

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Criminal Appeal No.D-92 of 2025

Before:

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

Appellant : Sajjad son of Arbab Ali Kalhoro,
through Mr. Muhammad Qayyum Arain,
Advocate

Respondent : The State, through Mr. Aftab
Ahmed Shar, A.P.G.

Date of Hearing : 03.06.2026

Date of judgment : 03.06.2026

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant criminal appeal, the appellant, Sajjad son of Arbab Ali Kalhoro, has called in question the judgment dated 16.10.2025 passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for (CNS), Naushahro Feroze, in Special Case No.204 of 2024 (Re: The State v. Sajjad), arising out of Crime No.180 of 2024 registered at Police Station Tharushah, whereby he was convicted and sentenced for offence punishable under Section 9-3(a) of the Control of Narcotic Substances Act, 1997 (as amended) to suffer Rigorous Imprisonment for four (04) years and to pay fine of Rs.30,000/-. In default whereof, to suffer Simple Imprisonment for one (01) month. 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 09.10.2024 at about 0700 hours, complainant SIP Muhammad Alam, along with his subordinate staff, arrested accused/appellant Sajjad at Rajpar Path near the link road leading from Tharushah towards Naushahro Feroze and recovered from his possession a black-coloured shopper containing six big and small pieces of charas weighing 1100 grams. It was further alleged that 100 grams charas was separated therefrom as sample and sealed separately for chemical analysis. During personal search of the accused, cash amounting to Rs.200/- was also recovered. Memo of arrest and recovery was prepared in the presence of mashirs PC Muhammad Ajmal Khanzada and PC Shahid Hussain.

3. After completion of investigation, challan was submitted before the competent Court. The learned trial Court supplied copies of prosecution papers to the accused in compliance with Section 265-C, Cr.P.C., framed charge at Ex.03, to which the accused pleaded not guilty and claimed trial.

4. To prove the charge, the prosecution examined complainant SIP Muhammad Alam (Ex.04), mashir PC Muhammad Ajmal Khanzada (Ex.05), Investigating Officer Inspector Abdul Majid Dehraj (Ex.07), PC Imtiaz Ali (Ex.08) and ASI Roshan Ali Sand (Ex.09). Thereafter, the learned State Counsel closed the side of prosecution.

5. The statement of the appellant was recorded under Section 342, Cr.P.C. at Ex.11, wherein he denied the prosecution allegations in toto, professed innocence and claimed false implication. However, he neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any witness in defence.

6. Learned counsel for the appellant contended that the prosecution has failed to prove its case beyond reasonable doubt. According to him, the evidence of the prosecution witnesses is riddled with material contradictions; no independent witness was associated despite availability; the prosecution failed to establish safe custody and safe transmission of the alleged narcotics; and the chain of custody remained broken. He further submitted that the prosecution case suffers from serious procedural defects which strike at its root, therefore, the appellant is entitled to acquittal.

7. Conversely, learned Assistant Prosecutor General supported the impugned judgment and argued that the prosecution witnesses have fully corroborated each other on material particulars; the recovery of charas stands proved; the chemical report supports the prosecution case; and the learned trial Court has rightly convicted the appellant after proper appreciation of evidence. He thus prayed for dismissal of the appeal.

8. We have heard the learned counsel for the parties and have gone through the evidence available on record with their able assistance.

9. The following point arises for determination:-

“Whether the prosecution has been able to prove 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. After anxious consideration of the entire record, we are persuaded to answer the above point in the negative for the reasons discussed hereinafter.

11. Before examining the forensic aspect of the matter, it would be advantageous to assess the credibility and reliability of the prosecution witnesses, as the prosecution case primarily rests upon their testimony. A careful scrutiny of the evidence reveals a number of material inconsistencies touching the very manner of arrest, recovery, sealing and subsequent proceedings. The complainant SIP Muhammad Alam, during cross-examination, stated that departure entry No.41 was recorded by him and that the police party patrolled Tharushah town, thereafter Bharti Naka, Aasi Chowk and finally proceeded towards the link road leading to Naushahro Feroze. However, mashir PC Muhammad Ajmal Khanzada stated that the departure entry was recorded by the WHC and that the police party first visited Bharti Naka, then Aasi Chowk and thereafter proceeded towards the said link road. The complainant further deposed that the accused was apprehended with the assistance of subordinate staff, whereas the mashir stated that the complainant himself apprehended the accused. Such contradictions may appear insignificant in isolation but assume importance when viewed collectively.

