IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-89 of 2024

BEFORE:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Appellant	:	Tauheed Raza son of Manzoor Hussain, Pathan *Through* M/s Rukhsar Ahmed M. Junejo and Aijaz Ahmed A. Puno, Advocates
The State	:	Through Mr. Shafi Muhammad Mahar, DPG
Date of Hearing	:	09.12.2025
Date of Judgment	:	13.01.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. Appellant Tauheed Raza has called in question the vires of the judgment dated 08.08.2024, passed by the learned Additional Sessions Judge-I/Special Judge for Control of Narcotic Substances (MCTC), Khairpur, in Special Case No.316 of 2023, arising out of Crime No.207/2023, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997, registered at Police Station B-Section, Khairpur,. By the impugned judgment, the learned trial Court convicted the appellant for the said offence and sentenced him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.100,000/-, and in default of payment of fine, to suffer simple imprisonment for six months more. The benefit of Section 382-B Cr.P.C was extended to the appellant.

2. Brief facts of the prosecution case as unfolded in the FIR are that on 04.06.2023 at 1800 hours, a police party headed by ASI Abdul Ghaffar Phulpoto, while on patrolling duty, apprehended the appellant at the Link Road leading from Village Jan Muhammad Janwari to Sarkhi Moar, near the Water Park within the remits of PS B-Section, Khairpur. It is alleged that upon personal search, the police recovered a black colored plastic shopper from the right hand of the accused containing 1500 grams of Charas in the shape of seven pieces. A cash amount of Rs.100/- was also recovered. The police sealed the

recovered contraband on the spot, prepared a memo of arrest and recovery in the presence of mashirs PC Sikandar Ali and PC Khadim Hussain. Consequent upon; case was registered inter alia on the above facts.

3. After completion of the investigation, the police submitted a challan against the accused. The learned trial Court framed the charge, to which the accused pleaded not guilty and claimed trial. To prove its case, the prosecution examined four witnesses: PW-1 Complainant ASI Abdul Ghaffar, PW-2 HC Ghulam Nabi (Malkhana In-charge), PW-3 Mashir PC Sikandar Ali, and PW-4 S.I.P Kaleemullah (Investigation Officer). The prosecution also produced documentary evidence including the FIR, mashirnama of arrest and recovery, road certificate, and the report of the Chemical Examiner. The statement of the accused was recorded under Section 342 Cr.P.C, wherein he denied the allegations and claimed false implication. He, however, did not examine himself on oath under Section 340(2) Cr.P.C nor produced any defense witness. Thereafter the learned trial court heard the parties and convicted the appellant as per the above sentences.

4. Learned counsel for the appellant contended that the judgment of the trial Court is contrary to the law and facts on record. He argued that there is a fatal delay of 8 days in sending the representative samples to the office of the Chemical Examiner without plausible explanation, which violates the mandatory provisions of Rule 4 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, and breaks the chain of safe custody. He further submitted that the alleged recovery was effected from a public place, specifically near a "Water Park" during daylight hours at 1800 hours, yet no independent private witness was associated, casting serious doubt on the transparency of the raid. The learned counsel pointed out material contradictions in the depositions of the police officials regarding the mode of transport, the direction of patrolling, and the particulars of the private vehicle

used by the Investigation Officer, which suggests that the proceedings were conducted at the police station rather than at the spot. He prayed for the acquittal of the accused.

5. Conversely, the learned Additional Prosecutor General for the State supported the impugned judgment, contending that the police officials are competent witnesses and their testimony cannot be discarded merely because they belong to the police force. He argued that the huge quantity of 1500 grams of Charas could not be foisted upon the accused and the positive report of the Chemical Examiner corroborates the ocular account. He prayed for the dismissal of the appeal.

6. We have carefully heard the arguments advanced by both sides and have minutely perused the evidence and the record with their assistance.

7. It is a settled principle of criminal jurisprudence that in cases entailing severe punishments, such as under Section 9(c) of the Control of Narcotic Substances Act, the standard of proof required is far more stringent. The prosecution is duty-bound to prove every link of the chain from the moment of apprehension and recovery to the safe custody and transmission of the samples beyond a shadow of reasonable doubt. Where the case rests entirely on the testimony of police officials, the Court must exercise a higher degree of caution to ensure that the procedural safeguards have been strictly adhered to, lest the liberty of a citizen be curtailed on manufactured evidence.

8. The pivotal question for determination is whether the prosecution has succeeded in establishing the guilt of the appellant Tauheed Raza beyond reasonable doubt. A re-appraisal of the ocular account furnished by the prosecution witnesses reveals glaring contradictions and material discrepancies that shatter the confidence of this Court in the veracity of the police proceedings.

9. There is material inconsistency emerges from the description of the recovered contraband itself. The complainant (PW-1 Abdul Ghaffar) in his

examination-in-chief categorically stated that from the shopper *"07 big and small pieces of charas" were recovered,* and PW-3 Sikandar Ali, the mashir, in his examination-in-chief repeated the same description that *"07 big and small pieces of charas" were recovered from the shopper.* However, the Chemical Examiner's report (Ex.6-E) describes the received sample as *"seven small black-brown coloured pieces kept in black plastic shopper,"* without any mention of "big and small" pieces as consistently claimed by both star witnesses. This mismatch between the ocular account and the forensic description, when seen alongside the already-noted defects in safe custody and delay, further weakens the link between the alleged recovery at the spot and the sample actually examined in the laboratory, and reinforces the reasonable doubt about the identity of the case property.

