

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.D-16 of year 2025

(Habibullah Jakhrani V. The State)

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Appellant:

Habibullah Jakhrani

Through Mr. Riaz Hussain Khoso, Advocate.

Respondent:

The State

Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh Assisted by Mr. Zain-ul-
Abideen Abbasi Assistant Prosecutor General.

Date of hearing:

02-09-2025

Date of short order:

02-09-2025

Date of reasons:

10-09-2025

J U D G M E N T

NISAR AHMED BHANBHRO, J. Appellant Habibullah Jakhrani was tried by the Court of Learned Special Judge for CNS/Sessions Judge Kashmore @ Kandhkot, (Trial Court) in special narcotics case No.04/2023, emanating from FIR No.95/2022, of police station B-section Kandhkot recorded for an offence punishable under section 9(i)(c) of the CNS Act 1997. He was convicted and sentenced to Rigorous imprisonment for Life and pay fine of Rs 80,000, in case of fault in fine payment to further undergo simple imprisonment for 05 months with benefit of section 382 CrPC vide judgment dated 24.04.2025 (impugned judgment). He has preferred instant Criminal Appeal against conviction.

2. The brief facts of the case as unfolded in FIR NO.95/2022 of PS B-section Kandhkot, lodged by Complainant SIP Janib Dahani are that on 06-12-2022, at 1610 hours, during patrolling, Complainant SIP Janib Dahani along with his subordinate staff, reached Allah Walla Chowk, Kandhkot near Manoo Curve, apprehended a person, who disclosed his name as Habibullah Jakhrani. On search black color plastic bag containing charas, collectively weighing 1500 grams was recovered from his possession. During personal search, rupees two hundred were found in pocket of his shirt. The memo of arrest and

recovery was prepared, accused along with recovered contraband was taken to police station and FIR was registered against him on behalf of the State.

3. After registration of FIR, investigation took its course. Investigation Officer submitted charge sheet of the instant case in the court of Consumer Protection/Civil Judge and J.M Kashmore @ Kandhkot. The case being exclusively triable by Special Court constituted under CNS Act 1997 was sent up to Learned Trial Court for disposal in accordance with law.

4. Copies of the case papers were supplied to accused Habibullah Jakhrani, vide receipt at Ex. No.01, he was indicted for the charge vide Ex. No.02 to which he pleaded not guilty vide Ex. No.02/A and claimed trial.

5. Prosecution in order to prove charge, examined five (05) witnesses before Learned Trial Court:

- i. *PW-01/SIP Janib Dahani (complainant) at Ex. No.03.*
He produced memo of arrest and recovery at Ex:3/A, FIR at Ex:3/B, daily diary entry Nos.12, 20, 21 and 25 at Ex:3/C.
- ii. *P.W-02/PC Lehaq Gujrani (witness and mashir) vide Ex: No.4.*
He produced mashirnama of inspection of place of vardat at Ex:4/A.
- iii. *PW-03/PC Moharram Dahani (parcel bearer) at Ex: No.5.*
He produced R.C No.177 at Ex: No.5/A.
- iv. *PW-04/SIP Khawand Bux (investigation officer) at Ex: No.6.*
He produced entry No.38 of register No.19 at Ex: No.6/A, daily diary entry No.32 and 6 at Ex: No.6/B, daily diary entry Nos.6 and 22 at Ex: No.6/C, report of chemical examiner at Ex:6/D.
- v. *PW-5/HC Khalid Hussain at Ex: No.7. (in charge malkhana)*

6. Learned prosecutor for the state closed prosecution evidence. The statement under section 342 CrPC of accused/ appellant Habibullah Jakhrani was recorded vide Ex. No.9, in which he denied the charge and claimed innocence. Appellant / accused did not examine himself on oath nor did he adduce any evidence in defence.

7. Learned Trial Court after hearing the Learned Counsel for prosecution and defence, convicted and sentenced the appellant as aforementioned.

8. Mr Riaz Hussain Khoso Learned Counsel for the appellant argued that the appellant was booked in a false case. He argued that per prosecution story the appellant was nabbed from a chowk near petrol pump in broad day light but no person from the public was

associated to witness the recovery proceedings. He argued that per mashirnama of arrest and recovery 1500 grams charas was recovered from black shopper carried by the appellant, however the shape and description of the recovered contraband was not described in the memo of recovery. He argued that there were material contradictions in the evidence of prosecution witnesses in the manner of arrest and recovery. Per Learned Counsel complainant PW 1 SIP Janib Dahani deposed that witnesses PC Lehaq and PC Ghulam Rabbani apprehended the accused, whereas per PW 2 PC Lehaq that SIP Janib apprehended the accused. Per PW 1 SIP Janib, 50 minutes were spent at the place of incident, whereas PW 2 PC Lehaq deposed that 30 minutes were consumed at the place of incident. He argued that there was delay of two days in sending the recovered property for chemical analysis and prosecution failed to prove the safe custody and safe transmission of the recovered contraband. He argued that the evidence of prosecution witnesses recorded at trial did not inspire confidence, the same was unreliable. He prayed for acquittal of the accused.

