HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.D-16 of 2024

Present:
Mr. Justice Jan Ali Junejo.
Mr. Justice Mohammad Osman Ali Hadi.

Appellants/Accused:	1. Sadique Ali S/o Muhammad Ameen Brohi. 2. Mir Ahmed S/o Faiz Muhammad Brohi. Through Mr. Afzal Karim Virk, Advocate.
Respondent:	The State, Through, Mr. Ghulam Abbas Dalwani, Deputy Prosecutor General Sindh.
Date of hearing:	10.06.2025.
Date of Judgment:	10.06.2025.

J U D G M E N T

Jan Ali Junejo, J:-- This criminal appeal is preferred to challenge the judgment dated 18.04.2023 (hereinafter referred to as the *"Impugned Judgment"*), rendered by learned 1st Additional Sessions Judge/M.C.T.C/Special Judge for C.N.S.A, Mirpurkhas (hereinafter referred to as the *"Trial Court"*), in Special Case No.07 of 2023 (Re: The State vs. Sadique Ali and others), emanating from F.I.R. Crime No.01 of 2023, registered for offence punishable under section 9(1) Serial No.3-C of Control of Narcotic Substance Amended Act, 2022 at P.S Taluka Mirpurkhas and sentenced to suffer rigorous imprisonment for nine years, with fine of Rs.80,000/- (fine of Rs.40,000/- each convict) and in default thereof, to suffer S.I for two years more, with benefit of Section 382-B, Cr.P.C.

2. The prosecution case, as outlined in the First Information Report (FIR) Crime No.01/2023 dated January 4, 2023, registered at Police Station Taluka Mirpurkhas, commenced on January 4, 2023, at 1415 hours Sub-Inspector of Police (SIP) Hidayatullah Narejo, accompanied by police officials, including Constable (PC) Nadir Parvez and Constable (PC) Ghulam Qadir of the C.I.A Centre, Mirpurkhas, proceeded on a patrol duty in order to arrest proclaimed

offenders. They were duly armed, in police uniform, and carrying an investigation bag, leaving the CIA Centre Mirpurkhas, as recorded in Roznamcha Register Departure Entry No. 10. During their patrol, the police team received confidential information, prompting them to hasten to the specified location, namely Jhalori Link Road (Umerkoat Mirpurkhas bypass road). At 1550 hours, they apprehended two individuals, Sadique Ali Brohi and Mir Ahmed Brohi, who were sitting in a Suzuki Mehran Car No. ASH-832. The prosecution alleged that the co-accused, Bansi and Bhangchand, who were occupying the rear seats of the same vehicle, fled upon sighting the police party. Subsequent to the apprehension, the police conducted a search and recovered 4040 grams of charas from beneath the dashboard of the car, along with cash amounting to Rs. 1500/- and a cell phone from the possession of the accused. The vehicle was identified as stolen property, as per FIR 109/2015 registered at Police Station Gulshan-e-Iqbal East Karachi. Following the investigation, a challan was submitted, and the case was forwarded to the trial court for trial. A formal charge was framed against the appellants and the acquitted accused, to which they did not plead guilty and claimed to be tried.

3. To substantiate its case, the prosecution examined five witnesses, whose detailed evidence is as follows:

> **PW-1 SIP Hidayatullah Narejo (Complainant)** examined at Ex.3, he produced Duplicate Departure Entry No.10 (04-01-2023 at 1415 hours), arrest & recovery memo (04-01-2023), FIR Crime No.01/2023 P.S Taluka Mirpurkhas and Investigation Entry No.15 (04-01-2023 at 1630 hours) at Exh-3/A to 3/D. He testified that on January 4, 2023, at 1530 hours, he and his team apprehended Sadique Ali Brohi and Mir Ahmed Brohi in a Suzuki Mehran car (No. ASH-832) on Jhalori road near the Umerkot-Mirpurkhas bypass. During a search, they discovered a hidden compartment in the dashboard containing 8 pieces of Charas, weighing 4040 grams. During cross-examination, he admitted that the case property was not recovered from the possession of co-accused Bhagchand and Bansi. He also admitted that no private person was present at the time of arrest of the accused.
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> **PW-2 PC/757 Nadir Parvez (Eye Witness cum Mashir)** examined at Ex.4, he produced memo of Site Inspection (25-01-2023) at Exh-4/A and verified arrest & recovery memo (Exh-3/B) including his signature, co-mashir's and police officer's signature. He corroborated PW-1's version. However, in cross-examination, he raised doubts about the car's condition, the absence of the key, and inconsistencies in the description of the recovered Charas. He stated that at this stage car is not in working

