

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Special Criminal Appeal No.D-15 of 2025

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Abdul Hamid Bhurgri

Appellant : Niaz Hussain son of Qalander Bux Jatoi,
through Mr. Liaquat Ali Jatoi, Advocate

Respondent : The State, through Mr. Aftab Ahmed
Shar, Additional PG

Date of Hearing : 09.06.2026
Date of Judgment : 09.06.2026

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant criminal appeal, the appellant, Niaz Hussain son of Qalander Bux Jatoi, has called in question the judgment dated 12.02.2025 passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for (CNS), Khairpur, in Special Case No.93 of 2024 (Re: The State v. Niaz Hussain), arising out of Crime No.42 of 2024 registered at Police Station Sobhodero, district Khairpur, whereby he was convicted and sentenced for offence punishable under Section 9-3(b) of the Control of Narcotic Substances (Amendment) Act, 2022, to suffer imprisonment for nine (09) years and to pay fine of Rs.80,000/-. In default whereof, to suffer Simple Imprisonment for six (06) months. Benefit of Section 382-B, Cr.P.C. was also extended to him.

2. Briefly stated, the prosecution case, as set out in the F.I.R., is that on 04.04.2024 at 1700 hours, complainant ASI Zahoor Ahmed, together with his subordinate staff, arrested accused/appellant Niaz Hussain near Banana Garden of Allah Rakhio situated on Sobhodero-Bindi link road and recovered from his possession a white-colour bag containing two pieces of charas weighing 600 grams. It is further alleged that out of the recovered charas, 10 grams from each piece was separated and sealed for chemical analysis. Such memo was prepared in presence of mashirs PC Zakir Hussain and PC Ayaz Ali.

3. The learned trial Court, after supplying copies of relevant documents to the accused, framed charge against him, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW/WHC Ahsan Ali (Ex.03), complainant SIP Zahoor Ahmed (Ex.04), PW/mashir PC Ayaz Ali (Ex.05) and PW/I.O. Sahib Khan (Ex.06). Thereafter, the side of prosecution was closed.

5. The appellant, in his statement recorded under Section 342, Cr.P.C. at Ex.08, denied the allegations levelled against him, professed innocence and claimed false implication. However, he neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any defence evidence.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions; that no independent witness was associated with the alleged recovery; that the chain of custody has not been established; and that the evidence brought on record is not confidence-inspiring. He further argued that only 20 grams out of the alleged recovered 600 grams charas was sent for chemical examination and that the prosecution has failed to prove its case beyond reasonable doubt. He therefore prayed for acquittal of the appellant.

7. Conversely, learned Assistant Prosecutor General supported the impugned judgment and submitted that the prosecution witnesses have fully supported the prosecution case; the recovery stands proved; and the learned trial Court has rightly convicted the appellant after proper appreciation of evidence. He prayed for dismissal of the appeal.

8. We have heard learned counsel for the parties and have carefully reappraised the evidence available on record.

9. From the arguments advanced by the learned counsel for the parties and the material available on record, the following point arises for determination by this Court:

“Whether the prosecution has succeeded in proving its case against the appellant beyond reasonable doubt and whether the conviction and sentence awarded to him by the learned trial Court are sustainable in law?”