9. Mr Ali Anwer Kandhro learned Additional Prosecutor General for the state argued that prosecution proved its case against the accused beyond reasonable shadow of doubt, therefore, the appellant was awarded punishment in accordance with law. He argued that there was unison in the prosecution evidence on material points of arrest and recovery. He argued that safe custody and transmission of the property to chemical laboratory was established through evidence of relevant witnesses. He argued that the report of Chemical laboratory was in positive. There was no ill will or animosity of the prosecution witnesses to falsely involve the appellant in the case. He argued that officials of the police were as good witnesses as from public. He prayed for dismissal of the appeal.

10. Heard arguments. Reappraised evidence with the assistance of the Learned Counsel for the parties.

11. Scanning of the evidence on record revealed that appellant was apprehended from Allah Wala Chowk near Raja Petrol Pump at about 1610 hours and contraband material weighing 1500 grams was allegedly recovered from his possession. In the memo of arrest and recovery so also in FIR it was not mentioned that the recovered contraband consisted upon three pieces or patties of the Charas. The place of incident was a thickly populated area and Appellant was found alone roaming there. During recovery proceedings there appeared no efforts on the part of raiding party to associate any independent person with recovery proceedings, as no word was uttered by the prosecution witnesses in that regard. Though section 25 of the CNS Act excluded the applicability of section 103 of the Code of Criminal Procedure, 1898 in search and seizure, making the evidence of police officials as good as that of an independent person from public. Looking at the peculiar facts and

circumstances present case as the alleged arrest and recovery was affected from a public thoroughfare, the association of witness from public would have strengthened the prosecution case. Per evidence of Complainant, the police party remained at the place of incident for about 50 minutes, per mashir PC Lehaq police party consumed about 30 minutes at the place of incident in completing the formalities. PWI SIP Janib Dahani deposed that he got the contraband weighed, but who weighed the contraband material remained shrouded in mystery. None of the prosecution witnesses disclosed in the evidence before Trial Court or in FIR or memo of recovery that the recovered contraband consisted of three pieces or otherwise. The Prosecution witnesses deposed in unison before Learned Trial Court that recovered contraband consisted of three pieces, whereas, per chemical report the contraband material received by the laboratory consisted of two black brown patties and one piece of Charas. The contradictions and improvements in the prosecution evidence created dent in the prosecution story, which would yield favor to the appellant.

12. This view finds support from the judgment of Honorable Supreme Court of Pakistan in the case of *Qurban Ali Versus The State* reported as 2025 S C M R 1344, wherein it is held that:

“13. In our view, if all these factors, as noted above, are considered it could not be said that the prosecution has proved its case beyond reasonable doubt. The depositions of various prosecution witnesses, complainant etc., as noted above, do reflect contradictions and doubts. It is a settled proposition of law that in case of contradictions and doubts the benefit of the same must be extended to the accused. “

13. The safe custody of the recovered contraband, its safe transmission to Laboratory for forensic analysis remains the important feature of the prosecution case. Any departure, inconsistency in the chain of custody hits at the very root of the prosecution case, rendering the contraband recovery of no consequences. In depth examination and reappraisal of the prosecution evidence transpired that contraband material weighing 1500 grams was allegedly recovered from the possession of Appellant on 06.12.2022. The entire contraband property was sent to Chemical Laboratory on 08.12.2022 through PW3 Pc Moharram. The witnesses PW 1 Complainant SIP Janib, PW 4 IO of the case SIP Khawand Bux during evidence before Learned Trial Court failed to establish the safe custody of recovered property during the intervening period. There was no evidence on record to say that contraband material after its storage in malkhana was taken out for sending the same to Forensic Laboratory. The failure on the part of prosecution to prove the safe transmission of recovered contraband to Forensic Laboratory broke the chain. Prosecution examined WHC Khalid Hussain to prove safe custody and transmission of recovered contraband.

PW 5 WHC Khalid Hussain, the Malkhana incharge, deposed that on 06.12.2022 the case property was handed over to him by SIP Khawand Bux Mahar for depositing in the Malkhana. He did not depose that the case property was taken from malkhana for sending the same for chemical analysis. For the sake of convenience, the relevant part of the deposition of PW 5 Khalid Hussain in his examination in Chief is reproduced below:

“On 06.12.2022, I was posted as WHC at PS B section Kandhkot. On that date SIP Khawand Bux handed over the case property parcel of this case at P.S to keep the case property in malkhana of P.S. I deposited the case property in malkhana of P.S B Section Kandhkot and such entry was recorded at serial No 38 in register 19. Investigation officer recorded my statement under section 161 CrPC. I see exhibit 06/A which is entry No 38 of register No 19 about depositing case property in malkhana of P.S and say that it is same and correct. I see article 1/A and 1/B which are two currency notes of Rs 100 each. I see article 1/C which is sealed cloth parcel containing case property and say that the case property available in court is same.”

