

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No. D-13 of 2020

Appellant : Muhammad Laique Khatiyani
Through Mr. Farhat Ali Bugti,
Advocate

Respondent : The State
Through Mr. Bilal Ahmed, Special Prosecutor
ANF.

Date of hearing : 22-07-2025
Date of Judgment : 29.07.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J— Appellant Muhammad Laique challenges the judgment dated 30.01.2020, passed by learned Additional Sessions Judgeo-I/ Model Criminal Trial Court, Shikarpur, whereby he was convicted for an offence under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNSA") and sentenced to life imprisonment with a fine of Rs.100,000/-, and in default of payment, to undergo further simple imprisonment for one year. The benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. The prosecution's case in brief, is that on 06.08.2018, an ANF team, acting on prior spy information, apprehended the appellant at Lakhi Ghulam Shah, who was driving a Toyota Corolla Car No. AFJ-514. Upon search 45 kilograms of charas were allegedly recovered from secret cavities within the vehicle. After taking samples and completing initial formalities, case was registered inter alia on above facts.

3. The learned trial court framed a charge against the appellant, to which he pleaded not guilty and claimed trial. The

prosecution examined three witnesses (PWs), and the appellant, in his statement under Section 342, Cr.P.C., denied the allegations and claimed false implication. He also led defense evidence by examining four defense witnesses (DWs) who testified that the appellant was arrested from a hotel at the Qamber-Bypass in Larkana.

4. The learned counsel for the appellant has vehemently argued that the impugned judgment is against the law and the facts of the case. He contends that the learned trial court failed to appreciate the plethora of material contradictions, omissions, and improvements in the prosecution's evidence, rendering it wholly unreliable. Learned advocate submitted that the prosecution case rests entirely on the testimony of official witnesses who are interested in the success of the case, and despite the alleged recovery taking place at a public thoroughfare in broad daylight, no independent private person was associated as a mashir. He highlighted that the evidence is rife with glaring contradictions, including: the denomination of the recovered currency; the location from where the car's registration book was recovered (dashboard vs. personal search); the position of the raiding party at the scene (left vs. right side of the road); and the language of the endorsements on the parcels (Urdu vs. Sindhi). He further argued that the Investigating Officer (PW-1) made a dishonest improvement by claiming the appellant had a prior conviction for murder, a fact which was proven false by the official record (Ex.9/H) he himself produced. Learned advocate contended that Malkhana Officer (PW-3) admitted to tampering with the official Malkhana register by using a "remover" on an entry and leaving crucial columns blank, thereby shattering the chain of custody. Critically, the case property was neither properly described, nor articulated in the evidence nor was it produced in court at the time of recording the appellant's statement under Section 342, Cr.P.C. This failure denied the appellant his fundamental right to be confronted with the incriminating

evidence and to offer an explanation, which is a fatal flaw in the proceedings. The learned trial court failed to appreciate the consistent and corroborative evidence of four defense witnesses who provided a plausible alternative account of the appellant's arrest.

5. Conversely, the learned Special Public Prosecutor has supported the impugned judgment. He has argued that the recovery of a huge quantity of 45 kilograms of charas has been proven by the consistent evidence of the prosecution witnesses. He contends that any contradictions are minor in nature and do not affect the core of the case. He submits that the conviction is well-founded and the appeal may be dismissed.

6. The cardinal principle of criminal jurisprudence is that the burden of proof rests squarely on the prosecution to prove its case against the accused beyond any shadow of a reasonable doubt. The accused is presumed innocent until proven guilty, and this presumption of innocence is not a mere formality but a substantive right. It is only after the prosecution has discharged its burden by presenting unimpeachable, consistent, and credible evidence that the onus shifts to the defense. In the present matter, the learned trial court appears to have overlooked this fundamental duty of analysis. It summarily dismissed grave contradictions as insignificant and rejected the defense plea as an afterthought without first subjecting the prosecution's own evidence to the rigorous scrutiny required by law.

