

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Appeal No.226 of 2025
Criminal Appeal No.259 of 2025
Criminal Jail Appeal No.160 of 2025
Criminal Jail Appeal No.349 of 2025**

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**Present:- Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi**

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Appellants: Muhammad Saleem son of Abdul Rasheed through M/s Liaquat Ali and Shafiq Ahmed, advocates in Criminal Appeal No.226 of 2025
Sikandar son of Yaseen Khan through Mr. Muhammad Immad Qamar, advocate in Cr. Appeal No.259 of 2025
Muhammad Ahmed Khan s/o Muzzamil Shah Afridi and Syed Wali s/o Nawab Khan through Ms. Farah Khan, advocate in Cr. Jail Appeals 160 and 349 of 2025

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh

Date of hearing **14.04.2026**

Date of reasons: **07.05.2026**

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J U D G M E N T

SHAMSUDDIN ABBASI, J.- Appellants Muhammad Saleem, Sikandar, Syed Wali and Muhammad Ahmed Khan were tried by learned Additional Sessions Judge-II, Karachi West in Special Cases Nos.290 and 297 of 2024, arising out of FIR No.119 of 2024, registered at P.S. SIU for offence under Sections 6/9(1)(3)(d) of the Control of Narcotic Substances (Amendment) Act, 2022. After full-dressed trial, vide judgments dated 24.02.2025, appellants were convicted under section 9(1)3(d) of the Control of Narcotic Substances (Amendment) Act, 2022 and sentenced to fourteen (14) years R.I. and to pay fine of Rs.400,000/-, in default whereof to undergo S.I. for six (6) months more with benefit of section 382-B of Cr.P.C.

2. Short but relevant facts of the case are that on 16.06.2024 at about 0100 hours, appellants were arrested from Vehicle Suzuki Every bearing Registration No.CW-0586 by police and recovered black shoppers lying on the laps of each accused containing charas wrapped with yellow tax,

weighing 5140, 5505 and 5490 grams charas whereas from juvenile offender namely Muhammad Ahmed Khan police recovered 5270 grams charas. Hence the subject FIR.

3. After completing all the formalities, report under section 173, Cr.P.C. was submitted before the concerned Court and the Charge was framed at Ex.2, to which the appellants pleaded not guilty and claimed to be tried.

4. At trial, prosecution examined PW-1/complainant ASI Muhammad Azam Khan at Ex.3, PW-2 PC Sher Zaman at Ex.5, PW-3/HM Wasi Syed Zia Abbas at Ex.6, PW-4/IO SIP Muhammad Waseem at Ex.7. Thereafter, prosecution side was closed vide statement at Ex.8.

5. Statements of accused under Section 342, Cr.P.C. were recorded, wherein they denied the prosecution allegations and claimed their false implication in the instant case. However, neither they opted to be examined themselves on oath nor they led any evidence in disproof of prosecution allegations.

6. It is jointly contended on behalf of the appellants that they are innocent and have been falsely implicated in the present case due to malafide intentions and ulterior motives having no nexus whatsoever with the alleged offence and have been victim of the circumstances. It is next submitted that there is unexplained delay of four days in sending the sample to the office of the Chemical Examiner, which casts serious doubt upon the safe custody of the case property as well as its secure transmission. It is also contended that the entry in Register No.19 is doubtful and to that extent the benefit must be extended to the appellants. It is argued that the prosecution witnesses have contradicted each other on material particulars thereby impairing the credibility of the prosecution case. Moreover, no cogent and reliable evidence has been brought on record to establish the safe custody and safe transmission of the case property to the Chemical Examiner rendering the report unreliable particularly in view of the admitted delay. Lastly, it is submitted that the impugned judgment suffers from misreading and non-reading of evidence, contrary to the settled principles laid down by the Hon'ble Supreme Court and reflects non-application of judicial mind. Consequently, the convictions and sentences awarded to the appellants are

unsustainable in the eyes of law and are liable to be set aside and the appellants deserve to be acquitted of the charge.

7. On the other hand, the learned Additional Prosecutor General has opposed the appeal and supported the impugned judgment contending that the prosecution has successfully established its case against the appellants beyond any shadow of doubt through cogent, consistent and confidence inspiring evidence. It is next submitted that alleged recovery of charas from the possession of the appellants has been proved through reliable evidence furnished by the prosecution witnesses, whose testimonies remain unshaken during cross-examination. With regard to the delay in sending the samples to the office of the Chemical Examiner, it is contended that such delay, in the absence of any evidence of tampering or misappropriation, is not sufficient to discard the prosecution case. It is also submitted that the prosecution has duly established the safe custody of the case property as well as its safe transmission to the Chemical Examiner through the relevant entries and testimonies, and the report of the Chemical Examiner fully corroborates the prosecution version. He maintains that the impugned judgment is well-reasoned, based on proper appreciation of evidence and in accordance with settled principles of law laid down by the superior Courts. Lastly, it is contended that the appellants have failed to point out any material illegality or irregularity in the impugned judgment warranting interference by this Court. Therefore, the appeal being devoid of merit is liable to be dismissed and the conviction and sentence awarded to the appellants are liable to be maintained.

