

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-131 of 2023

Appellants : Riaz Ali son of Hussain Ghelhro and
Hadi Bux son of Ameer Bux Ghelhro
through Mrs. Razia Ali Zaman Khan,
Advocate

The State : Through Ms. Sana Memon, Assistant
Prosecutor General, Sindh

Date of Hearing : 07.10.2025

Date of Judgment : 07.10.2025

J U D G M E N T

Jan Ali Junejo, J.- This is a criminal appeal under Section 410, Cr.P.C. impugning the conviction and sentence recorded by the learned Additional Sessions Judge, Matli (hereinafter referred to as the "*Trial Court*"), vide Judgment dated 22.07.2023 (hereinafter referred to as the "*Impugned Judgment*") in Sessions Case No.463 of 2021 (The State v. Riaz Ali & another), which arose out of Crime No.100/2021, P.S. Tando Ghulam Ali, registered under Section 8 of the Sindh Prohibition Of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 (Sindh Act No. III OF 2020) ("the Act"). By the impugned judgment the appellants were convicted and each sentenced to R.I. for one year and to pay a fine of Rs.200,000/-, with default sentence of S.I. for two months, benefit of Section 382-B Cr.P.C. was extended.

2. The case arises out of Crime No.100 of 2021, registered at P.S. Tando Ghulam Ali under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019. On 30.07.2021 at 1830 hours, complainant ASI Ghulam Akbar Durrani along with PC Subhan and PC Abdul Qayoom, during routine patrolling near Bhitai Petrol Pump to Sabun Dasti Road, village Haji Jan Muhammad Laghari, allegedly intercepted two persons riding a motorcycle with a white plastic sack between them. The suspects disclosed their names as Riaz Ali S/o. Hussain Ghelhro and Hadi Bux S/o. Ameer Bux Ghelhro. Upon checking, the sack was found to contain 1000 Manpuries weighing approximately 30 kilograms. Five samples were separated for chemical examination, and the remaining were sealed on the spot. A memo of arrest and recovery was prepared on the spot in the presence of police mashirs,

both being police officials, and the FIR was lodged the same day. Upon completion of investigation, the challan was submitted before the learned Judicial Magistrate, who took cognizance of the offence and subsequently transmitted the case to the Court of Sessions. The matter was thereafter assigned to the learned trial Court for adjudication.

3. Copies of the prosecution papers, as required under Section 265-C, Cr.P.C., were duly supplied to both Appellants, who acknowledged receipt thereof at Exh.01. Subsequently, the learned Court framed a formal charge at Exh.02, accusing the appellants of having committed an offence punishable under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, by being found in possession of a white sack containing 1000 Manpuries with intent to sell or distribute the same. The charge was read over and explained to the accused in vernacular, to which they pleaded not guilty and claimed to be tried. In order to substantiate its version, the prosecution examined the following witnesses:

PW-01 — Complainant ASI Ghulam Akbar deposed that on 30.07.2021, while posted as ASI at PS Tando Ghulam Ali, he along with his subordinates PC Abdul Qayoom, PC Subhan Ali, and DPC Piyar Ali left the police station for patrolling vide entry No.18 at 1645 hours. During patrolling, at about 1830 hours, they reached Link Road Jan Muhammad Laghari where they noticed two persons riding a motorcycle carrying a plastic sack between them. On seeing the police, the accused tried to escape but were apprehended. Upon inquiry, the rider disclosed his name as Riaz Ali and the other as Hadi Bux, both residents of village Sobho Gahlro, taluka Matli. Nothing was recovered from their personal search, but on checking the sack, it was found to contain 1000 mainpuries weighing 30 kilograms. Five mainpuries were separated and sealed for chemical examination, while the remaining contraband was sealed in the same sack. The black Honda CD-70 motorcycle (model 2013) was also seized. Both accused confessed to selling contraband material. Due to the absence of public mashirs, the memo of arrest and recovery was prepared in presence of PCs Subhan and Abdul Qayoom. The complainant then returned to the police station at 2000 hours, handed over the accused and case property to SIP Siraj Ahmed, and lodged the FIR. He produced:

- Exh.03/A -- Departure and Arrival Entries
- Exh.03/B -- Copy of FIR;
- Exh.03/C — Memo of Arrest and Recovery.