10. The above point is answered in the negative for the reasons discussed hereinafter.

11. It is by now a settled principle of law that in cases under the Control of Narcotic Substances law, the prosecution is under a legal obligation to establish an unbroken chain of custody of the recovered contraband from the time of its recovery till its receipt by the office of the Chemical Examiner. In the present case, the prosecution has failed to establish such an unbroken chain. The complainant deposed that after recovery he handed over the case property to the Investigating Officer. The Investigating Officer also stated that he received the case property from the complainant and thereafter handed it over to the Malkhana Incharge. This version was supported by PW/WHC Ahsan Ali, who deposed that the Investigating Officer handed over two sealed parcels of charas to him for deposit in the Malkhana. However, during cross-examination, the complainant stated that upon return to the police station, the case property was kept in the safe custody of the Malkhana before registration of the F.I.R., thereby creating ambiguity regarding the actual custody and movement of the case property. More importantly, the Investigating Officer deposed that on 05.04.2024 he himself carried the sealed parcels to the Chemical Examiner, yet he failed to produce any relevant roznamcha entries regarding his departure from and arrival at the police station. Likewise, although PW/WHC Ahsan Ali deposed that on 05.04.2024 he handed over the sealed parcels to the Investigating Officer for onward transmission to the Chemical Examiner, the relevant entry of Register No.19 (Ex.3/A) does not contain any endorsement or entry showing removal of the case property from the Malkhana or its handing over to the Investigating Officer. The said witness also admitted during cross-examination that he had not produced any such entry. Rule 22.70 of the Police Rules, 1934, specifically requires that every removal of property from the store room/Malkhana must be entered in Register No.19. The relevant rule reads as under:-

22-70. Register No. XIX.- This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

The Register No.19 produced by the prosecution does not reflect any entry regarding removal of the sealed parcels for transmission to the Chemical Examiner. Consequently, the prosecution has failed to establish through reliable evidence that the samples examined by the Chemical Examiner were the same samples allegedly recovered from the possession of the appellant. Such defect strikes at the root of the prosecution case and renders the safe custody and safe transmission of the recovered contraband highly doubtful. Reliance in this regard is placed upon **Jeehand v. The State (2025 SCMR 923)** and **Muhammad Nasir v. The State (2026 SCMR 224)**.

12. Apart from the above-mentioned defect in the chain of safe custody, the prosecution evidence also suffers from material contradictions on vital aspects of the occurrence, which further erode the credibility of the prosecution case. The complainant stated that the police party first patrolled Sobhoderi town, then Bindi curve, thereafter the link road leading towards Bindi Motayo and ultimately reached the place of occurrence, and that they remained at Barkat Petrol Pump for about 15 to 20 minutes for refueling. On the other hand, mashir PC Ayaz Ali stated that they patrolled Sobhoderi town, Mehrab Wah Bridge, NADRA Office Bindi Morr and Bindi Road and remained at Bindi Morr for only two to three minutes. The complainant further stated that the accused was apprehended at the very place where he was seen and remained in the custody of PC Ayaz Ali during the recovery proceedings. In contrast, mashir PC Ayaz Ali deposed that the accused had moved back two to four paces before being apprehended and was kept in the custody of co-mashir PC Zakir Hussain. The complainant also deposed that the police party proceeded for site inspection in a government vehicle and that the memo of inspection was prepared by WPC Abdul Ghaffar. The Investigating Officer supported this version. However, mashir PC Ayaz Ali stated that they travelled in a private car and that the memo was prepared by the Investigating Officer himself. Furthermore, the Investigating Officer admitted that the recovery certificate produced by him was not on a prescribed printed form and that he did not make any effort to associate private persons with the recovery proceedings. These contradictions are

not confined to trivial matters but relate to material particulars of the prosecution story. When considered cumulatively, they materially impair the reliability and credibility of the prosecution evidence.

13. The deficiencies discussed above are not minor in nature but go to the root of the prosecution case. The cumulative effect of these infirmities creates serious doubt regarding the genuineness of the alleged recovery and the truthfulness of the prosecution version.

14. It is a settled principle of criminal jurisprudence that if a single circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of an accused, then such doubt must be resolved in favour of the accused as a matter of right and not of grace. Reliance is placed upon **Tariq Pervez v. The State (1995 SCMR 1345)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Mansha v. The State (2018 SCMR 772)**.

15. In view of the foregoing discussion, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Consequently, the conviction and sentence recorded by the learned trial Court cannot be sustained in law. The point for determination is answered accordingly.

16. Consequently, this Criminal Appeal is allowed. The conviction and sentence awarded to the appellant through the impugned judgment dated 12.02.2025 are set aside and he is acquitted of the charge. He shall be released forthwith, if not required in any other custody case.

JUDGE

JUDGE