12. Further discrepancies emerge from the prosecution evidence regarding the recovery proceedings themselves. The complainant stated that the mashirs were carrying keypad mobile phones, whereas the mashir stated that he himself was carrying a touchscreen smartphone. Despite availability of such device, admittedly no video recording of the recovery proceedings was made. The complainant further deposed that sample was separated from one piece of charas. However, when the case property was de-sealed before the Court, five pieces were produced. He initially stated that five pieces were sealed in a parcel and then stated that one complete piece was sent to the Chemical Examiner as sample. The complainant and mashir also deposed that the recovered pieces were not wrapped in plastic, yet after de-sealing they admitted that all pieces

were wrapped in plastic shoppers of different colours. The complainant stated that the pieces were of different shapes and sizes, whereas the mashir stated that all pieces were identical in shape and size. These contradictions directly relate to the recovery and identity of the alleged contraband and cannot be brushed aside as minor discrepancies.

13. The evidence concerning association of private witnesses is equally unsatisfactory. The Investigating Officer Inspector Abdul Majid deposed that he attempted to associate private persons as mashirs but none agreed and that no notice was issued to such persons. On the other hand, both the complainant and mashir categorically stated that no effort was made by the Investigating Officer to associate any private witness. This contradiction further dents the credibility of the prosecution case and indicates lack of transparency in the alleged recovery proceedings.

14. Apart from the aforesaid inconsistencies affecting the trustworthiness of the prosecution witnesses, the prosecution has also failed to establish an unimpeachable chain of custody of the recovered narcotics. It is now firmly settled that in narcotics cases the prosecution is required to establish, through reliable evidence, an unbroken chain connecting the recovered substance with the sample examined by the Chemical Examiner. Unless such link evidence is satisfactorily proved, the chemical report alone cannot sustain a conviction.

15. In the present case, neither the original entry of Register No.19 was produced before the learned trial Court nor was it shown that the same was maintained on the prescribed printed proforma. Rather, PW ASI Roshan Ali admitted during cross-examination that the relevant entry was not recorded on a printed proforma and was not maintained in accordance with Rule 22.70 of the Police Rules, 1934. The said Rule mandates that every article deposited in the Malkhana and every removal thereof must be entered in Register No.19 and reflected in the relevant column. The Rule reads as follows:

“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.”

16. The prosecution evidence further reveals that RC No.162, through which the sample parcel was allegedly transmitted to the Chemical Laboratory, does not contain the name of dispatcher PC Imtiaz Ali. This fact was specifically admitted by the Investigating Officer during cross-examination. Moreover, although the Investigating Officer and PW ASI Roshan Ali stated that the sealed sample was delivered to the Chemical Examiner by PC Imtiaz Ali on 10.10.2024, the Malkhana record produced at Ex.7/A does not show when and at what time the sample was taken out from the Malkhana for onward transmission to the Chemical Laboratory. No separate entry regarding such removal was produced by the prosecution. Consequently, there remains no documentary evidence establishing the movement of the sample from the Malkhana to the Chemical Laboratory.

17. The omission to produce the relevant Malkhana entry regarding removal and dispatch of the sample is not a mere procedural irregularity but a substantive defect which strikes at the root of the prosecution case. Once the prosecution fails to establish safe custody and safe transmission of the narcotics, the possibility of tampering cannot be excluded with certainty. The deficiencies noted above create a serious gap in the prosecution case and render the safe custody of the alleged contraband highly doubtful. Guidance in this regard may be sought from the cases of **Jeehand v. The State (2025 SCMR 923)** and **Muhammad Nasir v. The State (2026 SCMR 224)**.

18. It is the solemn obligation of the Court to discover the truth within the bounds prescribed by law. Such determination must rest upon evidence that is trustworthy, confidence-inspiring and free from reasonable doubt. In the present case, the prosecution evidence suffers not only from material contradictions affecting the credibility of the witnesses but also from serious defects relating to safe custody and transmission of the alleged narcotics. These infirmities are not isolated in nature; rather, they cumulatively undermine the entire prosecution case and make it unsafe to maintain the conviction.

19. It is a settled principle of criminal jurisprudence that if a single circumstance creates a reasonable doubt in the mind of a prudent person

regarding the guilt of an accused, he becomes entitled to the benefit thereof as of right and not as a matter of concession. Reference may be made to the cases of **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)**.

20. For the foregoing reasons, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The conviction and sentence awarded by the learned trial Court are, therefore, not sustainable in the eye of law. The point for determination is answered accordingly.

21. Consequently, this Criminal Appeal is allowed. The conviction and sentence awarded to the appellant through judgment dated 16.10.2025 passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for (CNS), Naushahro Feroze, in Special Case No.204 of 2024 are set aside and the appellant is acquitted of the charge. He shall be released forthwith, if not required in any other custody case.

JUDGE

JUDGE