

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-05 of 2025

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant : Shafi Muhammad S/o Muhammad Ameen Dool
through Mr. Asif Ali Abdul Razak Soomro,
Advocate.

The State : through Mr. Aitbar Ali Bullo, Deputy Prosecutor
General, Sindh

Date of Hearing : 12.08.2025.

Date of Short Order : 12.08.2025.

Date of Reason : 19.08.2025.

JUDGMENT

Ali Haider 'Ada'. J:- The appellant has challenged the judgment dated 21.01.2025, passed by the learned Sessions Judge/Special Judge for Control of Narcotic Substances (CNS), Kashmore at Kandhkot, in Special Case No. 22 of 2024, titled The State versus Shafi Muhammad, arising out of FIR No. 101 of 2024, registered at Police Station Karampur, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. Through the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of ten (10) years, along with a fine of Rupees Eighty Thousand (Rs. 80,000/-). In default of payment of the fine, he was directed to undergo simple imprisonment for a further period of four (04) months. The benefit of Section 382-B of the Code of Criminal Procedure, 1898, was extended to the appellant.

2. The brief facts of the prosecution case, as disclosed in the FIR, are that on the relevant date, ASI Abdul Rasheed, along with his subordinate staff, was on routine patrolling duty when he received spy information to the effect that a tractor-trolley was proceeding along the road, and that charas was concealed in its toolbox. Acting upon such information, the police party proceeded to the link road leading from Karampur to Diyani, near Bhagio Laro. Upon reaching the pointed location, the complainant party spotted the suspected tractor-trolley. On being signaled to stop, the driver of the vehicle abandoned the tractor and

attempted to flee, but was successfully apprehended by the police. Upon inquiry, the driver disclosed his identity as Shafi Muhammad, the present appellant. A search of the toolbox of the tractor-trolley was conducted, which led to the recovery of charas, the weight of which was subsequently determined to be 1100 grams. Additionally, upon personal search of the accused, an amount of Rs. 500/- in cash and a mobile phone were also recovered. After completing initial formalities at the place of recovery, the recovered narcotics were sealed on the spot, and the accused was arrested. Thereafter, FIR No. 101 of 2024 was registered at Police Station Karampur, under Section 9(c) of the Control of Narcotic Substances Act, 1997, against the present appellant. Subsequent to the registration of the FIR, the matter was entrusted to the Investigating Officer for Investigation. During the course of investigation, necessary formalities were completed, including the preparation of site inspection, seizure memos, arrest memos, recording of statements under Section 161 Cr.P.C., and dispatch of the recovered substance to the chemical examiner for analysis.

3. Upon completion of the investigation, a final report (challan) was submitted before the competent Court of law, and the appellant was sent up to stand trial. The learned Sessions Judge/Special Judge for CNS, Kashmore at Kandhkot, took cognizance of the offence and, after ensuring compliance with Section 265-C Cr.P.C (supply of requisite documents to the accused), framed the charge against the appellant on 21.10.2024, under Section 9(c) of the Control of Narcotic Substances Act, 1997. The appellant pleaded not guilty to the charge and claimed to be tried. Consequently, the learned trial court permitted the prosecution to lead its evidence in support of the charge.

4. In support of its case, the prosecution examined a total of six (06) witnesses: PW-1, Abdul Rasheed, the complainant and Investigation officer at the time of arrest, was examined first. He deposed to the facts of arrest and recovery and exhibited several documents, including the memo of arrest and recovery, copy of the FIR, and relevant Roznamcha (daily diary) entries. PW-2, a police constable who acted as mashir (witness) to the memo of arrest and recovery as well as the memo of place of incident, was also examined. He corroborated the version of PW-1 and formally exhibited the memo of place of incident. PW-3, Abdul Rauf, the Investigating Officer who conducted further proceedings, deposed in respect of post-recovery investigation. He exhibited several documents including the Entry from Register No. 19, letter to the Senior

Superintendent of Police (SSP), additional Roznamcha entries, the road certificate, and the chemical examiner's report. Thereafter, PW-4, Altaf Hussain, who presented himself as the Incharge of Malkhana was examined to verify the custody and dispatch of the sealed parcels. The prosecution also examined Muhammad Rafique, a dispatch rider, who confirmed the transportation of the case property to the chemical examiner in proper condition. Upon completion of recording of evidence of all material and formal witnesses, the prosecution closed its side by submitting a statement in writing before the learned trial Court.

5. After the closure of the prosecution evidence, the learned trial Court proceeded to record the statement of the accused under Section 342 of the Code of Criminal Procedure. In his statement, the appellant professed his complete innocence denied the allegations leveled against him, and prayed for his acquittal. However, the appellant neither opted to examine himself on oath under Section 340(2) Cr.P.C, nor he produced any witness in his defence. Thereafter, upon conclusion of trial proceedings and after hearing the arguments advanced by learned counsel for the parties, the learned trial Court delivered the impugned judgment dated 21.01.2025, whereby the appellant was convicted and sentenced under Section 9(c) of the Control of Narcotic Substances Act, 1997, as detailed hereinabove. It is this judgment which is now under challenge before this Court through the instant criminal appeal.

