

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Cr. Appeal No.D-61 of 2024

Appellant : Ali Ahmed Khakhrani
Through Mr. Ahmed Bux Abro,
Advocate

Respondent : The State
Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General, Sindh.

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 Ali Ahmed Khakhrani, challenges the judgment dated October 14, 2024, passed by the learned Sessions/Special Judge (CNS), Larkana, in Sessions Case No.95 of 2024, registered at Police Station Taluka, for offence under Section 9(3)(c) of the Control of Narcotic Substances Act, 1997 (second amendment bill 2022). By the said judgment, the appellant was convicted for offence under Section 9(3)(c) of the Act and sentenced to R.I for 11 years along with a fine of Rs.160,000/-, in default whereof, he was directed to undergo S.I for six months, with benefit of section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on April 16, 2024, at about 1500 hours, ASI Altaf Hussain (PW-1), along with PCs Mehtab Ali (PW-4) and Oshaque, and DPC Hussain Bux, while on patrolling duty, apprehended the appellant Ali Ahmed near Waggan road, Ghaari Canal. They allegedly recovered 2000-grams of Charas from a black plastic shopper in his hand, along with Rs.200/- from his shirt pocket. Due to the non-availability of private mashirs, PCs

Oshaque and Mehtab Ali acted as mashirs. The property was sealed on the spot, and a memo of arrest and recovery was prepared. The appellant and case property were brought to PS Taluka, where was lodged by ASI Altaf Hussain on behalf of the State. The investigation was then handed over to I.O./SIP Raheem Bux Mugheri (PW-5), who, along with the complainant and mashirs, conducted a site inspection. The recovered Charas was subsequently sent for chemical analysis through PC Farooque Ahmed (PW-3), and the chemical report was reported as positive.

3. After framing of charge and recording of evidence, the learned trial court, after hearing both parties, passed the impugned judgment dated October 14, 2024, convicting the appellant. Hence, this appeal has been filed, inter alia, on the grounds that the judgment is contrary to law and facts, gives undue weight to subordinate police witnesses while ignoring the defense, suffers from material contradictions, non-appreciation, and mis-reading of evidence, and that the prosecution failed to prove the charge beyond reasonable doubt.

4. Learned counsel for the appellant vehemently contended that the impugned judgment is unsustainable as the prosecution failed to prove its case beyond reasonable doubt. He highlighted numerous material contradictions, omissions, and improvements in the testimony of the prosecution witnesses, which render their evidence unreliable. Specifically, the counsel argued that the recovery was foisted upon the accused, as there was a clear violation of Section 103 Cr.P.C. due to the non-association of independent private mashirs, despite the place of incident being described as a "busy place" near a highway where vehicles passed by. He further pointed out critical discrepancies in the chain of custody of the recovered charas, particularly regarding its handling at the police station. The appellant's

claim of having met an accident and being unable to run was also put forth as a mitigating circumstance.

5. Conversely, the learned DPG for the State contended that the prosecution had successfully proven its case beyond reasonable doubt. He argued that the police officials are reliable witnesses, and minor discrepancies should not be fatal to the prosecution's case. He emphasized that the Charas was recovered from the possession of the appellant, and the chemical analysis report confirmed its nature. He maintained that the trial court correctly appreciated the evidence and convicted the appellant.

6. We have meticulously perused the record of the case, heard the arguments of the learned counsel for the appellant and the learned SPP for the State, and applied the principles of criminal jurisprudence. We find unable to uphold the conviction recorded against the appellant due to profound infirmities in the prosecution's evidence.

7. At the outset, a critical flaw emerges regarding the non-association of private mashirs during the recovery and site inspection. Both the complainant ASI Altaf Hussain (PW-1) and mashir PC Mehtab Ali (PW-4) stated that due to "non-availability of private mashirs," police officials acted as mashirs. However, PW-1 explicitly admitted during cross-examination that the "place of incident is near highway and vehicles were passed by," and PW-4 stated that the "place of the incident is located on a road, but the houses are situated some distance away," implying public accessibility. The Investigating Officer SIP Raheem Bux Mugheri (PW-5) also admitted that "place of incident was busy place but no private person crossed by during site inspection." The consistent failure to secure independent private mashirs, despite the purported public nature of the place of recovery, creates a strong inference of mala fide and violates the spirit of Section 103 Cr.P.C. This casts a serious doubt on the veracity of the recovery

itself. It is a settled principle that where no private person from the locality is associated as a mashir, the recovery stands seriously doubted, as reiterated in numerous judgments by the superior Courts.