14. From the analysis of the above piece of evidence of PW 5 Khalid Hussain it can be safely concluded that the chain of safe transmission of case property viz. the parcel containing contraband material from the spot to Police Station and thereafter to the Forensic Laboratory could not be established by the prosecution, which made the report of the chemical examiner unsafe and unreliable for justifying conviction of the appellant. The prosecution had to establish that the custody of recovered contraband remained safe, it was transmitted to Forensic Laboratory in secure and indisputable way, then was returned back and deposited in the malkhana after its chemical analysis, so that the reliance on the report of the chemical examiner could be placed. In this case the prosecution failed to establish such chain of safe custody and transmission of samples of the narcotic from the place of seizure to Police Station and thereafter to the chemical examiner.

15. It is an established principle of law that the prosecution was burdened to prove the unbroken chain of custody contraband, so as to exclude any possibility of tampering in the chemical report. If the prosecution fails to establish such unbroken chain, the benefit of such lapse must necessarily be extended to the accused. It is axiomatic principle of criminal jurisprudence that when the prosecution evidence is tainted with doubt, the scales of justice must tilt in favor of the accused. Any failure to prove the safe and continuous handling of the narcotic sample from seizure to forensic analysis not only weakens the prosecution case but spoils the credibility and reliability of the evidence. The safe custody and transmission of the contraband material to the Forensic Laboratory in the present case was compromised,

which dented the prosecution case and brought it under the scale of uncertainty. The doubt so created in the prosecution case ought to be resolved in favor of the accused being a blue-eyed child of the criminal law.

16. This view finds support from the dicta laid down by Honorable Supreme Court of Pakistan in the case of Abdul Haq Versus The State reported in 2025 S C M R 751, wherein it has been held that:

“The chain of safe transmission of case property i.e parcels each containing sample of ten grams opium and the parcel containing remaining quantity of opium from the spot to Police Station and thereafter to the FSL could not be established by the prosecution, which made the report of the chemical examiner unsafe and unreliable for justifying conviction of the accused the prosecution had to establish that the chain of custody was safe, secure and indisputable in order to place reliance on the report of the chemical examiner, and in this case the prosecution has failed to establish such chain of safe custody and transmission of samples of the narcotic from the place of seizure to Police Station and thereafter to the chemical examiner. The sanctity of the chain of transmission stands as the cornerstone for maintaining the integrity and evidentiary credibility, particularly in narcotics cases, where the law imposes severe and inexorable punishments. Any rupture or inconsistency in the chain of custody strikes at the very root of the prosecution's case, rendering the evidence susceptible to doubt and challenge. It is an established principle that the prosecution bears the burden of ensuring an unbroken, meticulously documented chain of custody, so as to preclude any possibility of tampering, substitution, or contamination. If the prosecution fails to establish an unbroken chain of transmission of the narcotic sample and any breakage or discrepancy is observed in the custody of the recovered substance, the "benefit of such lapse must necessarily be extended to the accused. It is a well-settled principle of criminal jurisprudence that when the prosecution's evidence is tainted with doubt, the scales of justice must tilt in favor of the accused. Any failure to prove the safe and continuous handling of the narcotic sample from seizure to forensic analysis not only weakens the prosecution's case but also vitiates the reliability of the evidence, entitling the accused to the benefit of the doubt.”

17. It is settled principle of law that multiple circumstances were not necessary to create dent in prosecution story, a single circumstance creating reasonable doubt in prudent mind is sufficient to discredit prosecution story, and benefit of such doubt has to be resolved in favor of accused not as a matter of grace but as a matter of right. It is always the prosecution burdened to prove its case beyond shadow of doubt; this burden cannot shift in any way to other side.

18. This view finds support from the dicta laid down by Honorable Supreme Court of Pakistan in the case of Ahmed Ali and another V. The State reported as 2023 S C M R 781, wherein it is held that:

***“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right.*”**

19. For what has been discussed herein above, We are of the considered view that the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt, benefit of which, ought to be given to the accused. Consequently; we allow this appeal, set aside the impugned judgment dated 24.04.2025 passed by the Court of Learned Sessions/Special Judge (CNS) Kashmore @ Kandhkot, in Special Case No.04/2023 “Re The State Versus Habibullah Jakhrani”, stemming from FIR No.95/2022, of police station B-section Kandhkot for an offence punishable under section 9(i)(c) of the CNS Act 1997 and acquit the Appellant Habibullah Jakhrani of the charge of above Special Case. He shall be released forthwith if not required in any other case.

20. The appeal was allowed vide short order dated 02.09.2025 and these are the reasons for the same.

JUDGE

JUDGE

Asghar/P.A

Larkana

Dated: 10.09.2025

“Approved for reporting”