

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Special Criminal Jail Appeal No.D- 61 of 2024

Date	Order with signature of Judge
	<u>Before:</u> Mr. Justice Adnan-ul-Karim Memon Mr. Justice Abdul Hamid Bhurgri
Appellant	: Sheroz @ Sherry S/o Muhammad Ashraf Niazi through Mr. Imdad Ali Malik, Advocate.
Respondent	: The State, through Mr. Khalil Ahmed Maitlo, D.P.G.
<i>Date of Hearing</i>	: <i>16.06.2026</i>
<i>Date of judgment</i>	: <i>16.06.2026</i>

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant appeal, the appellant, Sheroz @ Sherry son of Muhammad Ashraf Niazi, has called in question the judgment dated 23.04.2024 passed by the learned Sessions Judge/Special Judge for CNS Cases, Sukkur, in Special Case No.219 of 2023 (Re: The State v. Sheroz @ Sherry), arising out of Crime No.258 of 2023 registered at Police Station A-Section, Sukkur, whereby he was convicted and sentenced for an offence punishable under Section 9(1)3(c) of the Control of Narcotic Substances Act, 1997 (as amended in 2022) to suffer rigorous imprisonment for ten (10) years and to pay a fine of Rs.100,000/-. In default whereof, to suffer simple imprisonment for two (02) 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 08.10.2023 at about 1900 hours, complainant ASI Zameer Hussain, along with his subordinate staff, arrested the accused/appellant Sheroz @ Sherry at Qasimabad Market, Old Fish Market, Sukkur. It was alleged that the accused was carrying a white-coloured shopper containing two large and one small piece of charas, weighing in aggregate 1420 grams. The recovered contraband was sealed at the spot for chemical analysis. During personal search of the accused,

cash amounting to Rs.50/- was also recovered. Memo of arrest and recovery was prepared in the presence of mashirs PC Shahbaz Ali and PC Faheem Gul.

3. After completion of investigation, challan was submitted before the learned trial Court. Upon supplying copies of relevant documents as required under Section 265-C, Cr.P.C., charge was framed against the appellant, to which he pleaded not guilty and claimed trial.

4. In order to substantiate the charge, the prosecution examined complainant ASI Zameer Hussain (Ex.04), mashir PC Shahbaz Ali (Ex.07) and Investigating Officer SIP Farhan Ali (Ex.08). Thereafter, the learned Deputy Prosecutor General closed the prosecution side.

5. The appellant, in his statement recorded under Section 342. Cr.P.C. at Ex. 10, denied the prosecution allegations in toto, professed his innocence and claimed false implication. He neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions and serious procedural infirmities; that no independent witness was associated despite the alleged recovery having been effected from a populated locality; that the prosecution failed to establish the safe custody and safe transmission of the recovered contraband; and that the evidence produced by the prosecution does not inspire confidence. He lastly contended that the prosecution has failed to prove its case beyond reasonable doubt and, therefore, the appellant is entitled to acquittal.

7. Conversely, learned Assistant Prosecutor General supported the impugned judgment and argued that the prosecution witnesses have consistently supported the prosecution case, the recovery stands duly established; the chemical examiner's report corroborates the prosecution version, and that the learned trial Court has rightly convicted the appellant after proper appraisal of evidence.

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

9. From the arguments advanced by the learned counsel for the parties and the material available on record, 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. Our answer to the above point is in the negative for the reasons discussed hereinafter.

11. It is now a settled principle of law that in prosecutions under the Control of Narcotic Substances Act, strict and transparent compliance with procedural safeguards, particularly regarding the safe custody and transmission of the recovered narcotics, is of paramount importance. The prosecution is under a legal obligation to establish an unbroken chain of custody from the time of recovery of the contraband until its receipt and examination by the Chemical Examiner. Any break in such chain strikes at the very foundation of the prosecution case.

