

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-87 of 2024

BEFORE:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Syed Rais Shah s/o Syed Peeran Shah @ Raheem Shah
Through Mr. Rukhsar Ahmed Junejo, Advocate

The State : *Through* Mr. Shafi Muhammad Mahar, DPG

Date of hearing : 09.12.2025

Date of Judgment : 13.01.2026

JUDGMENT

KHALID HUSSAIN SHAHANI, J. This appeal is directed against the judgment dated 24th July 2024, passed by the learned Additional Sessions Judge (MCTC), Mirwah, in Special Case No.210 of 2023, Re-(*The State v. Syed Rais Shah*), whereby the appellant was convicted for an offence punishable under Section 9 (3) (c) of the Control of Narcotic Substances Act, 1997 (as amended in 2022). He was sentenced to undergo Rigorous Imprisonment for ten (10) years and to pay a fine of Rs.100,000/-, and in default of payment of fine, to suffer further Simple Imprisonment for six months. The benefit of Section 382-B Cr.P.C. was extended to him.

2. The prosecution case, as unfolded in the F.I.R (No.88/2023) registered at Police Station Faiz Ganj, is that on 08.05.2023, a police party headed by ASI Sajjan Khan Mashori (complainant) along with his subordinate staff, including PC Hussain Ali Shar and PC Lal Muhammad, was on patrolling duty. At about 1300 hours, when the police party reached near Magsi Bridge of Veeho Canal on a *katcha* path leading from Muhammad Shah Stop, they spotted a person coming from the southern bank of the canal carrying a black plastic shopper. Upon seeing the police vehicle, the said person became confused and attempted to flee. The police party stopped their vehicle, chased him for about 15-20 paces, and apprehended him. On inquiry, the apprehended person disclosed his identity as Rais Shah. The complainant, due to the non-availability

of private witnesses at that isolated place, associated his subordinate constables PC Hussain Ali and PC Lal Muhammad as mashirs (witnesses) of arrest and recovery. Upon searching the black shopper recovered from the appellant's right hand, the police found four pieces of *Charas*. The *charas* was weighed on the spot using a digital scale brought from the investigation kit, and it weighed 1600 grams. A sample was drawn for chemical analysis, and the property was sealed on the spot. During personal search, a currency note of Rs.100 was also recovered. The accused was arrested, brought to the police station, and the F.I.R. was lodged.

3. At the trial, the prosecution examined four witnesses to substantiate the charge. PW-1 SIP Muhammad Sulleman (Investigating Officer) deposed regarding the investigation conducted by him, including the inspection of the place of incident, recording of statements, and dispatching the sample to the chemical examiner. He produced the Chemical Examiner's report (Ex. 4/G), which confirmed the substance as *Charas*. PW-2 ASI Sajjan Khan (Complainant) and PW-3 PC Hussain Ali (Mashir) gave ocular accounts of the arrest and recovery. PW-4 ASI Liaquat Ali deposed regarding the safe custody of the contraband in the *Malkhana*. The appellant, in his statement under Section 342 Cr.P.C., denied the allegations, claiming false implication, but did not opt to examine himself on oath or lead defense evidence.

4. Mr. Junejo, learned counsel for the appellant, vehemently argued that the judgment of the trial court is based on the testimony of police officials who are subordinates of the complainant and thus interested witnesses. He contended that the incident allegedly occurred at 1300 hours (daytime) at a public place (Magsi Bridge), yet no independent private witness was associated, violating the spirit of fair investigation. He pointed out contradictions in the depositions of the prosecution witnesses regarding the color of the appellant's clothes and the exact manner of arrest. He further argued that the "*dim foot marks*" mentioned by the I.O contradicted the mashir's claim of visible

footprints, casting doubt on the presence of the witnesses at the spot. He prayed for acquittal, asserting that the benefit of doubt must go to the accused.

