

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.

Special Criminal Appeal No.D-83 of 2024

Date	Order with signature of Judge
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Before;
Mr. Justice Adnan-ul-Karim Memon.
Mr. Justice Abdul Hamid Bhurgri.

Appellant : Abdul Hameed son of Jam Khan Maitlo,
through Mr. Muhammad Bux Bangwar,
Advocate.

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

Date of Hearing : ***17.06.2026.***
Date of Judgment : ***17.06.2026.***

J U D G M E N T

ABDUL HAMID BHURGRI, J.- Through the instant appeal, the appellant, Abdul Hameed son of Jam Khan Maitlo, has called in question the judgment dated 25.07.2024 passed by the learned I-Additional Sessions Judge/Special Judge for (CNS), Khairpur, in Special Case No.297 of 2023 (Re: The State v. Abdul Hameed), arising out of Crime No.30 of 2023 registered at Police Station Wada Machyoon, whereby he was convicted and sentenced for offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997 (as amended) to suffer Rigorous Imprisonment for nine (09) years and to pay fine of Rs.80,000/. In default whereof, to suffer Simple Imprisonment for three (03) 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 14.07.2023 at about 1400 hours, complainant SIP Syed Azhar Hussain Shah, along with his subordinate staff, arrested accused/appellant Abdul Hameed near Ghaffar Shah and recovered from his possession a blue-coloured shopper containing five pieces of charas weighing 1100 grams. The recovered charas was sealed at the spot for chemical analysis. During personal search, an amount of Rs.200/- was also recovered from his possession. Mashirnama of arrest and recovery was prepared in the presence of mashirs PC Ghulam Akbar and PC Mukhtiar Hussain.

3. After completion of usual investigation, challan was submitted before the competent Court of law. The learned trial Court supplied copies of relevant documents to the accused in compliance with Section 265-C, Cr.P.C. and 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 Sikander Ali (Ex.03), PW/complainant SIP Syed Azhar Hussain Shah (Ex.04), PW/Investigating Officer SIP Muhammad Ashraf Tunio (Ex.05), PW/PC Saleemullah (Ex.06) and PW/mashir PC Mukhtiar Hussain (Ex.07). Thereafter, the learned Deputy Prosecutor closed the prosecution side.

5. The appellant, in his statement recorded under Section 342, Cr.P.C. at Ex.09, denied the allegations levelled against him and professed innocence. He neither examined himself on oath under Section 340(2), Cr.P.C. nor produced any defence evidence in his favour.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions and inherent infirmities; that no independent witness was associated despite availability; that the prosecution failed to establish an unbroken chain of custody of the alleged recovered narcotics; and that the evidence produced on record is not confidence-inspiring. He argued that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and, therefore, he is entitled to acquittal.

7. Learned Assistant Prosecutor General supported the impugned judgment and contended that the prosecution witnesses have fully supported the prosecution case; that the recovery has been proved through confidence-inspiring evidence; and that the learned trial Court has rightly convicted the appellant. He, therefore, prayed for dismissal of the appeal.

8. We have heard the learned counsel for the parties and have carefully examined the 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. The above point is answered in the negative for the reasons to be recorded hereinafter.

11. It is now well-settled that in prosecutions under the Control of Narcotic Substances Act, 1997, strict adherence to procedural safeguards governing the safe custody, transmission and chemical examination of the recovered narcotics is indispensable. The prosecution is under a legal obligation to establish through reliable and confidence-inspiring evidence an unbroken chain of custody from the time of recovery till the receipt of the report of the Chemical Examiner. Any break in such chain renders the prosecution case doubtful and entitles the accused to the benefit thereof. In the present case, the prosecution has failed to establish such an unbroken chain. PW/WHC Sikander Ali, who was the Incharge of the Malkhana, deposed during cross-examination that he handed over the case property to the Investigating Officer through PC Saleemullah at about 1000 hours for onward transmission to the Chemical Laboratory. Contrary thereto, the Investigating Officer deposed that he himself received the case property from the Incharge Malkhana and thereafter entrusted the same to PC Saleemullah for depositing it at the Chemical Laboratory, Rohri. Furthermore, PW/PC Saleemullah, who allegedly transported the case property, deposed that he received the sealed parcel from the Investigating Officer at about 1030 hours and then proceeded to the

Chemical Laboratory on a motorcycle. These conflicting versions materially affect the prosecution's claim regarding the safe movement of the case property from the Malkhana to the Chemical Laboratory. Apart from the above discrepancies, the documentary evidence produced by the prosecution is equally deficient. The Road Certificate relied upon by the prosecution is neither on the prescribed printed proforma nor does it contain the name of PC Saleemullah, who allegedly transported the contraband. Likewise, the extract of Register No.19 produced by the Malkhana Incharge at Ex.3/A is not maintained on the prescribed format and does not reflect any entry showing when the case property was taken out from the Malkhana for onward transmission to the Chemical Laboratory. Similarly, no departure or delivery entry was produced by the Investigating Officer to demonstrate the movement of the case property from the Malkhana to the Chemical Laboratory. In this context, Rule 22.70 of the Police Rules, 1934 specifically mandates that every article deposited in the Malkhana shall be entered in Register No.19 and every subsequent removal thereof shall be recorded in the appropriate column.