6. Learned counsel for the appellant vehemently contended that the appellant has been falsely implicated in the instant case and that the alleged case property has been foisted upon him. It was argued that the appellant specifically raised this plea during trial and consistently maintained his innocence. The learned counsel emphasized that, in narcotics cases, the initial burden lies heavily upon the prosecution to prove the charge beyond reasonable doubt through credible and convincing evidence, which, in the present case, the prosecution has miserably failed to discharge. It was further submitted that in cases involving the recovery of contraband, the Courts are required to scrutinize the evidence with great care and caution, ensuring that the chain of custody remains intact, and that no link in the evidentiary chain is broken. However, in the instant case, multiple flaws lacunae were highlighted, including a significant and unexplained delay of more than six (06) days in sending the recovered substance to the Chemical Examiner for analysis, which casts serious doubt on the integrity of the case property. Learned defence counsel also pointed out

major inconsistencies and contradictions between the testimonies of prosecution witnesses, particularly between the complainant and other members of the raiding party. Furthermore, the documentary evidence failed to bridge these gaps, thereby rendering the prosecution case doubtful. It was argued that such doubtful circumstances must operate in favour of the accused, in line with the well-settled principles of criminal law, and thus, the appellant is entitled to acquittal.

7. On the other hand, the learned State Counsel supported the impugned judgment in its entirety, arguing that the recovery of contraband substance was effected directly from the possession of the appellant, who had full knowledge of its presence in the toolbox of the tractor-trolley. It was further contended that the prosecution witnesses remained consistent on all material aspects and that there were no major discrepancies or contradictions sufficient to undermine the prosecution's case. As, the learned trial Court rightly appreciated the evidence and law, and the conviction of the appellant does not warrant interference.

8. Arguments heard. Record carefully perused.

9. It is an admitted fact on record, as stated by the prosecution witnesses, that the area where the alleged arrest and recovery took place is a busy public place. In such circumstances, it is incumbent upon the police officials to corroborate their version of the incident with evidence from independent and trustworthy sources, rather than relying solely upon the statements of police witnesses. While the principle of no embargo exists against reliance on police witnesses, once the presence or availability of independent witnesses or sources on the spot is brought on record, it becomes the primary duty of the prosecution to establish the guilt of the accused through such independent evidence. The absence of such independent corroboration significantly weakens the prosecution's case. In the instant matter, the prosecution has completely failed to produce any such independent source or witness to corroborate the recovery and arrest, thereby creating a serious lacuna in the chain of evidence. Reliance is placed upon the decision of this Court in *Arshad Ali and another vs. The State* (2024 PCr.LJ 1183) [Sindh-DB], Similarly, in the case of *Shahzaib alias Wadero Feroze vs. The State* (2024 YLR 1298) [Sindh-DB], this Court held that:

".... It has come in evidence that the accused was arrested from Tarazo Chowk which is a thickly populated area and the complainant SIP Sarfraz Ali Qureshi had sufficient time to call the independent persons of locality to witness the recovery

proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to the complainant were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in the police case cannot be brushed aside lightly by this court. Prime object of Section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. After all, preparation of mashirnama is not a formality but it's object is to prevent unfair dealings. There is also no explanation on record why the independent witness has not been associated in the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses. But here in this case, we have also noted number of contradictions in between the evidence of prosecution witnesses which cannot be easily brushed aside. Above conduct shows that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth."

10. Turning to the question of recovery of charas, it is settled law that recovery proceedings must be conducted with utmost fairness and transparency, with the prosecution clearly explaining and establishing every link in the chain of custody. This is essential to build a strong and credible case against the accused. However, in the present case, the prosecution has shown gross negligence and lapses in this regard. The documentary evidence, including the memo of arrest and recovery, is silent and ambiguous about the precise quantity and description of the recovered contraband. While the testimony of the complainant (PW-1) and the mashir (PW-2) suggests that the contraband consisted of two slabs of charas, this crucial fact is conspicuously missing from the memo of arrest and recovery. Furthermore, there is no separate or itemized weight indicated for each piece. The accused is alleged to have been found in possession of 1100 grams of charas, but the prosecution has failed to produce evidence specifying the exact weight of each slab or piece, thereby raising serious doubts about the integrity of the recovery. The lack of a detailed and consistent description of the recovered narcotics in the official record undermines the clarity of the recovery proceedings. In this context, reliance is placed on the judgment of the Lahore High Court in *Qalandar Shah vs. The State* (2021 YLR 2349), and in the case of *Ansar Abbas alias Pakori vs. The State and another* (2021 P Cr. L J 138).