5. Conversely, Mr. Shafi Muhammad Mahar, learned Deputy Prosecutor General, supported the impugned judgment. He argued that under Section 25 of the CNS Act, the exclusion of Section 103 Cr.P.C, allows police officials to be competent witnesses, especially when the arrest is made at a place where private witnesses are not readily available or willing to join. He submitted that the recovery of a substantial quantity (1600 grams) of *Charas* cannot be foisted falsely upon a person without any proven animosity. He emphasized that the minor contradictions highlighted by the defense do not shatter the core veracity of the prosecution case, and the positive report of the Chemical Examiner corroborates the ocular testimony.

6. Heard the arguments of the learned advocates for the parties and perused the record. The prosecution examined four witnesses: (i) SIP Muhammad Sulleman (I.O), (ii) ASI Sajjan Khan Mashori (complainant/recovery officer), (iii) PC Hussain Ali (mashir), and (iv) ASI Liaquat Ali (malkhana witness). No private witness was associated at any stage. Although the law does not treat non-association of private witnesses as *automatically* fatal, the corollary is that where the prosecution relies solely on official witnesses, the Court must insist upon strict compliance of safe-custody/chain-of-custody requirements and careful scrutiny of consistency, because the conviction practically rests on the integrity of police procedure and contemporaneous record.

7. The complainant supported the FIR and memo in examination-in-chief. However, the cross-examination contains significant omissions/admissions which were not discussed in the impugned judgment. The prosecution claimed a patrol departure via *roznamcha* entry No.10, but the complainant admitted he does not remember critical timings: time of arrival at Muhammad Shah stop; time of capture; time of departure from place of

incident; time of arrival at PS; and he cannot say whether entry was made first or FIR recorded first, nor within what time the entry and FIR were recorded. This is not a trivial omission: in a patrol-based recovery, departure/arrival timings are the objective contemporaneous check on whether the raiding party was where it claims to be.

8. In examination-in-chief he asserted preparation of the mashirnama; yet in cross-examination he admitted that *PC Lal Bux authored memo of recovery* and that the memo was prepared on a clipboard at the spot. The prosecution did not examine the alleged scribe of the memo. This becomes relevant because where the memo is authored by someone other than the complainant, the Court must test whether the document is truly contemporaneous or a post-event managed paper.

9. The complainant claimed he “*looked around*” but did not go towards village Magsi to call private witnesses, while admitting village Magsi exists on the northern side (at some distance). This is not merely “*non-association*”; it is an admission that no serious effort was made to procure independent corroboration despite the presence of nearby locality. When the entire case is built on subordinates of the complainant, the absence of serious effort assumes importance. The complainant stated colour of *charas* was “*light black*” yet admitted the produced *charas* appeared brownish. He could not recall whether pieces were equal size, while the mashir gives a different stance (discussed below). In narcotics cases, the Court is not to treat every discrepancy as immaterial; rather, discrepancies concerning description/handling/sealing become significant when the chain of custody is also challenged.

10. PW-3 generally supported the complainant, but his cross-examination introduces further contradictions and uncertainty:

- *He stated distance between Muhammad Shah stop and Magsi bridge is “less than half KM,” whereas the complainant could not state the distance and also made different assertions regarding the area between the stop and bridge.*

- *He stated “size of all pieces of Charas were equal” but simultaneously admitted it is correct that the pieces are different in size, and also admitted the produced charas is brown.*
- *He placed the police vehicle at 15–20 paces from the arrest point, while the complainant could not say the distance of the vehicle from place of arrest.*

These are not peripheral contradictions. They go to the very scene mechanics (distance, position, opportunity for independent witnesses) and the identity/description of the recovered substance, which is the heart of a possession case.

11. Even if the ocular account is accepted at face value, a conviction under section 9(c) cannot safely stand unless safe custody and safe transmission are proved through credible oral evidence plus the proper contemporaneous record (Register No.XIX /relevant *roznamcha*/road certificate chain), which is not produced.

