

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hassan Shah

Criminal Jail Appeal No.35 of 2024

Mukhtiar Ali and another

Versus

The State

APPELLANTS : 1. Mukhtiar Ali S/o Abdullah @ Aboo @
Muhammad Ramzan and
2. Ameenullah S/o Waliullah Pathan
Through Ms. Roopmala Singh,
Advocate for Pauper Appellants.

RESPONDENT / : The State
THE STATE Through Ms. Rubina Qadir,
Deputy Prosecutor General, Sindh.

Date of Hearing : 18.03.2026

Date of Decision : 18.03.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J :-- Through the instant Criminal Jail Appeal, the Appellants have challenged the Judgment dated 23.12.2023 (“**impugned Judgment**”) passed by the learned Special Judge, Control of Narcotic Substances, Thatta (“**Trial Court**”) in Special Case No.62 of 2023 emanating from Crime No.33/2023 for the offence under sections 9-1(3)(c) of Control of Narcotic Substances (Amendment) Act, 2022 (“**CNS**”) registered with Police Station Gharo, wherein the appellant was convicted under section 9-1-3(c) of CNS and sentenced them to suffer Rigorous Imprisonment (“**R.I**”) for ten (10) years each

and to pay fine of Rs.100,000/- each and in case of default, they would further undergo Simple Imprisonment (“S.I”) for six (06) months more each. However, the appellants were extended benefit of section 382(b), Cr.P.C.

2. Briefly, the facts of the prosecution case segregated from the FIR lodged by SIP Imdad Hussain Panhwar on 06.03.2023 are that on the eventful day, whilst patrol alongwith subordinates on spy information apprehended accused Mukhtiar Ali and Ameenullah and recovered charras weighing 1300 and 1200 grams from their respective possession, memo of arrest and recovery was prepared.

3. After usual investigation, copies were supplied to the appellants in terms of section 265-C, Cr.P.C. vide Exh.1 & 2 and the charge was framed against them vide Exh.3, to which they pleaded not guilty and claimed to be tried vide their pleas at Exh.4 & 5.

4. The prosecution had examined five (05) witnesses to prove the case who had produced documents and record at Exh.6/A to Exh.9/G respectively. Thereafter, the prosecution closed its side and the statements of the appellants were recorded under section 342, Cr.P.C, however, they neither examined themselves on oath under section 340(2), Cr.P.C. nor led any evidence in their defence. Consequently, the learned Trial Court after hearing both the parties passed the judgment, which has impugned herein before us.

5. The learned counsel appearing on behalf of the pauper appellants has mainly argued on the point of doctrine of safe custody and safe transmission of case property and urged that the prosecution

has failed to prove beyond reasonable doubt. She states that after recovery of narcotics and preparation of recovery memorandum until deposit with Malkhana, there is broken “safe custody” as it was not proved that after recovery of the case property, though the same was deposited with Malkhana, it was not proved that during interval period where the case property was kept and case of prosecution was broken as no link between oral testimony brought to confirm relevant entry of Register No.XIX a corroborative piece. She has lastly contended that even such Registered No.XIX was not produced in original, on the contrary an handmade copy was attested and produced without making compliance of Article 76 of Qanun-e-Shahadat Order, 1984 (“QSO”).

6. Conversely, learned Deputy Prosecutor General, Sindh appearing on behalf of the State has supported the impugned judgment and stated that impugned judgment does not warrant any interference and minor contradiction may be ignored.

7. We have heard the learned counsel for pauper appellants as well as learned Deputy Prosecutor General, Sindh and with their assistance minutely perused the record of the case.

8. It is observed that, in cases involving recovery of narcotics, the foundational document is the memorandum of recovery and arrest, prepared by the Raiding party or the Seizing Officer at the spot contemporaneously with the recovery and sealing of the alleged contraband. Once recovered and sealed, the case property is mandatorily required to be deposited with the *Malkhana* Incharge under proper entries in the relevant registers, strictly in accordance with the Police Rules, 1934. This stage constitutes what is legally recognized as

“safe custody.” Thereafter, the Investigating Officer is under a statutory obligation to conduct a proper investigation, which includes the transmission of the case property, either in whole or by way of representative samples, as the case may be, to the Chemical Laboratory for analysis. The object of such analysis is to conclusively determine whether the recovered substance qualifies as a narcotic drug or psychotropic substance so as to attract the penal provisions of the Control of Narcotic Substances Act, 1997 in order to convince the Court to award conviction and sentence the guilty person. The process of dispatching the case property from the *Malkhana* to the Chemical Laboratory—whether undertaken by the Investigating Officer himself or through an authorized official, accompanied by a duly issued road certificate—is legally termed as **“safe transmission.”** The prosecution is under a bounden duty to establish, through cogent and confidence-inspiring evidence, both the safe custody and safe transmission of the case property. Any break, omission, or failure in proving this continuous chain of custody renders the evidentiary value of the recovered substance doubtful, and consequently, conviction and sentence under the *ibid* Act cannot be sustained.

9. In the present case, the prosecution alleged recovery of narcotics weighing 1300 grams from the possession of appellant Mukhtiar Ali and 1200 grams from appellant Ameenullah. The recovered contraband was allegedly sealed on the spot, deposited in the *Malkhana*, and subsequently produced before the learned trial Court. It was further asserted that PW-4, the Investigating Officer (SIP Liaquat Ali), retrieved the case property from the *Malkhana* and dispatched it,

through PW-5 Muhammad Juman, to the Chemical Laboratory within time. The laboratory report was also produced, confirming that the recovered substance was narcotic in nature.