condition and the key of the car has not been produced as case property in the court today. He also stated that the color of pieces of chars, which have been produced today, is dark brown. He stated that Charas was of black colour.

PW-3 SIP Khuda Bux Ranjhani (Author-cum-I.O) examined at Ex.5, he produced departure entry No.08 (04-01-2023), arrival entry No.11 (04-01-2023), property entries (Entry No.21: 08-01-2023 & Entry No.19: 09-01-2023), attested photo stat copy of Property Register No.XIX Serial No.01, Laboratory Payment Receipt, Property Forwarding Letter, Chemical Examiner Report No.1013 (23-01-2023) and CRO at Exh-5/A to 5/H. During cross-examination, he admitted that the case property was recovered on January 4, 2023, but the sealed parcel was sent to the chemical laboratory on January 9, 2023.

PW-4 ASI Ariz Muhammad Mari Baloch (I/C Malkhana) examined at Ex.6, he verified and confirmed authenticity of Exh-5/B to 5/E (Lab report, forwarding documents, register copies, etc. However, he failed to establish the safe custody of the recovered Charas in the Malkhana. During cross examination, he deposed that "It is correct to suggest that time of entry serial No.1 is not mentioned. I do not remember date on which case property was received back from laboratory".

PW-5 PC/1446 Shahid Rajput (Dispatch Official) examined at Ex.7**,** he verified relevant documents and testified about dispatching the sealed parcel to the Chemical Laboratory in Karachi.

4. After the prosecution's evidence side was closed, the trial court proceeded to record the statements of the appellants and co-accused under Section 342 of the Criminal Procedure Code (Cr.P.C.). They categorically denied the prosecution's allegations and maintained their innocence. When asked to provide any explanation regarding the evidence, each accused claimed that they were falsely implicated in the case. Notably, the accused persons opted not to be examined on oath under Section 340(2) of the Cr.P.C. Additionally, the accused persons did not produce any witnesses in their defence. The trial Court convicted Sadique Ali and Mir Ahmed under Section 245 (ii) Cr.P.C for offence punishable U/S 9-1 (serial 3-C) CNSA (Amended 2022). The trial Court sentenced them as follows:

- **Sadique Ali Brohi and Mir Ahmed Brohi**: Both were sentenced to nine (09) years of rigorous imprisonment (R.I) and a fine of Rs. 80,000 (Rs.40,000 each). In case of default in payment of the fine, they will undergo an additional two (02) years of simple imprisonment (S.I).

- **Bansi Malhi and Bhagchand**: Acquitted under Section 245(1) Cr.P.C.

5. The learned counsel for the Appellants has strenuously argued that the impugned judgment is based on misreading and non-reading of evidence and is

liable to be set aside on several grounds. He submitted that the police party admittedly acted on spy information received in advance, yet no efforts were made to associate private persons as mashirs to witness the search and recovery proceedings, which creates serious doubt about the genuineness of the recovery. He further contended that the recovery was allegedly effected on 04-01-2023 but the sample was sent for chemical examination on 09-01-2023 with an inordinate and unexplained delay of five days, during which the case property remained in police custody without proper safeguards, creating reasonable possibility of tampering or substitution. The learned counsel emphasized that the recovery was allegedly made from secret cavities beneath the dashboard of the vehicle, yet there is nothing on record to establish that the Appellants had knowledge of the presence of narcotic substance in the vehicle. He argued that mere presence in a vehicle does not ipso facto establish possession or knowledge, particularly when the substance is concealed in hidden compartments. The learned counsel further submitted that the prosecution has failed to establish the chain of custody of the alleged narcotic substance and the delay in sending the sample for chemical examination has not been satisfactorily explained. He prayed that the impugned judgment may be set aside and the Appellants be acquitted of the charge.