12. PW-4 says property was received at about 1400 hours and that it was handed over to him while FIR was being recorded. On the other hand, PW-1 (I.O) states complainant handed over case papers/property to him at about 15-20 hours. This inconsistency creates doubt as to *who first had custody after registration, and at what time the property entered official safe custody*. PW-1 admitted the original Register No.19 was not produced. In narcotics jurisprudence, the Courts repeatedly hold that where the prosecution fails to establish safe custody through the proper *malkhana* register mechanism, the chemical report becomes unsafe to sustain conviction because the possibility of tampering/substitution cannot be eliminated. The I.O says he deposited case property at Rohri and does not remember the name/designation of the person who received it at the chemical examiner's office. The prosecution also did not produce evidence of seal impression comparison in a manner that eliminates doubt. The chemical examiner report being positive does not cure a compromised chain; the report only proves the nature of the sample received, not that it is the same sample recovered from the accused. Apart from the above, the followings are also noted the key contradictions;

Issue	PW-2 ASI Sajjan (Complainant/Recovery)	PW-3 PC Hussain (Mashir)	Why it matters
Distance scene particulars	Could not state key distances (e.g., vehicle distance from arrest), did not go to village to call mashirs.	Gave specific distances (e.g., vehicle 15–20 paces; bridge less than half KM from stop) but uncertain on other core details.	Scene mechanics affect credibility and possibility of independent corroboration.
Memo preparation	Claimed preparation, but admitted memo authored by PC Lal Bux; scribe not examined.	Signed memo; did not clarify scribe issue.	Raises doubt whether memo is truly contemporaneous or managed.
Description of <i>charas</i>	Colour “light black” but admitted produced appears brownish.	Said colour black; admitted produced brown; said pieces equal yet also admitted suggestion pieces are different.	Identity/description contradictions matter especially when chain of custody is questioned.
Timings diary sequence	Did not remember arrival/departure times; cannot say whether entry or FIR recorded first or the time gap.	also could not recall many times.	Missing objective check on patrol-based recovery.
Custody timeline	Says handed to IO; unsure of exact time.	—	Coupled with PW-1/ PW-4 inconsistencies, breaks safe custody clarity.

13. The Honorable Superior Courts have repeatedly emphasized that the chain of custody begins from seizure, includes deposit in malkhana register (Register XIX) as per Police Rules, and the secure dispatch to the laboratory; any break/gap renders the chemical report unreliable for conviction. This principle has been reiterated in the context of Sindh appeals as well, including that the harsher the sentence, the stricter the standard of proof, and missing links in safe custody/safe transmission must go to the accused. The impugned judgment proceeds on generalized reasoning: that witnesses were “unshaken” and that contradictions are “minor,” without examining the specific admissions and inconsistencies noted above (memo authorship, uncertain timings, no meaningful effort for independent mashirs despite locality, conflicting description/colour/size, and inconsistent custody timeline). Such a disposal is not a lawful appraisal of evidence required in criminal cases, particularly where

the conviction is based entirely on official witnesses and procedural compliance is the real guarantor of fairness.

14. The settled principle is that for giving benefit of doubt it is not necessary that there be many circumstances; even a single circumstance creating reasonable doubt entitles the accused to acquittal as of right. In the present case, doubts arise cumulatively from uncertain/unsupported patrol timings and unclear sequence of entry/FIR; contradiction regarding the author and contemporaneity of the recovery memo; internal contradictions about the scene and the recovered substance; inconsistent chain-of-custody timeline and non-production of original malkhana record and consequent inability to rely on chemical report as a conclusive link between accused and the examined sample.

15. Accordingly, the prosecution has failed to prove the charge beyond reasonable doubt. For the foregoing reasons, the appeal merits acceptance; the impugned judgment dated 24.07.2024 is set aside as not being in accordance with law and proper appreciation of evidence. The appellant/accused is acquitted of the charge by extending him the benefit of doubt. He shall be released forthwith if not required in any other case.

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