10. However, upon scrutiny of the record, it appears that the prosecution has miserably failed to establish the continuity of safe custody of the case property. No plausible explanation or justification has been furnished for the intervening period during which the sealed case property remained in the *Malkhana* before being taken out by the Investigating Officer for dispatch to the Chemical Laboratory. Crucially, the Incharge of the *Malkhana* (official storeroom) was not examined to verify that the case property remained in his custody during the said interval. Furthermore, the contents of Register No. XIX did not disclose the name or designation of the official who received the case property, nor did indicate who handed it over to the Investigating Officer for onward transmission.

11. Additionally, the purported copy of Register No. XIX (Exh. 6/E) is merely a handwritten reproduction attested by the SHO. In such circumstances, where secondary evidence is sought to be relied upon, strict compliance with Article 76 of the Qanun-e-Shahadat Order, 1984 was mandatory, which has not been adhered to in the present case. The omission to mention the identity or designation of the officials involved in the custody and transfer of the case property, coupled with the non-production of such witnesses before the Court, creates a serious dent in the prosecution case regarding the continuity of safe custody and secure transmission of the alleged narcotics.

12. Learned counsel for the indigent appellants has placed reliance upon the case of *Jeehand v. The State* (2025 SCMR 923), wherein it has been categorically held that it is the duty of the police and prosecution to establish that the case property remained in safe custody at all times. We are mindful to observe that it is the primary duty of the Investigating Officer to ensure that the factum of handing over the case property, sealed sample parcels, and other articles recovered from the possession of the appellant was duly entered in the relevant police registers, namely Register No. II (Daily Diary) and Register No. XIX (Malkhana Register), at *every stage of movement*. The foundational provision governing maintenance of the Daily Diary is Section 44 of the Police Act, 1861, which mandates that every officer Incharge of a police station shall maintain a general diary and record therein all material events, including complaints, arrests, recoveries, and particulars of property seized. The said statutory requirement is further elaborated under Rule 22.48 of the Police Rules, 1934, which provides that the Daily Diary must be a complete and contemporaneous record of all occurrences at the police station, including movements of police officials, arrival and departure of persons in custody, and all related proceedings, with precise timings. Reliance can be placed on the rule laid down in *Zain Shahid v. The State* (2024 SCMR 843) & *Ahmed Ali and another Vs. The State* (2023 SCMR 781).

13. Similarly, Rule 22.49 of the Police Rules requires that all arrivals at and departures from the police station, including movements of persons in custody and case property, must be recorded in Register No. II with exact timings. Furthermore, Rule 22.70 mandates the

maintenance of Register No. XIX (*Malkhana Register*), wherein every article deposited in the store-room must be entered with full particulars, including the name of the depositor, date of deposit, description of property, and *details regarding its subsequent removal, along with signatures of the concerned officials.*

14. It is well-settled that a conviction may, in appropriate cases, be based even on the testimony of a single witness, provided the same is confidence-inspiring and trustworthy, as held in *Muhammad Ehsan v. The State* (2006 SCMR 1857) and *Niaz-ud-Din v. The State* (2011 SCMR 725).

15. However, in narcotics cases, stricter standards apply. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the *Malkhana* under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody. Any deviation, omission, or infirmity in either of these essential requirements warrants drawing an adverse inference against the prosecution, thereby entitling the accused to

acquittal. This principle has been consistently reiterated by the Hon'ble Supreme Court of Pakistan in a catena of judgments, including *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 through A.G. KPK* (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), *Gulzar v. The State* (2021 SCMR 380), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Qaiser and another v. The State* (2022 SCMR 1641), *Muhammad Hazir V. The State* (2023 SCMR 986), *Javed Iqbal v. The State* (2023 SCMR 139) and *Asif Ali and another V. The State* (2024 SCMR 1408).

16. Prosecution must establish an unbroken chain of custody. If any link in this chain is missing or appears reasonable doubtful, the benefit thereof must accrue to the accused. In view of the above deficiencies, we hold that the impugned judgment of conviction is based on unpersuasive evidence in respect of the broken chain of safe custody and safe transmission of the case property, resulted in miscarriage of justice.

17. Tandemly, the doctrine of benefit of doubt, being a cardinal principle of criminal jurisprudence, mandates that conviction must be founded on unimpeachable evidence leading to certainty of guilt. Where any reasonable doubt arises, the same must necessarily be

resolved in favor of the accused. It is well settled principle that even a single circumstance creating doubt is sufficient to entitle an accused to acquittal as a matter of right, not as a matter of grace. Reliance may be placed upon *Tariq Pervez v. The State* (1995 SCMR 1345), *Riaz Masih v. The State* (1995 SCMR 1730), *Muhammad Akram v. The State* (2009 SCMR 230), *Ikramullah v. The State* (2015 SCMR 1002), *Hashim Qasim v. The State* (2017 SCMR 986), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Muhammad Mansha v. The State* (2018 SCMR 772), *Abdul Jabbar v. The State* (2019 SCMR 129), *Mst. Asia Bibi v. The State* (PLD 2019 SC 64) and *Khair-ul-Bashar v. The State* (2019 SCMR 930). This principle, that even a single dent in the prosecution case is sufficient to demolish its entire edifice, has been reiterated in *Amir Muhammad Khan v. The State* (2023 SCMR 566) and *Rehmatullah v. The State* (2024 SCMR 1782).

18. Consequently, the prosecution has failed to prove safe custody and its evidentiary worth beyond reasonable doubt in terms of Article 117 of the Qanun-e-Shahadat Order, 1984. Accordingly, this CrI. Jail Appeal is allowed. The impugned judgment is hereby set aside. The appellant is acquitted of the charge and shall be released forthwith, if not required in any other case.

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