12. In the present case, the prosecution has failed to establish such an unbroken chain of custody. The Investigating Officer deposed that on 08.10.2023 he received the case property from the complainant and handed the same over to the Moharrar Head Constable for deposit in the malkhana. However, the said Moharrar Head Constable, who was the custodian of the case property, was not examined by the prosecution. In absence of his testimony, the prosecution failed to establish that the case property remained in safe and secure custody during the intervening period. It is by now settled that non-examination of the Moharrar responsible for maintaining custody of the case property creates a serious gap in the chain of custody and renders the prosecution case doubtful. Reliance in this regard may be placed upon *Sarfraz Ahmed v The State* (2024 SCMR 1571)

13. The prosecution case suffers from another serious infirmity. The Investigating Officer stated that on 11.10.2023 he deposited the case property at the office of the Chemical Examiner, Rohri. However, the relevant extract of Register No.XIX produced at Ex.8/A does not disclose as to when and at what time the case property was taken out from the malkhana for onward transmission to the Chemical Examiner. No separate entry from Register No.XIX or any other relevant record was produced to establish such removal.

14. Rule 22.70 of the Police Rules, 1934 mandates that every article placed in the store-room shall be entered in Register No.XIX and any removal thereof shall also be noted in the appropriate column. The Rule reads as follows:

"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 absence of any contemporaneous entry regarding removal of the case property from the malkhana leaves a material gap in the prosecution case. Such omission cannot be treated as a mere procedural irregularity because the prosecution is required to affirmatively establish that the recovered narcotics remained in safe custody and were transmitted to the Chemical Examiner without any possibility of tampering. Consequently, the safe custody and safe transmission of the case property remained unproved. Reliance may be placed upon *Jeehand v. The State* (2025 SCMR 923) and *Muhammad Nasir v. The State* (2026 SCMR 224).

15. Apart from the deficiencies relating to the chain of custody, we have independently reappraised the ocular evidence produced by the prosecution. Such reappraisal reveals material contradictions inter se the statements of the prosecution witnesses on significant aspects of the prosecution case, which adversely affect their credibility and render the prosecution version doubtful.

16. The complainant ASI Zameer Hussain deposed during cross examination that the police party patrolled Shikarpur Road and Moti Masjid before reaching the place of occurrence. In contrast, mashir PC Shahbaz Ali stated that the police party patrolled Barrage Road, Fojdari Chowk, Shikarpur Road and Moti Masjid

before arriving at the place of incident. The complainant further stated that there was a mosque on the western side of the place of occurrence, shops on the northern and southern sides, and Qasimabad Market on the eastern side. However, the mashir deposed that there were shops on the northern side, Barrage Road on the eastern side and streets on the southern side. The mashir further stated that the accused attempted to flee towards the northern side and covered a distance of 20 to 25 paces before being apprehended, whereas no such fact was disclosed by the complainant, who instead stated that the accused was standing at a distance of 8 to 10 paces when first noticed. Likewise, the complainant stated that he himself conducted the body search of the accused, whereas the mashir asserted that he had conducted such body search. These contradictions relate to material particulars of the alleged recovery proceedings and cannot be brushed aside as minor discrepancies attributable to lapse of memory. Rather when considered cumulatively, they materially impair the reliability and credibility of the prosecution witnesses.

17. The infirmities discussed above are neither isolated nor inconsequential. The prosecution has failed to establish an unbroken chain of custody of the recovered contraband, while its ocular account is marred by material contradictions on significant aspects of the occurrence. The cumulative effect of these deficiencies creates serious doubt regarding the genuineness of the alleged recovery and the truthfulness of the prosecution version.

18. It is by now 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, he becomes entitled to the benefit thereof as a matter of right and not of grace. Where multiple circumstances giving rise to doubt are present, the accused becomes entitled to the benefit thereof with greater force. Reference in this regard may be made to *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).

19. For what has been discussed above, 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 awarded to the appellant by the learned trial Court cannot be sustained in the eyes of law.

20. Consequently, this Criminal Appeal is allowed. The conviction and sentence awarded to the appellant through judgment dated 23.04.2024 passed by the learned Sessions Judge/Special Judge for CNS Cases, Sukkur, are set aside and the appellant is acquitted of the charge by extending to him the benefit of doubt. He shall be released forthwith

JUDGE

JUDGE