The 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 prosecution's failure to produce any entry showing removal of the case property from the Malkhana for chemical examination is not a mere procedural irregularity but a substantive defect striking at the root of the prosecution case. In the absence of such evidence, the possibility of tampering, substitution or manipulation of the case property cannot safely be excluded. Consequently, the prosecution has failed to establish the safe custody and unimpaired transmission of the recovered contraband beyond reasonable doubt.

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 aforesaid fatal defect relating to the chain of custody, we have independently examined the ocular evidence and found the prosecution witnesses to be inconsistent on several material aspects of the prosecution case. While minor discrepancies attributable to lapse of memory may ordinarily be ignored, contradictions touching material particulars of the prosecution case cannot be brushed aside lightly.

13. The complainant SIP Syed Azhar Hussain Shah deposed that he first noticed the appellant from a distance of about ten paces and that both PC Mukhtiar Hussain and PC Ghulam Akbar apprehended him, whereas mashir PC Mukhtiar Hussain stated that he did not remember who first noticed the appellant and further stated that the appellant was seen from a distance of five to six paces and was apprehended solely by PC Ghulam Akbar. The complainant further stated that during personal search the appellant remained in the custody of both police officials, whereas the mashir deposed that at the relevant time the appellant remained exclusively in his custody. The complainant stated that he prepared the mashirnama of arrest and recovery while standing at the place of incident with the help of a clipboard, whereas the mashir deposed that the same was prepared while sitting in the police mobile. Similarly, the complainant deposed that all formalities relating to the sealed parcel, except incorporation of the crime number, were completed by him at the place of incident, whereas the mashir stated that all endorsements on the sealed parcel were written by PC Ghulam Akbar. The complainant and the Investigating Officer denied the presence of residential houses around the place of occurrence, whereas the mashir admitted that residential houses belonging to members of Solangi and Jagirani communities were situated nearby. The complainant stated that the entire proceedings consumed approximately one hour, whereas the mashir assessed the duration at merely twenty to twenty-five minutes.

The witnesses also furnished conflicting accounts regarding the registration of the F.I.R. The complainant stated that the F.I.R. was reduced into writing by WHC Sikander Ali on his dictation, whereas the mashir deposed that it was written by WHC Saleemullah. Equally significant are the contradictory accounts regarding the transportation used during the investigative proceedings. The Investigating Officer deposed that he proceeded from the Police Station to inspect the place of incident in a private GLI car belonging to the complainant/SHO and driven by the SHO himself. The complainant merely stated that they travelled in a private car, whereas mashir PC Mukhtiar Hussain stated that they travelled in a private Mehran car and further admitted that he did not even remember its colour. Such divergent accounts concerning a matter directly connected with the investigative proceedings demonstrate a lack of consistency amongst the prosecution witnesses. Likewise, whereas the Investigating Officer and mashir stated that efforts were made to associate private persons during the site inspection but none was available, the complainant, despite being the principal witness of recovery, expressed ignorance on that aspect. The mashir further deposed that the police party had stopped at Machi Nako before proceeding to the place of occurrence, a fact not mentioned by either the complainant or the Investigating Officer. These contradictions are neither isolated nor inconsequential; rather, they relate to material facets of the prosecution case and materially impair the credibility and reliability of the prosecution witnesses.

14. The infirmities discussed above, when viewed individually as well as collectively, are not minor discrepancies attributable to normal errors of observation or lapse of memory. They pertain to the manner of arrest, custody of the accused, preparation of recovery proceedings, registration of the F.I.R., transportation and custody of the case property, and investigative proceedings conducted after the alleged recovery. The cumulative effect of these deficiencies creates serious doubt regarding

the genuineness of the alleged recovery and the truthfulness of the prosecution version.

15. 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 the accused, he is entitled to the benefit thereof as a matter of right and not of grace. Reliance in this regard 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)***.

16. In view of the foregoing discussion, we are of the considered view that the prosecution has failed to establish beyond reasonable doubt the safe custody and unimpaired transmission of the alleged recovered contraband from the place of recovery till its receipt by the Chemical Examiner. Furthermore, the prosecution evidence suffers from material contradictions affecting the credibility of its witnesses on significant aspects of the case. The cumulative effect of these deficiencies creates reasonable doubt regarding the guilt of the appellant. Consequently, we hold that the prosecution has failed to prove its case against the appellant beyond reasonable doubt and, therefore, the conviction and sentence recorded by the learned trial Court cannot be sustained in law. The point for determination is answered accordingly.

17. Consequently, this Criminal Appeal is allowed. The conviction and sentence awarded to the appellant through the impugned judgment dated 25.07.2024 passed by the learned I-Additional Sessions Judge/Special Judge for (CNS), Khairpur, in Special Case No.297 of 2023 arising out of Crime No.30 of 2023 registered at Police Station Wada Machyoon are set aside and the appellant Abdul Hameed son of Jam Khan Maitlo is acquitted of the charge. He shall be released forthwith, if not required in any other custody case.

JUDGE

JUDGE