8. We have given our anxious consideration to submissions of respective parties and perused the entire material available on record with the able assistance.

9. The prosecution case when subjected to careful judicial scrutiny appears to be suffering from inherent defects and material legal infirmities which go to the root of the matter and render the entire prosecution story highly doubtful. The appellants were alleged to have been apprehended on 16.06.2024 at about 1:00 am while each of them was allegedly carrying more than 5000 grams of charas in shoppers placed on their laps. Though the occurrence is stated to have taken place at odd hours of night and the

police allegedly succeeded in apprehending the appellants on the spot along with substantial quantity of narcotics, yet admittedly no private person from the locality was associated in the recovery proceedings despite availability of sufficient opportunity. The entire prosecution case thus rests solely upon the testimony of official witnesses whose testimony in the peculiar facts and circumstances of the case required strict corroboration from independent and unimpeachable circumstances particularly when the appellants consistently pleaded false implication.

10. The most fatal flaw in the prosecution case pertains to the complete failure of the prosecution to establish safe custody and safe transmission of the alleged recovered narcotics to the office of the Chemical Examiner through an unbroken and legally reliable chain of custody. The law is by now well settled that in narcotics cases, where conviction primarily depends upon the report of the Chemical Examiner, the prosecution is under obligation to establish beyond doubt that from the moment of recovery till the receipt of the sample by the Chemical Examiner, the case property remained in safe, secure and un-tampered custody. Every movement of the case property must be affirmatively proved through trustworthy evidence and any missing link in such chain becomes fatal to the prosecution case.

11. In the case in hand, the prosecution evidence itself reveals that immediately after the alleged recovery, the case property was brought to the police station and deposited in the Malkhana vide entry No.130/2024 in Register No.19. It is further the case of the prosecution that on 17.06.2024, the Investigating Officer, SIP Muhammad Waseem, obtained the case property from the Malkhana for onward transmission to the office of the Chemical Examiner. However, significantly, no corresponding entry exists in Register No.19 showing that the narcotics were actually deposited in the office of the Chemical Examiner on that date. The record further reveals that the samples ultimately reached the office of the Chemical Examiner on 20.06.2024, i.e., after an unexplained delay of four days from the alleged recovery and about three days after the date on which the Investigating Officer allegedly took custody of the same from the Malkhana. The entire record is silent regarding the whereabouts of the narcotics during this crucial intervening period, and no evidence

whatsoever has been produced to establish as to in whose custody the parcels remained from 17.06.2024 till 20.06.2024.

12. The Head Moharrar of the police station, ASI Syed Zia Abbas, appeared as PW.3 at Exh.6 and deposed that he had deposited the case property in the Malkhana vide entry No.130/2024 in Register No.19 on 16.06.2024. He further deposed that on 17.06.2024 he handed over the case property to the Investigating Officer, SIP Muhammad Waseem, for depositing the same in the office of the Chemical Examiner. He also stated that due to Eid holidays, the Investigating Officer returned the case property for keeping it in the Malkhana and that on 20.06.2024 he again handed over the property to the Investigating Officer for depositing the same in the office of the Chemical Examiner. The record, however, does not reflect that the case property was ever re-deposited in the Malkhana, nor has any entry been produced showing such re-deposit on 17.06.2024. Moreover, no entry is available in Register No.19 showing that the case property was taken out from the Malkhana on 20.06.2024. This fact has been admitted by PW.3 during his cross-examination wherein he stated that, *"It is correct to suggest that the said entry bearing Serial No.130/2024 of Register No.19 does not reveal handing over of the said parcel to the Investigating Officer for depositing the same with the Chemical Examiner on 20.06.2024."* We have also perused entry No.130/2024, available at page 77 of the record, which does not show that the case property was re-deposited on 17.06.2024 or subsequently taken out from the Malkhana on 20.06.2024. These glaring omissions materially undermine the prosecution case and render the alleged safe custody and safe transmission of the narcotics highly doubtful. The august Supreme Court of Pakistan has consistently held that any break in the chain of custody of narcotics renders the prosecution case doubtful and no conviction can safely be maintained on such defective evidence. In the case of *Ikramullah and others v The State (2015 SCMR 1002)*, the Hon'ble Supreme Court emphatically held that where safe custody of narcotics and safe transmission of samples to the laboratory are not established through confidence inspiring evidence, the benefit thereof must go to the accused. The same principle has been reiterated in the cases of *Amjad Ali v The State (2012 SCMR 577)*, *The State through Regional Director ANF v Imam Bakhsh and others (2018 SCMR 2039)*, *Mst. Razia Sultana v. The State (2019 SCMR*

1300) and Qaiser Khan v. The State (2021 SCMR 363). Recently, in the case of *Said Wazir and another v The State* (2023 SCMR 1144) and *Lal Jan v The State* (2023 SCMR 1009), the august Supreme Court once again reiterated that unexplained delay in transmission of sample parcels and non-production of the officials connected with custody and transportation of the samples constitute fatal defects which strike at the root of the prosecution case.