7. When the evidence of the prosecution is placed on the anvil of scrutiny, it shatters into pieces. The sheer number of contradictions, as highlighted by the appellant's counsel, are not minor discrepancies attributable to natural human error; they are material and go to the very root of the case. For instance, the discrepancy in the denomination of the recovered currency notes is a direct contradiction regarding the case property itself. The conflicting accounts of where the vehicle's registration book was found (from the

dashboard versus from a personal search) cast serious doubt on the manner of recovery. The Investigating Officer's blatant falsehood regarding a non-existent murder case against the appellant demolishes his own credibility as a witness. The evidence of police mashirs, in the absence of any genuine effort to secure independent witnesses, must be evaluated with a higher degree of caution, and in this case, their testimony is also contradictory.

8. The handling of the case property is another fatal flaw. It is an essential requirement of a fair trial that the accused must be confronted with the specific incriminating evidence that is to be used against him. The record shows that while a general reference was made to the case property, it was neither properly articulated, nor described in detail in the testimony nor was it produced before the appellant during his statement under Section 342, Cr.P.C. to allow him to explain its alleged recovery. This omission is not a mere procedural irregularity but a grave illegality that vitiates the trial.

9. The most crucial aspect of this case, which must be analyzed in the context of the law settled by the Hon'ble Supreme Court of Pakistan, is the integrity of the chain of custody and the legal value of the Chemical Examiner's Report. In its landmark judgment in *The State v. Imam Bakhsh and others* (2018 SCMR 2039), the Supreme Court laid down the definitive principles governing this area. The Court held that the entire structure of the CNSA rests on the Report of the Government Analyst, which in turn depends on the integrity of the sampling process and the subsequent chain of custody. Regarding the chain of custody, the Supreme Court held in paragraph 9:

"The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the

Report of the Government Analyst, thus, rendering it incapable of sustain¹ing conviction."

10. In the instant case, this chain is not merely broken; it is shattered. The Malkhana Incharge (PW-3) admitted to tampering with the official register using a "remover" and leaving Column 7 (detailing the dispatch and receipt of the sample) blank. This single admission is sufficient to render the entire chain of custody suspicious and unreliable. Furthermore, the IO (PW-1) claimed to have affixed one seal on the sample, but he also noted that the parcel shown in court had four seals, an unexplained discrepancy that further clouds the safe transmission of the sample. It raises an irrefutable presumption of tampering with the case property itself. This broken link is, by itself, sufficient to extend the benefit of the doubt to the appellant, as held by the Supreme Court in *Javed Iqbal V. The State* (2023 SCMR 139).

11. Regarding the legal requirements for the Chemical Examiner's Report, the Supreme Court in *Imam Bakhsh (supra)* analyzed Rules 5 and 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001. The Court declared Rule 5 to be directory, but held that Rule 6, to a certain extent, is mandatory. The Court's finding in paragraph 20 is reproduced:

"We conclude that Rule 5 of the Rules is directory while Rule 6 is mandatory to the extent that the full protocols ought to be mentioned in the Report of the Government Analyst. Non-compliance of Rule 6, in this context, will render the Report of the Government Analyst inconclusive and unreli²able."

12. The Court defined "Protocol" as "an explicit, detailed plan of an experiment, procedure or test or a precise step-by-step description of a test." A review of the Chemical Examiner's Report (Exh.9/F) in the present case, as described in the evidence, reveals a complete absence of any mention of the "full protocols" of the tests applied. The report simply states a positive result. This is in direct violation of the mandatory requirement of Rule 6 as interpreted by the Supreme

Court. Consequently, the report is legally inconclusive and unreliable and cannot form the basis for a conviction. The trial court completely failed to consider this vital legal aspect.

