

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.D-89 of 2024

Before:

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Shahzado alias Abdul Majeed son of Pholo Khan alias Phulan Manghanhar, Through Ms. Fareeda Naz, Advocate.

The State: Ms. Rameshan Oad, D.P.G.

Date of hearing: 05.05.2026

Date of decision: 20.05.2026

JUDGMENT

Syed Fiaz ul Hassan Shah, J: Through this appeal, the appellant has challenged the judgment dated 07.10.2024, passed by learned Model Criminal Trial Court-I/Special Judge Control of Narcotics Substance Act, Hyderabad, in Special Case No.156 of 2024, Re: State vs. Shahzado alias Abdul Majeed, bearing U/ss 9(1), 3-(5) (c) CNS Act PS Fort, Hyderabad, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer R.I for ten (10) years along with fine Rs.200,000/- (Two hundred thousand). In case of default in payment of fine the accused shall undergo S.I for one year more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that on 21.05.2024 police party of PS Fort, Hyderabad headed by SIP Zahid Hussain Panhwar, left PS in government mobile No.SPD-814 for patrolling in the area vide DD entry No.32 at 2030 hours. During patrolling near Habib hotel chowk, Hyderabad the complainant received spy information that the accused is selling chars at rickshaw market chowk, Hyderabad. Upon such information, at about 2105 hours the police party headed by the complainant arrested him (accused) and recovered one black colour shopper. The police party tried to associate independent witnesses but on refusal, the

complainant nominated PC Sarmad and PC Mansoor as mashirs. On enquiry, the accused disclosed his name as Shahzado alias Abdul Majeed son of Pholo Khan alias Phalan Manghanhar. The complainant opened and checked the black colour shopper and chars in it. The recovered chars was weighed on the spot on electronic scale which came of 1485 grams. It was sealed in white cloth bag for sending the same to the chemical analyzer for examination/analysis. The complainant prepared mashirnama of arrest and recovery in presence of mashirs/witnesses PC Sarmad and PC Mansoor. Thereafter, they brought the accused and case property at PS where such FIR was registered against the accused. Thereafter, the complainant handed over the mashirnama of arrest and recovery, copy of FIR, case property and accused custody to I.O. SIP Ali Anwar Hisbani for further investigation. The I.O visited place of incident and prepared such memo of site inspection on pointing of complainant and mashirs/witnesses. He also recorded statements of witnesses and accused. After obtaining permission from the SDPO he (I.O) SIP Ali Anwar Hisbani went to the office of chemical examiner and deposited the sealed parcel of case property on 24.05.2024 to the office of chemical examiner under such receipt. The I.O has also collected details of the previous criminal record of the accused. After completing investigation and receiving chemical report charge sheet was submitted against the accused.

3. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.2/A, to which in compliance of section 265-E Cr.P.C.

4. At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined P.W No.1 I.O SIP Ali Anwar Hisbani was recorded at Exh.03. He produced roznamcha entries, memo of site inspection, letter to SDPO, letter to incharge CRO, sample receipt, letter to chemical examiner, CRO of the accused and chemical examiner report at Exh.3/A to Exh.3/J respectively. The evidence of P.W-02 mashir/PC Sarmad Ali

was recorded at Exh.4. He produced memo of arrest and recovery at Exh.4/A. Evidence of P.W-3 complainant SIP Zahid Hussain Panhwar was recorded at Exh.5. He produced roznamcha entries and FIR at Exh.5/A & Exh.5/B respectively. P.W.04 WHC Malik Muhammad Khan, the malkhana incharge at Exh.6. He produce malkhana entry No.39 of register No.19 at Exh.6/A. Thereafter learned A.P.G closed the side in evidence of prosecution vide statement at Ex.Nil.

5. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.8 wherein he denied the allegations of the prosecution case and pleaded his innocence. However, the accused did neither examine himself on oath, nor desired to produce witness in his defense.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case; that he raiding officer / Investigation Officer PW-1 SIP Ali Anwar admitted in cross examination that FIR was registered on 21.05.2024 and he took the case property parcel on 24.05.2024 to the chemical laboratory for its examination; that no departure entries were discharged, that register-XIX was not produced in original and no permission obtained for photocopy as well as the photocopy was not found in accordance with police rules and as per prescribed proforma must be **eight columns**; that the alleged place of incident is commercial thickly populated area and police has not given any explanation for non-joining independent witness; that no private witnesses have been associated as Mashir in this case; therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the same hence, he prayed for that the impugned judgment may be set-aside and the appellant may be acquitted.

7. On the other hand, learned D.P.G for the State supported the impugned judgment by submitting that the accused was arrested on the spot with a huge quantity of recovery of 1485 grams chars. Section 103 Cr.P.C is not applicable in cases of recovery of narcotics. She further argued that all the prosecution witnesses have supported

the case and produced all the relevant record; therefore, appeal may be dismissed.

8. Heard learned counsel for the appellant, learned D.P.G for the State and perused the record.

9. The prosecution relied upon the testimony of PW-3 SIP Zahid Hussain Panwar, the Raiding Officer and author of the Memorandum of Recovery Exh.4/A, who deposed that the recovered charas weighed 1485 grams. PW-2 PC Sarmad Ali, the mashir of recovery, corroborated the same facts. However, both witnesses admitted that the pieces of charas were weighed collectively rather than separately. It is a settled principle of law that each piece of recovered narcotics must be weighed individually and its weight recorded in the recovery memorandum. The failure to do so, coupled with the omission of confirming in oral testimony that three pieces of charas were recovered as recorded in Exh.4/A, undermines the evidentiary value of the memorandum.

10. Material contradictions also arise regarding safe custody. PW-1 SIP Ali Anwar, the Investigation Officer, testified that he deposited the case property in the Malkhana. However, Register No.XIX Exh.6/A reflects that the property was deposited by SIP Zahid Hussain Panwar. This inconsistency on a material point creates uncertainty as to who actually deposited the property, thereby casting doubt on compliance with the doctrine of safe custody.

11. PW-4 WHC Malik Mohammad deposed that he received the parcel of case property on 18.05.2024, though the FIR was registered on 21.05.2024. Even if treated as a typographical error, his testimony confirms otherwise, as he reiterated receipt of the property on the same date. This contradiction further weakens the prosecution's version.

12. The Investigation Officer admitted that the case property was sent to the chemical laboratory on 24.05.2024, three days after recovery. No plausible explanation was offered for this delay. Such unexplained delay is fatal to the prosecution case, as it raises serious doubts about tampering and the integrity of the case property.

13. The prosecution carries a bounden duty to prove, through cogent and confidence-inspiring evidence, both the safe custody and safe transmission of the case property. Any break, omission, or failure in establishing this continuous chain of custody renders the evidentiary value of the recovered substance doubtful, and consequently, conviction and sentence under the relevant Act cannot be sustained. Reliance can be placed on *Qaiser and another v. The State* (2022 SCMR 1641), *Ikramullah v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), *Kamran Shah v. The State* (2019 SCMR 1217), *Mst. Razia Sultana v. The State* (2019 SCMR 1300), *Faizan Ali v. The State* (2019 SCMR 1649), *Zahir Shah alias Shat v. State* (2019 SCMR 2004), *Haji Nawaz v. The State* (2020 SCMR 687), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Zubair Khan v. The State* (2021 SCMR 492), and *Gulzar v. The State* (2021 SCMR 380).

14. In light of the above discrepancies—combined weighting of narcotics, failure to confirm the number of pieces in oral testimony, contradictions regarding deposit of case property, inconsistency in dates of receipt, and unexplained delay in chemical analysis—the prosecution has failed to establish its case beyond reasonable doubt. The benefit of doubt must therefore be extended to the appellant.

15. The appeal is allowed and the impugned Judgment for conviction and sentence passed by the learned Trial Court is set aside. The appellant is acquitted of the charge under the Control of Narcotic Substances Act, 1997. He shall be released forthwith, if not required in any other case.

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