13. Equally significant is the circumstance regarding delay in lodging the FIR. The occurrence is alleged to have taken place at 1:00 am whereas the FIR is said to be registered at 3:00 am. The prosecution has failed to furnish any plausible explanation for such delay despite the admitted fact that the police party had already arrested the appellants and secured alleged contraband on the spot. In criminal jurisprudence, FIR occupies a pivotal position because it sets the criminal law into motion and reflects the earliest version of the occurrence. Unexplained delay in its registration creates a strong presumption that the time was consumed in deliberation, consultation and fabrication. In the case of *Zeeshan @ Shani v. The State* (2012 SCMR 428), the Hon'ble Supreme Court held that even delay of more than one hour in lodging the FIR may indicate that the occurrence had not taken place in the manner alleged by the prosecution and that the prosecution story was given a fabricated shape after due deliberation.

14. It is also noteworthy that the prosecution evidence is wholly devoid of any independent corroboration. The alleged recovery has been shown to have been effected from shoppers lying on the laps of the appellants, yet no sincere effort appears to have been made by the police to associate any independent person of the locality in the recovery and mashirnama proceedings despite availability of sufficient opportunity. The incident is alleged to have taken place at a place accessible to the public and there is nothing on record to suggest that the area was deserted or that no private persons were available at or near the place of occurrence. Even otherwise, the prosecution witnesses themselves admitted that no private witness was requested through lawful process nor was any explanation furnished for their non-association. Such omission on the part of the prosecution assumes considerable significance particularly in narcotics cases carrying severe punishments where transparency and fairness in the recovery proceedings are of paramount importance.

15. The law is trite that suspicion, however grave, cannot take the place of proof. It is equally settled that in criminal cases the burden squarely rests upon the prosecution to prove its case beyond shadow of reasonable doubt and this burden never shifts. The accused carries no obligation to prove innocence. If any single circumstance creates reasonable doubt in a prudent mind regarding the guilt of the accused, then such doubt must necessarily be resolved in favour of the accused as a matter of right and not of concession. In the celebrated case of *Riaz Masih alias Mithoo v. The State* (1995 SCMR 1730), the Hon'ble Supreme Court authoritatively held that for extending benefit of doubt, it is not necessary that there should be multiple infirmities in the prosecution case; even a single circumstance creating reasonable doubt is sufficient to acquit the accused. The same principle has repeatedly been reaffirmed by the Hon'ble superior Courts. Likewise, it is a well settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial, for which the prosecution is bound to establish its case against the accused beyond shadow of any reasonable doubt by producing confidence inspiring and trustworthy evidence. It is a cardinal principle of administration of justice that in criminal cases the burden to prove its case rests entirely on the prosecution. The prosecution is duty bound to prove the case against accused beyond reasonable doubt and this duty does not change or vary in the case in which no defence plea is either taken or established by the accused and no benefit would occur to the prosecution on that account and its duty to prove its case beyond reasonable doubt would not diminish. The prosecution has not been able to bring on record any convincing evidence against appellant to establish his involvement in the commission of offence charged with beyond shadow of reasonable doubt. Rather, there are so many circumstances, discussed above creating doubts in the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the

Islamic Law and is enforced strictly in view of the saying of the **Holy Prophet (PBUH)** that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".

16. Having given our anxious consideration to the entire evidence available on record and having reappraised the same in its true legal perspective, we are persuaded to hold that the prosecution has failed to establish an unbroken, unimpeachable and confidence inspiring chain of evidence connecting the appellants with the alleged recovered narcotics. The unexplained delay in transmission of the samples to the office of the Chemical Examiner, failure of the prosecution to prove safe custody and safe transmission of the case property, non-production of material witnesses connected with the custody and transmission of the narcotics, absence of independent corroboration despite availability of private witnesses and the unexplained delay in registration of the FIR, cumulatively create serious dents in the prosecution case and render the same wholly unreliable and unsafe for sustaining conviction. The prosecution has thus failed to establish the guilt of the appellants beyond shadow of reasonable doubt.

17. The epitome of whole discussion gives rise to a situation that the appellants have been convicted without appreciating the evidence in its true perspective, rather the prosecution case is packed with various discrepancies and irregularities, which resulted into a benefit of doubt to be extended in favour of the appellants. Accordingly, the convictions and sentences recorded by the learned trial Court through impugned judgments dated 24.02.2025 are set-aside and the appellants are acquitted of the charges by extending them the benefit of doubt. They shall be released forthwith if not required to be detained in connection with any other case.

18. Foregoing are the reasons for our short order, announced in open Court on 14.04.2026, whereby the instant appeals were allowed.

JUDGE

JUDGE