During cross-examination, ASI Ghulam Akbar admitted that his team stopped briefly at Digri Naka and Chambar Naka but conducted no checking there. They proceeded towards the place of incident via Bhitai Petrol Pump and reached around 1755 hours, locating the accused from a distance of about 100–150 meters before apprehending them. He stated that the contraband was counted collectively and weighed using a digital scale from the police investigation bag, though he could not recall the manufacturer, and the description of the scale was not mentioned in police papers. He did not remember the engine or chassis number

of the recovered motorcycle and confirmed that all proceedings, including memo preparation and sealing, took about an hour at the spot. He denied the suggestion that the place of incident was a busy area, asserting it was a road with no traffic or houses nearby. He refuted the defence suggestion that the accused were falsely implicated following an altercation over lack of vehicle documents and maintained that the recovery and arrest were genuine.

PW-02 PC Subhan Ali, serving as mashir of arrest and recovery, deposed that on 30.07.2021 he was posted at PS Tando Ghulam Ali and left the police station at 1645 hours along with ASI Ghulam Akbar, PC Abdul Qayoom, and DPC Piyar Ali for patrolling vide entry No.18. During patrolling, at about 1830 hours, they reached Link Road Jan Muhammad Laghari, where they noticed two persons on a motorcycle carrying a plastic sack. On seeing the police, the accused attempted to flee but were apprehended. Upon inquiry, the rider disclosed his name as Riaz Ali and the pillion rider as Haji Bux, both residents of village Sobho Gahlro. Nothing was recovered from their personal search, but on checking the sack, they found 1000 mainpuries weighing 30 kilograms. Five mainpuries were separated and sealed for chemical examination, while the rest were sealed in the same sack. The black Honda CD-70 motorcycle, model 2013, was also seized. Both accused admitted that they used to sell contraband material. Due to the absence of public witnesses, the complainant prepared the memo of arrest and recovery in his and PC Abdul Qayoom's presence, obtaining their signatures. Thereafter, they brought the accused and the recovered property to the police station, where the FIR was lodged. The witness confirmed the following exhibit:

- Exh.03/C (same as above) — Memo of Arrest and Recovery, bearing his signature.

In cross-examination, PC Subhan Ali stated that the police party first visited Digri Naka, Chambar Naka, and Bhitai Petrol Pump before proceeding to the place of incident, which was about 2 kilometers from the petrol pump and took 20–25 minutes to reach. He deposed that the accused were sighted from a distance of about 100 meters, attempted to turn back, but were caught immediately. He confirmed that all police officials jointly counted and sealed the recovered contraband, and the entire procedure, including memo preparation, took about 45 minutes. He admitted that 1–2 vehicles passed the scene, but they were not stopped or asked to act as witnesses. He signed the case property, memo, and envelope, and four seals were placed—one on the sack and three on the chemical sample. He could not recall the motorcycle's engine or chassis number but confirmed it was black and model 2013. He denied the defence suggestion that the recovery proceedings were fabricated or conducted at the police station and reaffirmed that the accused were arrested and recovery made at the spot as deposed.

PW-03 SIP Siraj Ahmed, the Investigating Officer, deposed that on 30.07.2021, while posted as SIP at PS Tando Ghulam Ali, ASI Ghulam Akbar Durani appeared at the police station and narrated the incident, upon which he lodged the FIR against the accused on the complainant's verbatim statement. The complainant then handed over to him the mashirnama of arrest and recovery, the accused, and the recovered case property for investigation. The I.O. stated that he deposited the recovered property in the malkhana through WHC Hadi Bux under entry No.77 of register No.19, and thereafter recorded the statements of the prosecution witnesses, the accused, and the WHC. On 02.08.2021, he sent the

chemical sample to the DHO Badin through PC Muhammad Aslam, who left the police station at 0850 hours vide entry No.05 and returned at 1820 hours vide entry No.16 with the receiving letter, which was handed over to him. He then recorded the constable's statement under Section 161 Cr.P.C. and, after completing the investigation, submitted the final report before the competent court. He produced various documents in evidence, including register entries, forwarding letters, and the food analysis report, and identified the accused and case property present in court as the same. He produced the following documents during his testimony:

- Exh.05/A — Entry No.77 of Register No.19 (showing dispatch of samples);
- Exh.05/B — Departure and Arrival Entries of PC Piyar Ali;
- Exh.05/C — Letter addressed to the DHO Badin for chemical analysis; and
- Exh.05/D — Food Analysis Report received from DHO/Public Health Laboratory.

