittal in cases where the prosecution fails to establish safe custody and safe transmission of narcotic substances. In *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), the Court held that "The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure."

21. In *Javed Iqbal v. The State* (2023 SCMR 139), the Supreme Court observed that "So the safe custody and safe transmission of the sample parcel was not established by the prosecution and this defect on the part of prosecution by itself is sufficient to extend benefit of doubt to the Appellant. It is to be noted that in the cases of 9(c) of NSA, it is the duty of prosecution to establish each and every step from the stage of recovery, making sample parcels, safe custody of sample parcel and safe transmission of sample parcel to the concerned laboratory." The Court further held that if any link is missing in the chain of custody, the benefit of doubt must be extended to the accused as a matter of right.

22. Similarly, in *Muhammad Hazir v. The State* (2023 SCMR 986), the Supreme Court observed that "Neither the safe custody nor the safe transmission of sealed sample parcels to the concerned Forensic Science Laboratory was established by the prosecution because neither the Muharar nor the constable who deposited the sample parcel in the concerned laboratory was produced." The Court noted that the element of tampering becomes apparent when there are unexplained gaps in the custody chain, and such defects are sufficient to create reasonable doubt warranting acquittal.

23. Most recently, in *Asif Ali and another v. The State* (2024 SCMR 1408), the Supreme Court reiterated that "In the cases under CNSA, 1997 it was the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of sample parcels to the concerned laboratory. This chain has to be

established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused."

24. The learned trial court erred fundamentally in its approach to evaluating the evidence and applying the applicable legal principles. The trial court failed to recognize the critical importance of establishing an unbroken chain of custody in narcotics cases and instead relied heavily on the quantity of the recovered substance and the status of the witnesses as police officials. The trial court's reasoning that the substantial quantity of 270 kilograms could not be planted by police officers due to its economic value represents a misunderstanding of the legal requirements in narcotics cases, where the focus must be on the reliability and authenticity of the evidence rather than its quantity or value.

25. The trial court also erred in accepting the Chemical Examiner Report without proper scrutiny of its compliance with Rule 6 of the CNS Rules 2001, and failed to consider the significant gaps in the chain of custody that were evident from the testimony of the prosecution witnesses themselves. The trial court's reliance on precedents regarding official witnesses was misplaced, as those precedents apply only when the official witnesses are credible and their testimony is supported by proper procedures and documentation, which was clearly not the case in this matter.

26. The prosecution's case suffers from multiple fatal defects that, when viewed cumulatively, create overwhelming reasonable doubt about the appellant's guilt. The primary defect lies in the broken chain of custody from recovery to laboratory analysis, which makes it impossible to establish that the substance analyzed was the same substance allegedly recovered from the appellant. The secondary defect lies in the fundamentally flawed Chemical Examiner Report that lacks the essential protocols and detailed methodology required under applicable rules and regulations.

27. The tertiary defect lies in the unreliable and contradictory testimony of prosecution witnesses, all of whom are interested police officials whose credibility has been severely damaged through cross-examination admissions and procedural irregularities. The quaternary defect lies in the violation of established procedures for conducting searches and recoveries, including the failure to associate independent witnesses despite their apparent availability. These defects are not mere technical irregularities but represent fundamental

flaws that strike at the very foundation of the prosecution case and render it legally and factually unsustainable.

28. In criminal cases, particularly those involving serious offenses under special laws like the Control of Narcotic Substances Act, the prosecution bears the heavy burden of proving the guilt of the accused beyond reasonable doubt through legally admissible, reliable, and credible evidence. As held by the Supreme Court in Naveed Asghar (PLD 2021 SC 600), "The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, the benefit of that doubt is to be given to the accused person as of right, not as of concession." The prosecution in the present case has manifestly failed to discharge this fundamental obligation. The evidence presented is riddled with gaps, contradictions, and procedural violations that collectively create substantial reasonable doubt about the appellant's guilt. The prosecution cannot seek to cure these fundamental defects by relying on the quantity of the recovered substance, the status of the witnesses as government officials, or general presumptions about the reliability of police actions. Each element of the offense must be proved through credible and reliable evidence, and the failure to establish any essential element results in the failure of the entire case.

29. After conducting an exhaustive examination of the entire record, the arguments advanced by both sides, the applicable statutory provisions, and the relevant case law, we have reached the inescapable conclusion that the prosecution has miserably failed to establish the case against the appellant beyond reasonable doubt as required by law. The multiple defects in the prosecution case, particularly the broken chain of custody, the defective chemical report, the unreliable witness testimony, and the procedural violations, create substantial and reasonable doubt about the appellant's guilt that must be resolved in his favor as a matter of constitutional and legal right.

30. The rule of benefit of doubt is not merely a technical legal principle but represents a fundamental safeguard against wrongful conviction and state oppression. It reflects the basic principle that it is better for ten guilty persons to escape punishment than for one innocent person to suffer wrongful conviction. In the present case, the cumulative effect of the defects identified creates not just reasonable doubt but overwhelming doubt about the reliability and authenticity of the prosecution case.

31. This Court is mindful of the serious nature of narcotics offenses and their impact on society, but cannot allow the gravity of the offense to override the fundamental principles of criminal justice that require proof beyond reasonable doubt. The conviction of an innocent person based on defective and unreliable evidence would be a grave miscarriage of justice that would undermine public confidence in the judicial system and violate the constitutional guarantee of fair trial.

32. In light of the comprehensive analysis conducted above and the fundamental defects identified in the prosecution case, this Court finds that the conviction of the appellant cannot be sustained in law or on facts. The prosecution has failed to prove the essential elements of the offense through credible and reliable evidence, and the appellant is entitled to the benefit of reasonable doubt as a matter of constitutional and legal right. Consequently, instant Criminal Appeal was allowed. The judgment of conviction dated December 28, 2023, and the sentence of life imprisonment with fine of Rs. 1,00,000/- awarded to appellant Ali Khan S/O Peroze Jamali under Section 9(c) of the Control of Narcotic Substances Act, 1997, were set aside. The appellant Ali Khan was acquitted of the charge leveled against him vide short order dated 19.08.2025 with the directions to be released from custody forthwith, if not required in any other case. These are the detailed reasons thereof.

33. The case property, including the alleged 270 kilograms of charas and truck bearing registration No. MND-9146, shall be disposed of according to law after proper legal proceedings in accordance with the provisions of the Control of Narcotic Substances Act, 1997, and the rules made thereunder.

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