11. An examination of the depositions reveals material contradictions and inconsistencies which seriously weaken the prosecution's case. According to the complainant (PW-1), the recovered charas was described as black in color. However, this version was expressly contradicted by the mashir (PW-2), who deposed that the charas was of brown color. Further inconsistencies emerge in the description of the tractor-trolley involved in the recovery. The mashir testified that the color of the trolley was black, whereas the Investigating Officer (PW-3) stated in his deposition that the trolley was red in color. Such conflicting testimonies on basic and observable facts raise a shadow of doubt on the authenticity of the recovery. In this regard, reliance is placed on the recent judgment of this Court in *Nadir Hussain vs. The State* (2025 YLR 487), Similarly, relied in the case of *Najeeb Ullah and another vs. The State* (2025 YLR 1170) [Balochistan-DB], held that:

"He in examination-in-chief stated that the colour of the recovered car was blue, whereas complainant Abdul Qadir RL (PW-1) in his murasila (Ex.P/1-A) and FIR (Ex.P/6-A) has mentioned the colour of said car as golden. In view of the above, the statements of both the above witnesses have been found to be contradictory, creating doubt in the recovery."

12. A serious question arises regarding the safe custody and safe transmission of the recovered case property. According to the deposition of the Investigating Officer (PW-3), upon receiving the case property from the complainant, he handed it over to the Incharge Malkhana for safe keeping and deposit therein. The Incharge Malkhana (PW-4) also affirmed this fact, stating that the Investigating Officer entrusted him with the case property, and that the same was recorded in the Malkhana under register No. 19. However, a perusal of the entry in Register No. 19 reveals a contradiction. The documentary record indicates that the case property was kept in Malkhana by the Investigating Officer himself, not handed over to the Incharge Malkhana as testified by both witnesses. This material inconsistency between the oral testimonies and the documentary record seriously undermines the prosecution's version. In support of this proposition, reliance is placed on the case of *Muhammad Iqbal vs. The State* (2025 SCMR 704), *Abdul Haq vs. The State* (2025 SCMR 751), *Asif Ali and another v. The State* (2024 SCMR 1408), *Javed Iqbal v. The State* (2023 SCMR 139), *Qaiser Khan v. The State* (2021 SCMR 363), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Zubair Khan v. The State* (2021 SCMR 492). The examination of the prosecution's evidence concerning the safe transmission of the recovered case property to the chemical examiner reveals glaring

inconsistencies as alleged recovery was effected on 16.08.2024, yet the road certificate, which is the official document authorizing the dispatch of the case property to the chemical examiner, is dated 21.08.2024. In contrast, the chemical examiner's report states that the property was received at the laboratory on 23.08.2024, two days after the date mentioned in the road certificate. Furthermore, the dispatch rider, Police Constable Muhammad Rafique (PW-5), who was responsible for delivering the property, deposed that he received the case property from the Investigating Officer on 23.08.2024, the same date on which the chemical examiner acknowledged receipt. This discrepancy raises a serious and unexplained question that, if, the case property completed its transmission circle only on 23.08.2024, then what is the justification or necessity for issuing a road certificate dated 21.08.2024, purporting that the property was sent on that earlier date. This unexplained gap of two days creates a serious dent in the prosecution's narrative and raises substantial doubts regarding the safe custody and transmission of the seized material during the said interval.

13. It is a well-established mandate under law that the recovered case property be sent to the Chemical Examiner within seventy-two (72) hours of its seizure to preserve its integrity and to ensure a fair trial. In the instant case, however, there is a significant and unjustified delay of six (06) days in dispatching the seized charas to the chemical examiner. Such an unexplained delay not only creates a serious dent in the trustworthiness of the prosecution case but also raises serious doubt as to whether the seized substance was tampered with, replaced, or otherwise compromised during this period. Reliance is placed upon the case of *Zaheer vs. The State* (2023 YLR 276) [Sindh-DB].

14. It is a well-settled principle of Criminal jurisprudence that if a single circumstance creates a reasonable doubt in the prosecution's case, the accused is entitled to the benefit of such doubt. This principle is deeply rooted in the maxim "*in dubio pro reo*", meaning that when in doubt, the decision should favor the accused. In the instant matter, as has been demonstrated through the various inconsistencies, discrepancies, and procedural lapses in the prosecution's case, even a single doubt regarding the safe custody, transmission, or recovery of the contraband must be resolved in favor of the appellant. Reliance is placed upon the case of *Qurban Ali vs. The State* (2025 SCMR 1344).

15. In view of the foregoing circumstances, it is manifest that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The evidence on record is full up with material contradictions, procedural lapses, and unexplained delays, all of which cast serious doubts on the veracity of the recovery and subsequent proceedings. Consequently, the appellant is entitled to be acquitted of the charge leveled against him. As, this Court has already considered the matter and allowed the instant appeal vide short order dated 12.08.2025, wherein the appellant was acquitted of the offence. The impugned judgment of conviction and sentence was set aside, and the jail authorities were directed to release the appellant forthwith, provided he was not required in any other custody case. The detailed reasons articulated herein form the basis of the said short order.

JUDGE

JUDGE