In cross-examination, SIP Siraj Ahmed admitted that he did not weigh the recovered property during investigation as it had already been weighed by the complainant. He did not recall the exact date of receiving the chemical report but confirmed that upon taking over the investigation, he verified the property and found it consistent with the mashirnama, noting that the description on the case property had been made by the complainant except for the crime number. The property bore three seals. He acknowledged that he did not verify the seized motorcycle nor examine any private or independent witnesses during investigation, and no prior criminal record of the accused was found. He denied the defence suggestions that he failed to conduct a proper investigation or that the accused were innocent, maintaining that his investigation was properly carried out in accordance with procedure.

4. Thereafter, the statements of both Appellants were recorded under Section 342, Cr.P.C., at Exh.07 and Exh.08 respectively. In their statements, both accused denied all allegations, professed innocence, and asserted that they had been falsely implicated by the police. They further contended that the alleged recovery was foisted, and all witnesses were interested police officials, rendering the entire case doubtful. They also claimed that the chemical report was managed. Both accused chose not to examine themselves on oath under Section 340(2), Cr.P.C., nor did they produce any defence evidence or witness in rebuttal. Upon conclusion of trial, the learned Additional Sessions Judge, Matli, by judgment dated 22.07.2023, found the prosecution case proved beyond reasonable doubt, relying primarily on the consistent testimonies of police witnesses, the recovery of 1000 Manpuries, and the chemical examiner's report stating that the substance contained "hazardous ingredients". The learned trial Court convicted both appellants under Section 8 of the Sindh Prohibition Of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, and sentenced each to rigorous imprisonment for one year and to pay a fine of Rs.200,000/-, and in default thereof to further undergo simple imprisonment for two months, while

extending the benefit of Section 382-B, Cr.P.C. The trial Court observed that minor discrepancies in the prosecution evidence were immaterial, holding that police officials were competent and reliable witnesses, and that the defence had failed to establish any mala fides or animus against the accused. Feeling aggrieved and dissatisfied with the said conviction and sentence, the appellants preferred the present Criminal Appeal before this Court.

5. Learned counsel for the appellants, Mrs. Razia Ali Zaman Khan, contended that the prosecution case was riddled with legal and factual infirmities and failed to prove guilt beyond reasonable doubt. She argued that the entire case rested solely on the testimony of police officials, all of whom were interested and partisan witnesses, and that no independent or respectable person from the locality was associated at the time of alleged recovery, despite the occurrence having taken place on a public road near a petrol pump—a thickly populated area. The learned counsel submitted that no Malkhana entry, seal impression, or receipt of deposit of case property was produced, nor was the chain of custody established. She also emphasized that the chemical examiner's report was inconclusive, merely mentioning "hazardous ingredients" without specifying any chemical composition or confirming that the seized material fell within the statutory definition of "Manpuri" under the 2019 Act. It was further argued that there was no proof of conscious or exclusive possession, as the sack was merely lying between the accused on the motorcycle. She maintained that the alleged recovery was foisted due to prior exchange of hot words with police officials, that the trial court had misread and ignored material evidence, and that, in light of settled precedents of the Superior Courts, the appellants were entitled to benefit of doubt and consequent acquittal. Lastly, the learned counsel prayed for acquittal of the Appellants.

6. Conversely, Ms. Sana Memon, learned Assistant Prosecutor General Sindh, opposed the appeal and supported the impugned judgment. She contended that the prosecution witnesses were consistent, natural, and trustworthy, and their testimonies had withstood cross-examination without any material contradictions affecting the core of the prosecution case. It was argued that the recovery of a substantial quantity of contraband (1000 Manpuries) from the joint possession of both appellants stood duly proved through cogent oral and documentary evidence, and that minor discrepancies in timing or procedural details were inconsequential in the face of strong ocular and circumstantial proof. The learned A.P.G. maintained that police officials are competent witnesses, whose statements cannot be discarded merely because of their

official status, particularly in the absence of proof of animosity or malice against the accused. She further submitted that the chemical analysis report confirmed the presence of hazardous and prohibited ingredients, thereby substantiating the offence under Section 8 of the Act. It was urged that the learned trial court had rightly appreciated the evidence, applied correct legal principles, and recorded a well-reasoned conviction, which called for no interference by this Court; hence, the appeal was liable to be dismissed.