6. The learned Deputy Prosecutor General, while supporting the impugned judgment, has argued that the prosecution has successfully proved its case through cogent and reliable evidence. He submitted that Section 25 of CNSA excludes the application of Section 103 Cr.P.C in narcotic cases and official witnesses are as good as private witnesses. He contended that non-association of private persons as mashirs is not fatal to the prosecution case and the delay in sending the sample for chemical examination is directory in nature and not mandatory. The learned DPG argued that the Appellants were found in exclusive possession of the vehicle from which the narcotic substance was recovered and failed to offer any plausible explanation for their presence or possession of the vehicle. He submitted that the prosecution has discharged its

burden of proof and the Appellants have failed to create any reasonable doubt in the prosecution case. He prayed for dismissal of the appeal.

7. We have carefully considered the arguments presented by the learned counsel for the parties and have thoroughly examined the material on record with their assistance. It is an admitted fact that the alleged incident occurred in broad daylight in a densely populated area, and the police party acted on prior information, which would have afforded them a reasonable opportunity to arrange for independent witnesses to observe the search and recovery proceedings. However, the prosecution deliberately chose not to associate any private individuals as mashirs, relying solely on police officials as witnesses. Although Section 25 of the CNSA excludes the application of Section 103 of the Cr.P.C, the failure to associate independent witnesses in cases involving prior information raises serious concerns about the bona fides of the alleged recovery, particularly in the absence of a satisfactory explanation for this omission. The absence of independent witnesses to corroborate the prosecution's account raises significant concerns about the potential for false implication of the accused. In this regard, reliance may be placed on the legal principles enunciated by this Court in ***Ghulam Shabbir and Another v. The State (2023 YLR 153)***.

8. It is also admitted fact that the incident of alleged recovery occurred on 04.01.2023 but the sample was sent for chemical examination on 09-01-2023, involving an inordinate delay of five days. This delay is material and significant as it provided ample opportunity for tampering, substitution or contamination of the alleged narcotic substance. The prosecution has miserably failed to provide any plausible explanation for this delay during the evidence, and the mere assertion that such delay is directory in nature cannot absolve the prosecution from explaining the circumstances that necessitated such delay. The principle of safe custody demands that the prosecution must provide a satisfactory explanation for any unexplained delay in sending a sample for chemical examination, as the integrity of the sample during that period is crucial to its admissibility. In a similar context, the Honourable Supreme Court of Pakistan, in

Case of ***Muhammad Aslam v. The State (2011 SCMR 820)***, held that: *"Another distinguishing feature of the case is that there is no explanation, whatsoever, from' the side of the prosecution about the delay of over seven days in the remission of samples to the Chemical Examiner for his report. This being the position, extending the benefit of doubt to the appellant, this appeal is allowed, both the judgments impugned before us by the appellant are set aside, he is acquitted of the charge and ordered to be released forthwith, if not required in any other case".*

9. It is most important fact that the alleged narcotic substance was recovered from secret cavities beneath the dashboard of the vehicle, which were concealed and not visible to ordinary observation. There is absolutely nothing on record to establish that the Appellants had any knowledge of the presence of narcotic substance in these hidden compartments. The prosecution has failed to adduce any evidence to show that the Appellants were aware of the concealed narcotic substance or had any role in its placement in the vehicle. Mere presence in a vehicle, without more, cannot establish possession or knowledge of concealed contraband, particularly when the substance is hidden in secret cavities that would not be apparent to ordinary users of the vehicle. The law requires not only physical possession but also conscious possession with knowledge of the nature of the substance. In the instant case, the prosecution has utterly failed to establish the element of knowledge, which is essential for conviction under the CNSA. In a similar context, as seen in the case of ***Haji Nawaz v. The State (2020 SCMR 687)***, the Honourable Supreme Court of Pakistan held that: ***"****As if this were not enough, even according to the prosecution's own showing the appellant was merely a passenger sitting on the passenger seat of the relevant vehicle at the time of the raid and recovery and the substance recovered in this case had been recovered from underneath some seats of the relevant vehicle and its trunk. The appellant might be the owner of the relevant vehicle but at the relevant time his conscious possession of the narcotic substance had to be established by the prosecution, particularly when the vehicle*

was in control of the driver who had escaped, but the prosecution had completely failed on that score".