13. In the exercise of statutory interpretation, the distinction between a mandatory and a directory provision is paramount. The determinative test hinges upon the ascertainment of legislative intent and the prescribed consequences, if any, for non-compliance. Provisions that are integral to the core purpose of the statute are deemed mandatory, and a failure to adhere to them vitiates the ensuing proceedings. Conversely, provisions that are merely procedural or serve convenience are considered directory, and a breach thereof may be condoned, provided there has been substantial compliance. The judicial duty is to meticulously examine the statutory scheme to discern the true legislative intent, identifying the provisions that embody the principal objectives of the enactment. A provision is mandatory if its omission renders the related proceedings null and void, whereas it is directory if its observance is not a precondition to the validity of said proceedings. It is established that a single statute, or even a single provision, may contain elements that are both mandatory and directory in nature. Applying this principle to the Control of Narcotic Substances Act, 1997 (the "Act"), its legislative objective is the comprehensive control of narcotic drugs, psychotropic substances, and their trafficking. The severity of this objective is reflected in punishments ranging up to capital sentences. Central to the Act's enforcement mechanism is the Report of the Government Analyst, as stipulated in Section 36. This Report, which determines the chemical nature of a seized substance, is afforded significant evidentiary weight, being admissible without formal proof and deemed conclusive unless rebutted. The credibility and accuracy of this Report are therefore fundamental to the entire statutory scheme.

14. The Rules framed under the Act must be interpreted in this context. Rule 5, which outlines the process for sample examination, is construed as directory. It reflects best practices, and substantial compliance is sufficient; its non-observance does not constitute a fatal defect that would nullify the Analyst's Report. In contrast, Rule 6 stands on a different legal footing. The requirement under Rule 6 for the Analyst's Report to contain the "full protocols of the test applied" is held to be mandatory. A "protocol" constitutes a precise, step-by-step description of a scientific test. This requirement is of substantive importance because the evidentiary presumption of accuracy attached to the Report under Section 36(2) is contingent upon the verifiable reliability of the analysis. A report that omits the full protocols is inconclusive, unreliable, and cannot, as a matter of law, sustain a conviction, thereby frustrating the core purpose of the Act. However, other procedural aspects within Rule 6, such as the requirement for two signatures or the issuance of quadruplicate copies, are deemed directory, as their non-compliance does not offend the substantive provisions of the parent Act. This interpretation aligns with established jurisprudence, which has consistently held the 72-hour dispatch requirement under Rule 4(2) to be directory. It is concluded that Rule 5 of the Rules is directory in nature. Rule 6 is mandatory to the extent that it obligates the inclusion of full test protocols within the Report of the Government Analyst. A failure to comply with this specific mandate renders the Report legally insufficient and unreliable. Furthermore, the integrity of the chain of custody, from seizure to laboratory receipt, must be maintained. Consequently, directives are issued to the Federal and Provincial Governments to ensure that Narcotics Testing Laboratories are standardized in accordance with international guidelines (e.g., UNODC, SWGDRUG, ISO-17025:2017), that Government Analysts possess the mandatory qualifications prescribed by Rule 3, and that

the Rules are diligently observed to ensure the efficacy of chemical analyses, with disciplinary action to be initiated against officials in case of failure.

15. In the case of *Zahir Shah V. The State* (2019 SCMR 2004), it was observed:

“This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. ... Any break in the chain of custody... impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus rendering it incapable of sustaining conviction.”

16. Similarly, in ***Asif Ali and another V. The State* (2024 SCMR 1408)**, the Court reiterated:

“In the cases under CNSA, 1997 it was the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused.”

17. In light of the myriad contradictions, the compromised chain of custody, and a legally deficient chemical report, the prosecution's case collapses under its own weight. The consistent narrative provided by the four defense witnesses, which the trial court dismissed without cogent reasons, gains significant weight and creates profound and reasonable doubt in the prosecution's story.

18. For the foregoing reasons, we are of the considered view that the prosecution has miserably failed to prove its case against the appellant beyond a reasonable doubt. The conviction is based on evidence that is contradictory, unreliable, and legally insufficient. The investigation was tainted, the chain of custody was broken, and the primary piece of evidence the Chemical Examiner's Report does not meet the mandatory legal standards set by the apex court.

19. Resultantly, this Criminal Appeal is allowed. The impugned judgment of conviction and sentence dated 30.01.2020, passed by the learned 1st Additional Sessions Judge / MCTC, Shikarpur, is hereby set aside. The appellant, Muhammad Laiq son of Tooh, is acquitted of the charge. He shall be released forthwith if not required in any other custody case. The case property be unclaimed shall remain intact.

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Asghar Altaf/P.A