

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Special Crl. Appeal No.D-71 of 2023

PRESENT
Mr. Justice Khadim Hussain Tunio,J
Mr. Justice Ali Haider ‘Ada’,J.

Appellant
Yousif Khan : **Through** Mr. Shafique Ahmed Laghari.
Advocate.

State. : **Through** Mr. Muhammad Raza Katohar,
Deputy Prosecutor General Sindh.

Date of hearing : 15-04-2025
Date of Decision : 15-04-2025
Date of Reason : 22-04-2025

JUDGMENT

Ali Haider ‘Ada’, J - By this Special Criminal Appeal, the appellant challenges the judgment dated 19th October 2023, delivered by the learned Sessions Judge/Special Judge (CNS) Sukkur, in Special Case No. 71 of 2023, arising from FIR No. 93 of 2023, registered at Police Station A Section, Sukkur, under Section 9(c) of the Control of Narcotic Substances Act 1997. Through the impugned judgment, the appellant was convicted and sentenced to nine years of rigorous imprisonment and ordered to pay a fine of Rs.100,000 (Rupees One Hundred Thousand). In default of payment, he shall serve an additional two months of simple imprisonment. However, he was granted the benefit of Section 382-B of the Cr.P.C.

2. On 19.04.2023, ASI Lal Dino departed from Police Station A-Section, Sukkur, under a Roznamcha entry, accompanied by his subordinate staff, namely Head Constable Ali Gohar, Police Constable Saleemullah, and Police Constable Shahbaz Ali, for patrolling duties in an official vehicle driven by Driver Police Constable Jinsar Ahmed. While patrolling, they reached Makar Mohallah, Military Road, Sukkur, where the police observed a suspicious individual carrying a plastic shopping bag. Upon noticing the police, the individual attempted to flee but was apprehended on suspicion. In the presence of official witnesses/mashirs, Head Constable Ali Gohar and Police Constable Shahbaz Ali, a search was conducted, and the police recovered four large slabs and eight small pieces of charas from the bag, with a total weight of 2025 grams. Additionally,

Rs. 60 was recovered from the accused during a body search. The accused (the appellant) disclosed his identity at the scene. A recovery memo was prepared on the spot in the presence of the mashirs, and all formalities were completed. Subsequently, the accused, along with the recovered narcotics and other case property, was brought to the police station, where an FIR was registered against him.

3. Following the registration of the FIR, an investigation was conducted, and a challan was submitted for an offence under Section 9(c) of the Control of Narcotic Substances Act 1997. The case was then sent for trial. On 2 June 2023, the learned trial court framed a charge against the accused at Exhibit 2, to which he pleaded not guilty and opted for a trial, as recorded in his plea at Exhibit 3.

4. At the trial, the prosecution first examined PW-1, the complainant, Assistant Sub-Inspector Lal Dino, who appeared at Exhibit 4. During his examination-in-chief, he produced the memo of arrest and recovery, relevant entries from the Roznamcha, and a copy of the FIR. Thereafter, the prosecution examined PW-2 Police Constable Shahbaz Ali, who was examined at Exhibit 5. He acted as the mashir for the arrest, recovery, and site inspection. During his testimony, he produced the mashirnama of the incident site and affirmed the accuracy and correctness of the previously exhibited documents. Subsequently, the prosecution examined PW-3, Sub-Inspector Farhan Ali, the Investigating Officer, at Exhibit 6. He produced the Malkhana entry, further Roznamcha entries, the road certificate, and the Chemical Examiner's Report. Upon recording the evidence of all three prosecution witnesses, the prosecution closed its side of the case at Exhibit 7.

5. The statement of the accused was recorded under Section 342 of the Cr.P.C. at Exhibit 8, in which he denied the allegations made by the prosecution and claimed to have been falsely implicated in the case. However, the accused neither chose to give evidence on oath under Section 342(2) of the Cr.P.C. nor produced any evidence in his defence. The learned Sessions Judge/Special Judge (CNS), Sukkur, after hearing arguments of counsel for both parties, delivered the judgment on 19.10.2023, convicting and sentencing the appellant as detailed therein. Being aggrieved and dissatisfied with the conviction and sentence, the appellant has filed the present appeal.