10. Furthermore, the prosecution case is also weakened by the fact that the vehicle itself was a stolen property, which further diminishes the reliability of the alleged recovery and raises questions about the circumstances under which the Appellants came to be in possession of the vehicle. The prosecution has failed to establish any connection between the Appellants and the theft of the vehicle or their knowledge of its stolen status. The evidence on record suggests that the Appellants were merely using the vehicle as driver and passenger, without any knowledge of its stolen status or the presence of concealed narcotic substance. The burden was on the prosecution to prove beyond reasonable doubt that the Appellants had conscious possession of the narcotic substance with knowledge of its nature and character. The prosecution has dismally failed to discharge this burden, and the evidence adduced falls far short of the standard required for conviction in criminal cases.

11. It is imperative to underscore that the evidentiary value of the Chemical Examiner's Report is intrinsically linked to the preservation of the chain of custody. The prosecution bears the responsibility of proving that the chain of custody remained intact and secure at every stage, especially given the critical evidentiary role the Chemical Examiner's Report plays under the Control of Narcotic Substances Act, 1997. The only reliable method to verify that the recovered substance received by the Chemical Examiner is the same as that allegedly seized from the accused is by demonstrating, through cogent and credible evidence, an unbroken and safeguarded chain of custody. P.W-3 SIP Khuda Bux Ranjhani (I.O) in cross examination deposed that "It is correct that as per laboratory report (Ex.5-G) 08 dark brown pieces of charas were received by laboratory". P.W-2 PC Nadir Pervez (eye witness cum mashir) in cross examination stated that the charas was of black colour.

12. A careful examination of the record reveals that the prosecution has failed to establish that the recovered parcel of charas was retained in safe custody at the

police station (Malkhana). During his testimony, the complainant admitted that: *"I started to check Suzuki Mehran Car and found secret cavity available below its dashboard. During checking of such cavity, I found that 08 pieces of charas were lying in a blue coloured shopping bag. I took the same out of secret cavity. I weight the same charas alongwith shopper to be 4040 grams (gross weight). I alongwith police officials brought both arrested accused as well as recovered case property at PS Taluka Mirpurkhas where FIR vide Cr.No. 01/2023 was lodged against all accused for offence punishable under CNSA Amended Act, 2022. Another FIR vide Cr.No.02/2023 was also lodged against the same accused for offence punishable in terms of section 411, 34 PPC as complainant on behalf of State. I handed over custody of case property as well as accused alongwith all relevant police papers to SHO Khuda Bux Ranjhani for investigation purpose. The I.O of the case during his evidence deposed that I obtained requisite permission from SSP, Mirpurkhas and thereafter sent a sealed parcel of charas (g.w 4040 grams) to chemical laboratory Sindh at Karachi alongwith a letter through PC Shahid, who deposited the same in the laboratory, which was acknowledged by the incharge concerned"*. In cross examination he admitted that *"case property was recovered on 04-01-2023 and a sealed parcel of chars was sent to chemical laboratory on 09-01-2023"*. The date is not mentioned in the letter vide which parcel of recovered charas was sent to the chemical laboratory, but surprisingly report of chemical examiner (Ex-5-C) shows that parcel was received with memorandum No.Cr-01/2023 dated 09-01-2023.

13. Upon a meticulous examination of the complainant's testimony, several significant discrepancies and material defects have come to light. Notably, during cross-examination, the complainant admitted that: *"It is correct that I did not recover case property from the possession of accused Bhagchand and Bansi. It is correct that at the time of arrest of accused I did not find any other private person on the spot. It is correct that FIR is silent to the extent of handing over custody of case property to I.O. It is correct that location of the secrete cavity inside car is not specifically mentioned in*

FIR as well as in memo. It is correct that as per FIR and memo both accused namely Sadique and Mir Ahmed did not point out availability of chars in secret cavity to me".

