

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR****Spl. Cr. Appeal No. D – 83 of 2023***Present:***Mr. Amjad Ali Bohio, J.****Mr. Arbab Ali Hakro, J.**

Appellant : Amanullah S/o Pahlwan Shaikh,  
through Mr. J. K. Jarwar,  
Advocate.

Respondent : The State through  
Mr. Muhammad Faruq Ali Jatoi,  
Special Prosecutor ANF.

Date of hearing : **03.07.2024**

Date of decision : **03.07.2024**

**J U D G M E N T**

**AMJAD ALI BOHIO, J:** Appellant Amanullah through this appeal has impugned the judgment dated 7.12.2023 passed by Special Judge for (Control of Narcotic Substances), Khairpur in Special Case No. 231 of 2022, arising out of FIR No.13 of 2022 registered at the Police Station Anti Narcotic Force, Sukkur, whereby he appellant was convicted for offence under section 9(1)(1)(c) of the CNS (Amendment 2022) Act, 1997 and sentenced to Rigorous Imprisonment (R.I.) for nine years and a fine of Rs. 100,000 (one lac rupees), in default of payment of the fine, he was ordered to suffer simple imprisonment (S.I.) for six months. In addition to this, he was also convicted for the offense under section 9(1)(3)(b) of the CNS (Amendment 2022) Act, 1997 and sentenced to Rigorous Imprisonment for five years and a fine of Rs. 80,000 (eighty thousand rupees) in default whereof to suffer simple imprisonment for another six months with directions that sentences shall run concurrently by extending the benefit of section 382-B Cr.P.C.

2. According to the facts narrated in the FIR, upon receipt of spy information, complainant Syed Abid Raza Shah, along with subordinate staff, left the Police Station ANF on 29.09.2022, at 12:55 hours, vide entry No. 6. They arrived at the specified location viz. Bab-e-Shaheed Naseem Ahmed Kharal, Taluka Gambat, where the appellant, Amanullah Shaikh was reportedly supplying narcotic substances to his customer. At about 14:00 hours, the informant identified the person standing there as the appellant, who was then apprehended on the spot. The people available on spot were asked to act as mashir/witness, but they refused, therefore, in the presence of mashirs PC Baber Hussain and PC Nadir Khan, the appellant voluntarily produced a packet wrapped in a plastic tape of yellow colour from the right pocket of his shirt and also got recovered a gunny plastic bag (Bachika) from the bushes. The gunny plastic bag contained Bhang (Hemp). A piece of charas found in the plastic tape of yellow colour weighing 500 grams, from which a 10-gram sample was separated and sealed. The Bhang (Hemp) weighed 13 kilograms, from which a 100-gram sample was separated and sealed for chemical analysis. The remaining charas and Bhang (Hemp) were sealed separately. Further Rs. 800/- in cash was recovered from the appellant. The complainant prepared such mashirnama of arrest and recovery in the presence of the aforementioned mashirs. Subsequently, the appellant was brought to the police station, where FIR was registered.

3. After investigation, challan was submitted, and a formal charge for offenses under sections 9(1)(3)(b) and 9(1)(1)(c) of the CNS Act, 1997, was framed on 10.01.2023. The appellant pleaded not guilty to the charge.

4. To prove its case, the prosecution examined the complainant and Investigating Officer Inspector Abid Raza Shah (**PW-1**) who produced documents including the FIR, the memo of arrest and recovery, and the chemical report. PC Baber Hussain (**PW-2**), and ASI Absheel Victor (**PW-3**), who was the Incharge of Malkhana, at Exhibit 5. After recording evidence of these witnesses and production of documents, the prosecution closed it's case.

5. Statement of the appellant/accused was recorded under section 342 Cr.P.C at Exhibit 7, wherein he denied the allegations made by the prosecution. He neither examined himself on oath nor, desired to call any witnesses in his defense.

6. We have heard the arguments advanced by the learned counsel for the appellant and the learned Special Prosecutor ANF. We have also considered the material placed on record and re-appraised the evidence produced by the prosecution.

7. Complainant Abid Raza Shah deposed that while on duty, spy informer came to the Police Station A.N.F and informed him that the appellant being a narcotic dealer, would be reaching at Bab-e-Shaheed Naseem Kharal Gate, Gambat, to supply narcotic substances to a customer. Acting on this information, the complainant, along with ASI Ashbeel Victor, PC Baber Hussain, PC Nadir Khan, PC Muhammad Kamil, PC Muhammad Aijaz, and driver Masood Hussain, left the police station at 12:55 hours in official vehicle, as recorded in entry No. 6. They arrived at the specified location at about 14:00 hours, where the spy informer identified accused Amanullah Shaikh, who was apprehended at the spot. The people present there were asked to act as witnesses (mashirs), but they refused. Consequently, PC Baber Hussain and PC Nadir Khan