8. Furthermore, the prosecution has failed to establish a foolproof chain of custody for the recovered Charas. ASI Altaf Hussain (PW-1) claimed to have "handed over the papers, custody of accused and property to I.O at 1630 hours" and also stated that "The property was in my possession during lodging of FIR" (which he completed around 1630 hours). In stark contradiction, WHC Riaz Hussain (PW-2) deposed that "The complainant arrived at Police Station at about 1600 hours and handed over the property to me at about 1640 hours." Adding to this confusion, SIP Raheem Bux Mugheri (PW-5) stated that "I received case papers of this case from complainant Altaf Hussian Kalhoro alongwith case property. Before leaving PS I kept the property in Mall Khan through WHC under entry No.21 of register No.19." This sequence is fundamentally contradictory. If the complainant handed the property to the WHC at 1640 hours, the I.O. could not have received it from the complainant at 1630 hours and then deposited it through the WHC. This disarray in the crucial initial handling and custody of the recovered narcotic, from the moment it reached the police station until its formal deposit in the Malkhana and subsequent dispatch for chemical analysis, is fatal to the prosecution. Any break in the chain of custody of the case property, particularly in narcotics cases, makes the chemical examiner's report worthless and unreliable for justifying conviction, as held in a plethora of judgments including *Ikramullah v. The State* (2015 SCMR 1002), *The State vs. Imam Bakhsh* (2018 SCMR 2039), and *Abdul Ghani v. The State* (2019 SCMR 608). Moreover, the failure to specifically identify or mention the person who delivered the sample to the Chemical Examiner, as PC Farooque Ahmed (PW-3) only states he "deposited the said parcel," further weakens the chain.

9. Additionally, other discrepancies and omissions further weaken the prosecution's case. PW-1 (ASI Altaf Hussain) could not remember the arrival entry number at the police station, a basic procedural record. There is also no mention of the accused being handcuffed in the mashirnama of arrest, but PW-4 (PC Mehtab Ali) stated during cross-examination that "The accused was handcuffed." This omission in the official memo and later inclusion by a witness during cross-examination raises questions. Furthermore, while the accused denied recovery and claimed an accident, the prosecution failed to address or rebut these specific defense points. The cumulative impact of these inconsistencies and procedural lapses raises a reasonable doubt about the prosecution's narrative.

10. In criminal jurisprudence, the rule is clear: suspicion, however strong, cannot take the place of proof beyond reasonable doubt. When the prosecution relies on evidence that is riddled with such material contradictions, fundamental inconsistencies, and procedural irregularities that they impeach the credence of the witnesses, and when crucial documents lack proper authentication, the benefit of doubt must inevitably be extended to the accused. The cumulative impact of these flaws creates a profound and inescapable reasonable doubt regarding the appellant's guilt. The Hon'ble Supreme Court of Pakistan has consistently held that it does not need to be a plethora of circumstances raising doubt, a single event that creates reasonable doubt in the mind of a prudent person regarding an accused's guilt would entitle him acquittal as a matter of right and not as clemency or grace, as reiterated in *Tariq Pervez v. The State* (1995 SCMR 1345) and *Hashim Qasim and another v. The State* (2017 SCMR 986). It is trite law that a single dent in the case of prosecution is sufficient for acquittal, as held in *Rehmatullah vs. The State* (2024 SCMR 1782).

11. For the reasons stated above, we are of the considered view that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The impugned judgment of conviction is, therefore, unsustainable.

12. In light of the foregoing, the appeal is allowed. The conviction and sentence awarded to the appellant, Ali Ahmed S/o Juman Khakhrani, by the learned Sessions/Special Judge (CNS), Larkana, vide judgment dated October 14, 2024, are hereby set aside. The appellant is acquitted of the charges. He shall be released forthwith, if not required in any other case. The office is directed to communicate this judgment to the concerned jail authorities and the trial court for necessary compliance.

J U D G E

J U D G E

Asghar Altaf/P.A