6. We have carefully heard learned counsel for the parties and perused the entire evidence available on record.

7. Upon careful examination of the case record, significant discrepancies and contradictions have been identified. The prosecution's case primarily relies on the alleged recovery of a contraband substance. It is stated that the contraband was wrapped in plastic wrapping; however, the complainant did not testify that the recovered charas, comprising four large pieces and eight small pieces, was wrapped in plastic wrapping. This inconsistency casts serious doubt on the reliability of the prosecution's account. Furthermore, the Chemical Examiner's Report describes the recovered substance as being black-brown in colour. However, none of the prosecution witnesses provided any description of the substance's appearance, such as its colour, during their testimonies. This omission is significant, as such physical identification is crucial to establishing a clear link between the seized material and the substance analysed by the Chemical Examiner. The absence of this essential detail undermines the credibility of the prosecution's case.

8. It is also pertinent to note that the attesting witness/mashir of the recovery, during his testimony, did not provide any details regarding the weight of the recovered contraband. His statement merely confirms that four large pieces and eight small pieces of charas were recovered, sealed, and that the recovery memo was subsequently prepared and signed by him and the co-attesting witness. However, he made no mention of the crucial aspect of the weight of the recovered substance.

9. Further discrepancies have emerged from the prosecution's evidence. Although it is alleged that four large pieces and eight small pieces of charas were recovered, the prosecution failed to specify the individual weight of each piece. This omission is significant, as it hinders a proper assessment of the actual quantity of contraband recovered. Instead of weighing each piece separately to ensure transparency and accuracy, the contraband was weighed collectively, indicating procedural negligence. Moreover, there is a clear contradiction in the testimonies regarding the search of the accused. The eyewitness/attesting witness stated that they conducted the search of the accused after the arrest, whereas the complainant, Assistant Sub-Inspector, testified that he personally conducted the search. Another significant inconsistency concerns the visit to the place of occurrence and the attestation of the site memo (mashirnama). The Investigation

Officer testified that he visited the place of occurrence accompanied by the complainant and the attesting witness. However, the departure entry in the Roznamcha indicates only that the Investigation Officer and the complainant left the police station for the visit, with no mention of the attesting witness accompanying them. This omission is not trivial; it directly undermines the credibility of the mashirnama of the incident site. If the attesting witness was not officially recorded as part of the team visiting the place of occurrence, his subsequent claim of having witnessed and attested the memo becomes highly questionable.

10. No doubt, Section 103, Cr.P.C. stands excluded in cases falling under the purview of the Control of Narcotic Substances Act, 1997, by virtue of Section 25 of the said Act. However, this statutory exclusion does not grant an unrestricted license to the police to completely disregard the significance of procedural safeguards. The inapplicability of Section 103, Cr.P.C. does not relieve the prosecution of its obligation to ensure transparency, credibility, and fairness in the recovery proceedings. In the present case, all prosecution witnesses have consistently deposed that the alleged recovery was effected in a thickly populated or residential area. Yet, the record is conspicuously silent as to any effort by the police to associate an independent or impartial private witness from the locality during the recovery process, which casts a shadow on the integrity of the alleged recovery. The prosecution has failed to offer any explanation for this omission, which seriously dents the entire recovery process. Reliance is placed upon the case of *Muhammad Aslam Vs. The State 2011 SCMR 820*, further fortified with the *case of Mir Muhammad & Others Vs. The State 2024 PCrLJ 370* and *case of Shahzaib @ Wadero Feroze Vs. The State 2024 SCMR 1298*.

11. It is a settled principle of law that strict adherence to procedural requirements is imperative in cases involving narcotic substances, especially concerning the safe custody, handling, and transfer of case property. In the present case, glaring lapses are apparent in the prosecution's compliance with the prescribed procedures. The complainant merely stated that he handed over the recovered contraband to the Investigation Officer; however, he failed to produce any documentary evidence or procedural corroboration to substantiate this claim. Mere oral assertions are inadequate, particularly when the Police Rules, 1934, prescribe a detailed and mandatory framework governing the handling, recording, and transfer of case property. During the trial, the prosecution

produced a few Roznamcha entries, including: the departure entry showing the police party proceeded on patrol; the arrival entry indicating return to the police station with the accused and the recovered property; an entry noting the Investigation Officer's visit to the scene of occurrence with the complainant; another entry showing return to the police station after site inspection; and a final entry reflecting the Investigation Officer's departure to deposit the case property before the Chemical Examiner. Critically, however, no entry exists evidencing the formal, lawful, and documented handing over of the case property from the complainant to the Investigation Officer. This omission constitutes a major procedural lapse, effectively breaking the chain of custody and casting serious doubt on the integrity and safekeeping of the seized narcotics. The prosecution has thus failed to demonstrate when, how, and under what authority the Investigation Officer assumed possession of the case property, undermining the reliability of the recovery and the prosecution's overall case.