14. The credibility of the complainant's version has been severely undermined by the testimony of PW-02 PC Nadir Pervez. During cross-examination, PC Nadir Pervez made several statements that contradicted the complainant's account, including: *"It is correct that at this stage car is not in working condition and the key of the car has not been produced as case property in the court today. It is correct that fact of recovery of key is not mentioned in the memo. It is correct that colour of pieces of chars, which have been produced today, is dark brown. It is correct that pieces of chars are wrapped with white Panni, which is not mentioned in the memo. It is correct that a golden colour monogram with words "Sher-e-Sindh" is visible on the pieces of chars, which fact is not mentioned in the memo. He stated that Charas was of black colour".*

15. PW-03 SIP Khuda Bux, during the course of his cross-examination, stated that: *"It is correct to suggest that I did not collect any record in respect of court proceeding of FIR Cr. No.109/2015. It is correct that none from PS Gulshan-e-Iqbal Karachi came to receive Suzuki Mehran car as case property in FIR No.109/2015 of PS Gulshan-e-Iqbal Karachi. It is correct to suggest that I do not know about fate of FIR Crime No.109/ 2015 of P.S Gulshan-e-Iqbal Karachi. I did not collect any record in respect of vivo touch screen cell phone which according to complainant was recovered from possession of one of accused. It is correct that case property was recovered on 04.01.2023 and a sealed parcel of chars was sent to chemical laboratory on 09.01.2023. It is correct that as per laboratory report [Ex.5-G] 08 dark brown pieces of chars were received by laboratory".*

16. Moreover, the prosecution has failed to establish the secure transmission of the recovered parcel of charas to the relevant chemical laboratory, as well as its safe custody while lodged in the Malkhana of the concerned police station. Notably, the record is devoid of any explanation for the non-production of this crucial evidence, despite the clear legal obligation to do so. The Honourable Supreme Court of Pakistan, beginning with a landmark judgment reported in 2012 and reiterated in multiple subsequent decisions, has consistently held that

the prosecution's failure to prove safe custody and secure transmission of recovered narcotics is fatal to its case and entitles the accused to acquittal. Moreover, the honourable Supreme Court of Pakistan in the case of **Asif Ali and another vs. The State through Prosecutor General Punjab (2024 S C M R 1408)** has held that "*In the cases under CNSA, 1997 it is 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 the 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. The cumulative discussion, combined with the aforementioned contradictions in the testimony of the prosecution witnesses, has led us to a unanimous conclusion that the prosecution has failed to establish the guilt of the appellants beyond a reasonable doubt. It is a well-established principle of law that the prosecution bears the burden of proving its case beyond a shadow of a doubt. If a reasonable doubt arises in the prosecution's case, the benefit of that doubt must be extended to the accused, not as a matter of grace or concession, but as a matter of right. Furthermore, it is a fundamental principle of criminal justice that it is not necessary for there to be multiple doubts in the prosecution's case; rather, a single reasonable doubt arising from the prosecution's evidence, which raises a judicious concern, is sufficient to warrant the benefit of that doubt being extended to the accused. In this regard, reliance can be placed on the case of ***Mohammad Mansha v. The State (2018 SCMR 772)***, wherein it was observed:

> ***"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted." Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."***

18. For the reasons discussed above, we have no hesitation in concluding that the learned trial Court has committed an illegality and has arrived at an erroneous conclusion in holding the present appellants guilty of the charged offence. Consequently, Criminal Appeal No. 16 of 2024 is allowed. The conviction and sentence recorded against the appellants, Sadique Ali and Mir Ahmed, vide the Impugned Judgment, are hereby set aside, and they are acquitted of the charge, with the benefit of doubt extended to them. They shall be released forthwith, unless required in any other custody case.

19. These are the reasons for our short order passed on 10th June, 2025, which is being detailed and elaborated hereinabove.

JUDGE

JUDGE

"Saleem"