were associated as mashirs. Upon inquiry, the appellant disclosed his name as Amanullah son of Pehlwan, by caste Shaikh, resident of Mohalla Abbassi Ranipur, Taluka Sobhodero, District Khairpur. After some hesitation, the appellant produced a packet wrapped in yellow tape from his right shirt pocket and a gunny plastic bag (Bachika) from the bushes. The packet contained charas, and the gunny bag contained Bhang (Hemp). The charas weighed 500 grams, from which 10 grams were separated as a sample, placed in a momi khaki envelope by keeping in white color clothes and marked as Parcel No. 1. The remaining charas was sealed as Parcel No. 2. The Bhang (Hemp) weighed 13 kilograms, from which 100 grams were separated as a sample, placed in a momi envelope by keeping in white color clothes and marked as Parcel No. 3. The remaining Bhang (Hemp) was sealed as Parcel No. 4. Further Rs.800/- in cash were recovered from personal search. Such mashirnama was prepared in the presence of the mashirs and the appellant along with the recovered property, was taken to the police station. The recovered items were then, handed over to ASI Ashbeel Victor, who stored them in the Malkhana and recorded in entry No.556 of register book No. 19. The complainant then lodged FIR against the appellant. He further deposed that the parcel(s) were sent to the chemical laboratory for analysis for which report was received. During the investigation, the appellant's criminal record was requested from S.S.P Khairpur, and the appellant further disclosed that he had purchased the narcotics from Rehmatullah Rajper. The complainant also produced entry No. 6, the memo of arrest and recovery, arrival entry No. 10, a copy of the FIR, letters addressed to the Chemical Examiner, S.S.P Khairpur, and SHO Police Station Ranipur, as well as the appellant's criminal record and the chemical report, marked as Exhibits 3-A to 3-J.

8. To corroborate the evidence of the complainant, the prosecution examined mashir PW-2, PC Baber Hussain. He reiterated the same facts, including leaving the police station based on spy information received at 1240 hours, the arrest of the appellant as indicated by the spy informer and the recovery of the alleged charas and Bhang (Hemp). He confirmed that the samples were separated at the spot, placed in brown envelopes, and then wrapped in white cloth after weighing the contraband material allegedly recovered from the appellant's possession. PC Baber Hussain also testified to the memo of recovery and arrest, as well as the letters addressed to the Chemical Examiner.

9. To prove the safe custody of the parcel, the prosecution examined PW-3, ASI Absheel Victor (Incharge of Malkhana), who deposed that he received a sample of charas weighing 10 grams, a sample of Bhang (Hemp) weighing 100 grams, the remaining charas weighing 490 grams, and the remaining Bhang (Hemp) weighing 12.900 kilograms, all duly sealed. He also testified regarding the currency notes of Rs. 800/- and produced entry No. 556 of Register No. 19 for keeping the property in Malkhana. He handed over the parcel(s) for chemical analysis to PC Baber Hussain.

10. According to PC Baber Hussain, he delivered the parcel of sample(s) to the Chemical Examiner on 30.09.2022 but failed to mention the time when he left the PS and returned back. He also failed to produce the entries of departure and arrival back at police station to prove safe custody and safe transmission of sample(s) of the alleged narcotics from the malkhana till its receipt by the office of Chemical Examiner. The Apex Court has held that the prosecution has to prove the safe transmission of sample(s) of the recovered substance, right from its recovery from the accused, keeping it safe

with the police and than its onward transmission to the concerned Chemical Laboratory. In the instant case there are significant loopholes as pointed out by the learned counsel for the appellant in respect of delay in delivery of the sample(s) to the Analyst. The sample(s) are shown to have been dispatched through PC Babar Ali vide letter No: 13/2022/ANF/PS/SUK Dated: 29.09.2022, but the same were received in the office of Chemical Examiner, Chemical Laboratory, Rohri on 30.09.2022 with the delay of **24 (twenty four) hours**, whereas the distance between P.S. Anti-Narcotic Force, Sukkur and the Laboratory at Rohri can hardly be covered within 30 (thirty) minutes. Here the question arises as to where the sample(s) were kept by the dispatcher during the period of **24 (twenty four) hours**, which deficiency has dented the prosecution case. The prosecution evidence is silent as to where the said parcel(s) remained during this period, meaning thereby that the element of tempering is quite apparent in the case. The Hon'ble Supreme Court in the cases of Muhammad Shoaib and another v. The State (2022 SCMR 1006), Qaisar Khan v. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363), Mst. Razia Sultana v. The State and another (2019 SCMR 1300), The State through Regional Director ANF v. The State (2018 SCMR 2039), Ikramullah and others v. The State (2015 SCMR 1002) and Amjad Ali v. The State (2012 SCMR 577) has held that in a case containing above-mentioned 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 a reasonable doubt.

11. Furthermore, the Chemical Report also suffers from material discrepancies, as such, the memo of recovery and the testimonies

mention that the piece of charas was wrapped in yellow plastic tape, but the chemical report (Exh.3-J) mention that Parcel No. 1 contained one black-brown piece wrapped in a white plastic shopper kept in a khaki envelope. This contradicts the initial statement that the charas was wrapped in yellow plastic tape, raising doubts about whether the sample analyzed was the same one allegedly recovered from the appellant. The Report is also silent about white color clothes wherein, the momi khaki envelops were kept and sealed. Reliance can be placed on the case of Syed Zahir Hussain and another v. The State and another ( 2018 YLR Note 186 ). This leads us to hold that the very foundation on which whole prosecution case has been built has no legs to stand and evidence thus, produced is not free from doubts. Needless to mention that in criminal cases, benefit of doubt must go to the accused not as a matter of grace but as of right. Reliance is placed on cases Tariq Pervaiz v. The State (1995 SCMR 1345), Muhammad Mansha v. The State (2018 SCMR 772) and Mst. Nazia Anwar v. The State and others (2018 SCMR 911).

12. In view of above discussion, we find that the prosecution has miserably failed to prove its case beyond doubts. Therefore, relying on the principle of benefit of doubt, this appeal against conviction is allowed; conviction and sentences of the appellant are set aside, and the appellant was acquitted of the offences for which he has been charged vide our short order dated 03.07.2024 and these are the reasons for the same.

J U D G E

J U D G E