12. The prosecution case suffers from a serious procedural irregularity concerning the safe custody and documentation of the case property. The complainant, during his deposition, stated that he handed over the recovered contraband to the Investigation Officer. However, as previously discussed, no documentary evidence, such as an official entry or acknowledgment, was produced to corroborate this claim. Further complicating the matter, the Investigation Officer, during his examination, deposed that the case property was handed over to the Head Moharrar for safe custody in the Malkhana, under Entry No. 50 of Register No. XIX. However, upon perusal of the said entry, it is surprising and alarming to note that Entry No.50 was neither made by the Head Moharrar nor by the Investigation Officer. Instead, the entry was made by the complainant himself. This is a glaring contradiction, especially given that the complainant, in his own testimony, never claimed to have deposited the case property into the Malkhana or made any such entry. This unexplained and unauthorized action undermines the sanctity of the chain of custody, which is critical in narcotics cases. It raises grave concerns about the handling, storage, and possible tampering of the case property, thereby casting a shadow of doubt over the entire prosecution case. It is also a matter of serious concern that the Investigation Officer, despite claiming that the case property was handed over to the Head Moharrar for safe custody in the Malkhana, failed to produce the said Head Moharrar as a witness during the trial. In this regard, reliance is placed on

the verdict of the Honourable Division Bench of this Court in ***Abdul Raheem Dayo v. The State and another*** (2024 YLR 1157).

13. In this regard, Honourable Supreme Court in the case of ***Javed Iqbal v. The State*** reported as **2023 SCMR 139** on the point of safe custody of sample parcels and safe transmission of the sample parcels has held that:

“In cases of under Section 9(c) of the Control of Narcotic Substances Act, 1997, it is duty of the prosecution to establish each and every step from the stage of recovery, making of samples parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned Laboratory. Such chain has to be established by the prosecution and if any link is missing in such like offences the benefit must be extended to the accused. In a case containing the said defect on the part of the prosecution it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.”

14. In the case of ***Zahir Shah alias Shat Vs. The State through Advocate General*** (2019 SCMR 2004) the Hon’ble Apex Court also held as under:-

“The prosecution must establish that chain of custody was unbroken, unsuspecting, safe and secured. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable or sustaining conviction. Reliance is placed on State v. Imam Bakhsh (2018 SCMR 2039).”

15. Further being fortified with the case of ***Asif Ali and another Versus The State through Prosecutor General Punjab***. (2024 S C M R 1408)

4. 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. Reference in this regard is made to the cases of 'Javed Iqbal v. The State, 'Mst. Sakina Ramzan v. The State and 'Qaiser Khan v. The State.

16. Therefore, the prosecution’s case is fraught with reasonable doubt and fails to conclusively establish the charges against the accused. The evidence on record is marred by significant inconsistencies and glaring procedural lapses. In such circumstances, it is a well-settled principle of criminal jurisprudence that benefit of the doubt must be extended to the accused. This principle,

encapsulated in the maxim in *dubio pro reo*, meaning 'when in doubt, favour the accused', serves as a fundamental safeguard to prevent the miscarriage of justice in criminal trials.

17. It is a settled principle of law that once a single loophole/lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. Reliance is placed upon the authoritative pronouncement of the Honourable Supreme Court of Pakistan in *Asmatullah Khan & others v. The State & others (PLD 2024 SC 149)*, Further support is drawn from *Khial Muhammad v. The State (2024 SCMR 1490)*, the same stance taken herein is duly fortified by the observations made in *Muhammad Hassan and another v. The State and others (2024 SCMR 1427)* and *Muhammad Imtiaz Baig and another v. The State (2024 SCMR 1191)*`

18. We have no hesitation to hold that the prosecution has failed to prove its case against the accused. Resultantly, instant Cr. Jail appeal was allowed. Conviction and sentence recorded by the trial court vide judgment dated 19.10.2023 was set aside and appellant Abdul Jabbar was acquitted of the charge. He was ordered to be released forthwith if he is not required in some other custody case. These are the reasons of our short order dated 15.4.2025.

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