10. Further doubt is cast by the admission of the Investigating Officer regarding the landmarks. The F.I.R. (Ex.3D) and the Complainant (PW-1) specifically mention that the arrest was made "near Water Park". However, the I.O (PW-4), who claims to have visited the site on 05.06.2023 to prepare the visual site plan, admitted in cross-examination: "I do not know whether any water park situated adjacent to the place of incident." It is inconceivable that an Investigating Officer would visit a specific spot to draw a site plan and fail to notice the very landmark (Water Park) used to describe the location in the FIR. This admission strongly suggests that the site inspection was a table-work exercise, further denting the credibility of the investigation.

11. Admittedly, the incident occurred at 1800 hours (daytime) at a public thoroughfare (Link Road near Water Park). PW-1 admitted that sunlight was visible. While Section 25 of the CNS Act excludes the strict application of Section 103 Cr.P.C, it does not absolve the police of their duty to make a genuine effort to associate independent witnesses when they are available, to lend credence to their actions. PW-1 admitted the village Jan Muhammad

Janwari is only 1 kilometer away. PW-3 admitted they waited only "one or two minutes" for private mashirs. PW-4 admitted he tried to associate private mashirs for "05-07 minutes" but found none. Given that the recovery was made near a "Water Park" and a village in broad daylight, the complete absence of any private individual, or even a genuine effort to summon one from the nearby village, makes the police version highly suspect. The stereotyped excuse of "non-availability" cannot be accepted as gospel truth in such circumstances.

12. The most critical infirmity in the prosecution case is the breach of safe custody and the unexplained delay in transmitting the samples to the Chemical Examiner. The recovery was allegedly effected on 04.06.2023. The sample was dispatched to the laboratory on 12.06.2023, a delay of 08 days. The explanation offered by the IO (PW-4) that he was "busy in investigation of other cases" and that there were "two days holidays" is wholly unsatisfactory. Two days of holidays do not account for an 8-day delay. The law laid down by the Honourable Supreme Court in the cases of *Mst. Sakina Ramzan v. The State* (2021 SCMR 451) and *Qaiser Khan v. The State* (2021 SCMR 363) is clear: the chain of custody must be unbroken and safe custody must be proved positively.

13. Furthermore, there is a discrepancy in the custody timeline. PW-2 (WHC Ghulam Nabi) claims he received the property on 04.06.2023. However, the IO stated he took the property himself on 12.06.2023. The prosecution failed to produce the Road Certificate movement register or the specific Register No. 19 entry showing the movement of the property out of the *Malkhana* and into the hands of the IO on the specific date of dispatch. In the absence of positive evidence regarding where and with whom the samples remained during those 8 days, it cannot be said with certainty that the samples were not tampered with. This break in the chain of custody renders the Chemical Examiner's report (Ex.6/E) unreliable for the purpose of conviction.

14. Another relevant circumstance is the admitted non-use of modern devices by the police party. The complainant (PW-1) candidly admitted in cross-examination that at the time of the alleged recovery he was carrying an android mobile phone, yet he neither took any photographs nor recorded any video of the arrest or recovery, despite the fact that the incident allegedly occurred at 1800 hours in daylight near a Water Park on a public link road. Similar is the position of PW-3, who confirmed that the police party was equipped with such a device but offered no plausible explanation why no visual record was made of such a "huge" recovery. The Supreme Court in *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) has already underscored that, in narcotics cases, police and ANF personnel should routinely use their mobile phone cameras to record searches, seizures and arrests, as such visual evidence materially enhances transparency, credibility and public confidence in the prosecution version. In the more recent line of cases, including *Muhammad Abid Hussain v. The State* (2025 SCMR 721), the apex Court has gone further to stress that in serious narcotics prosecutions, failure to preserve the search and recovery proceedings through video/photographic documentation, despite the ready availability of smartphones, is a factor that renders the prosecution's story suspect and attracts an adverse inference about the genuineness of the alleged recovery. Applying these principles to the present matter, where (a) the police themselves admit having an android phone, (b) no visual record was made or produced, and (c) other material contradictions already exist in the ocular account and chain of custody, the omission to use available video/photographic technology further erodes the reliability of the prosecution case and reinforces the benefit of doubt in favour of the appellant.

15. The cumulative effect of the major contradiction regarding the distance of the place of incident, the IO's ignorance of the key landmark (Water Park), the lack of independent corroboration despite opportunity, and the

significant, unexplained delay of 8 days in sending the samples to the laboratory and non shot of video or photographs regarding arrest, recovery and seizure creates serious doubts in the prosecution case. It is a settled principle of law that for the benefit of doubt to be extended to an accused, it is not necessary that there be many circumstances creating doubt; if there is a single circumstance which creates reasonable doubt in a prudent mind, the accused is entitled to the benefit thereof as a matter of right, not of grace.

16. Consequently, we are of the candid opinion that the prosecution has failed to prove the charge against the appellant beyond a reasonable doubt. The impugned judgment is not in consonance with the evidence on record and the law laid down by the superior Courts. It is a golden principle of criminal administration of justice that if there is any doubt in the prosecution case, the benefit of such doubt must go to the accused as a matter of right and not as a concession. A single circumstance creating reasonable doubt is sufficient to earn an acquittal. In the present case, the delay of 8 days in the transmission of samples to the laboratory without a plausible explanation breaks the chain of safe custody, rendering the Chemical Examiner's report unsafe to rely upon for a conviction carrying a sentence of ten years. The prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt.

17. For the foregoing reasons, this appeal is allowed. The impugned judgment dated 08.08.2024 passed by the learned Additional Sessions Judge-I/ Special Judge for CNS (MCTC), Khairpur, in Special Case No.316 of 2023 is set aside. The appellant Tauheed Raza Pathan is acquitted of the charge. He shall be released from custody forthwith if not required in any other custody case.

J U D G E

J U D G E