7. I have considered the arguments advanced by the learned counsel for the appellants and the learned Assistant Prosecutor General for the State, and have carefully evaluated the evidence available on record with their able assistance. It is a settled principle of criminal jurisprudence that the prosecution must establish guilt beyond reasonable doubt. Where the evidence, taken as a whole, creates any reasonable doubt, such doubt must be resolved in favour of the accused. The ratio laid down in **Tariq Pervez v. The State (1995 SCMR 1345)** is binding that benefit of doubt is not a concession but a legal right arising from the prosecution's own failure to discharge its burden. When recoveries are made in public places, the proper practice — and in many cases a statutory requirement under Section 103, Cr.P.C. — is to associate independent, respectable witnesses as mashirs. Failure to do so, without a plausible explanation, constitutes a serious infirmity that raises the possibility of foisting. Likewise, for a scientific report to carry probative value, the prosecution must prove the continuity of custody from the scene to the analyst, through documentation of seals, signatures, malkhana entries, dispatch and receipt particulars, and preservation of seal impressions where necessary. Further, for conviction under penal statutes targeting sale, manufacture, or storage of prohibited substances (such as Section 8 of the Sindh Prohibition Of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019), the prosecution must establish *conscious possession* coupled with *intent* to sell, manufacture, or store such substance. Mere proximity to a container, or a sack "lying between them", without more, is insufficient to establish constructive or exclusive possession or requisite *mens rea*. I now proceed to examine the testimonies of the witnesses, their cross-examination, and the documentary evidence in detail. The complainant's account forms the backbone of the prosecution case. He narrated the sequence of patrol, sighting, interception, counting, weighing, and sealing of the alleged contraband.

8. Section 8 of the Act (penal provision) criminalizes certain acts (preparation, manufacturing, storage, sale and use). To convict, the prosecution must establish beyond reasonable doubt: (i) that the seized material was covered by the statutory definition (i.e., it is gutka / Manpuri as per statutory description or recognized composition); and (ii) that the accused possessed the material with requisite *mens rea* — i.e., involved in sale, manufacture, storage or use; or was otherwise in conscious control such that the offence's elements are satisfied. Besides, the alleged incident occurred on 30.07.2021 and the recovery was effected on the same date, yet the sample was dispatched to the Chemical Laboratory on 02.08.2021 — after an unexplained delay of three days. The prosecution has offered no plausible explanation for this lapse. Such unexplained delay in forwarding the sample to the laboratory is a serious infirmity, as it creates doubt about the safe custody and integrity of the case property, and is therefore fatal to the prosecution case.

9. Criminal law demands that the cumulative weight of the evidence must be such that the guilt of the accused is the only reasonable inference arising from the established facts. In the present case, the prosecution evidence, when examined as a whole, reveals multiple material deficiencies. No private mashir was associated despite the recovery having taken place in a public area. The prosecution failed to produce any Malkhana entry or authenticated proof of the property's safe custody while in police possession. The dispatch and laboratory documents do not bear any acknowledgment or seal impression linking the analyzed sample to the same parcel allegedly recovered from the accused. The chemical examiner's report itself lacks adequate identification and methodological detail to inspire confidence. This principle has been reaffirmed by the Honourable Apex Court of Pakistan in ***Zahir Shar alias Shat v. The State through Advocate General Khyber Pakhtunkhwa (2019 SCMR 2004)***, wherein the Honourable Court held 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"*.

10. There is no credible evidence establishing *exclusive or conscious possession* of the contraband or the requisite *mens rea* for sale, manufacture, or storage of prohibited substances. A careful and circumspect appraisal of the prosecution evidence reveals several material contradictions, procedural irregularities, and evidentiary deficiencies, which collectively render the prosecution case highly doubtful.

11. In the circumstances, and applying settled criminal jurisprudence, the only just outcome is to acquit the appellants. The prosecution has not proved the charge under Section 8 of the Act beyond reasonable doubt. The impugned judgment dated 22.07.2023 of the learned Additional Sessions Judge, Matli, convicting and sentencing the appellants is hereby set aside. Criminal Appeal No. S-131 of 2023 is allowed. The conviction and sentence recorded against (i) Riaz Ali S/o. Hussain Ghelthro and (ii) Hadi Bux S/o. Ameer Bux Ghelthro by the learned Additional Sessions Judge, Matli, vide judgment dated 22.07.2023 are set aside.

12. Consequently, the appellants are acquitted of the charge by extending them benefit of doubt. The appellants are present on bail; their bail bonds and sureties stand discharged. These are the detailed reasons for the short order announced on 07.10.2025.

JUDGE