

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD**

**Criminal Appeal No.D-58 of 2023**

***PRESENT***

***Mr. Justice Arshad Hussin Khan.***

***Mr. Justice Dr. Syed Fiaz ul Hassan Shah.***

Appellant : Nisar son of Abdaal Khan Khanzada through  
Mr. Zulfiqar Ali Chandio, Advocate.

Respondent : The State through Ms. Rameshan Oad,  
D.P.G.

Date of Hearing: 06.05.2025.  
Date of Judgment: \_\_.05.2025.

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

**Dr. Syed Fiaz ul Hassan Shah, J:** Through this captioned appeal, the Appellant Nisar has called in question the Judgment of Conviction dated 06.05.2023, passed by the learned Illrd Additional Sessions Judge / Special Judge (CNSA), Hyderabad in Special Case No.264 of 2022 (Re: The State vs Nisar), emanating from Crime No.264 of 2022, registered at P.S. Husri, Hyderabad whereby the Appellant has been convicted for offence punishable under Sections 6/9(1) and 3(c) of CNS (Amendment 2022) Act, and sentenced to undergo Rigorous Imprisonment for nine years and to pay fine of Rs.80,000/- (eighty thousand only), in default of payment thereof to further undergo SI for two years.

2. According to the prosecution case narrated in the FIR that 27.11.2022, a police team led by SIP Shoukat Ali along-with staff

namely HC Narain Das, PC Muhammad Thebo and DPC Ghulam Muhammad departed from the police station for routine patrolling at 1500 hours as recorded in Entry No.13. While on patrol reaching the Tando Ghulam Muhammad Link Road, the police apprehended present accused Nisar and upon his search, a white colour polythene bag was recovered from him containing seven pieces of charas, both large and small, weighing a total of **1300** grams. Additionally, Rs.500 currency note was found in his shirt pocket. The recovered narcotics were sealed on the spot in the presence of mashirs HC Narain Das and PC Muhammad Thebo. The Accused, along with the seized items, was then taken to the police station where a case was officially registered on behalf of the State. After usual investigation, the appellant was sent up with the challan to face his trial.

**3.** The requisite documents of prosecution file were provided to the Accused/Appellant by the trial Court as required under section 265-C of the Cr.P.C. at Exh.1. Subsequently, the trial Court has framed the “Charge” against the Appellant at Exh.2. The accused pleaded not guilty and claimed for fair trial, vide his plea at Exh.2/A.

**4.** During the trial, the prosecution has presented evidence to support the charge and to prove the allegations against the Appellant / accused. P.W-1 SIP Shoukat Ali Bughio who is the Raiding Officer, Arresting Officer, Recovery Officer, and Complainant of the case has testified at Exh.3, he had produced various documents, including roznamcha entries, arrest and recovery memo, marked as Exh.3/A to Exh.3/C respectively. The P.W-2 HC Narain Das, who is witness of event and Mashir had testified at Exh.4, he had produced memo of place of incident and he also deposited the case parcel in the Office of Chemical Analyzer. The P.W-3 Inspector Azhar Ali, he had produced the letter addressed to the chemical examiner, a sample receipt and

the chemical report as Exh.05/A to Exh.05/C respectively. The P.W-4 Abdul Qadir, Incharge Malkhana (Store Room of Police Station) had testified at Exh.6 and submitted malkhana Entry No.49 from register No.19, which was marked as Exh.6/A.

5. Afterwards, the prosecution side was closed at Exh.7 through the DDPP. Thereafter, the statement of the accused under Section 342 of the Cr. P.C was recorded at Exh.8. In the statement, the accused denied all allegations made by the prosecution and asserted his innocence. The accused, in his statement under Section 342 Cr.P.C, opted not to testify under oath as per Section 340(2) Cr.P.C, nor did he call any defense witnesses despite being given the opportunity. However, while answering to question, appellant Nisar stated that police demanded money from him to allow him to run paddy cart but on refusal he was falsely involved in this case.

6. After conclusion of trial and hearing the State Prosecutor and the Counsel for Defence, the learned trial Court convicted and sentenced the Appellant as referred at paragraph-1 hereinabove. The Appellant has impugned the said judgment of conviction before us which was passed on 06.05.2023.

7. The learned counsel appearing on behalf of appellant/accused has contended that no investigation with respect to selling of Chars alleged in the FIR has been conducted by the I.O; complainant and mashir are not consistent with each other in respect of material points such as PW-1 deposed the entry No.13 while PW-2 stated entry the number of entry as 31; that there is violation of S. 103 Cr.P.C in respect of recovery of alleged contraband material; that PW-2 did not state about memo of recovery and recovery of Chars from appellant; that PWs have failed to depose the shape and colour of case property; that police party returned to police post and not police station; that

accused has been falsely implicated by the police due to non-payment of illegal bribe money for his livelihood; that the learned trial Court failed to consider the contradictions made by prosecution witnesses and passed the impugned judgment in haphazard manner; that prosecution has miserably failed to connect the appellant/accused with the recoveries also failed to prove the case without shadow of doubts. Lastly he has prayed for acquittal of accused. In support of his contentions, he has relied upon the cases of Qaiser Khan Vs. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar [2021 SCMR 363], Muhammad Shoaib and another Vs. The State [2022 SCMR 1006], Javed Iqbal Vs. The State 2023 SCMR 139], Ghulam Mustafa alias Mushtaq Ali Vs. The State [2013 P Cr. L J 860], Arzi Gul and others Vs. The State and others [2020 P Cr. L J 178], Mst. Sakina Ramzan Vs. The State [2021 SCMR 451], State through Advocate-General, Khyber Pakhtunkhwa, Peshawar Vs. Farooq [2014 P Cr. L J 882], Khair-ul-Bashar Vs. The State [2019 SCMR 930], Manzoor Hussain Vs. The State [2004 P Cr. L J 218].

8. The D.P.G while supporting the impugned judgment has contended that the prosecution by examining prosecution witnesses and producing positive chemical examiner's report has proved its case beyond reasonable doubt and the presence of the Appellant has not been denied at crime scene as such the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the Appellant and the present appeal is liable to be dismissed.

9. We have heard the Counsel for Appellant and the DPG for State and with their assistance perused the evidence brought on record.

10. We have reappraised the evidence with the assistance of the counsel for Appellant and the DPG and we have meticulously scrutinized the material record and have found that the case of the

prosecution is suffered with material defects, discrepancies and improbabilities. The first thing we have observed that it has not been written in the Memorandum of recovery as well as in the FIR that how the recovered charas was weighted? The absence of description or details of the scale in the memorandum of recovery and FIR, either was it manual or digital? is a failure on the part of the prosecution.

11. The second thing we have noticed that even the prosecution witnesses have not deposed anything with regard to the manner or basis, the recovered charas was weighted. The absence of details about the digital or manual scale and its specification in the memorandum of recovery and FIR so also the unavailability of the manners in which the recovered charas was weighted coupled with the failure of mandatory duty of confirmation through the testimony by the prosecution witnesses and on the contrary the admission of prosecution witness-1 ***“I see the memo and say that nowhere it is mentioned by which instrument either digital or ordinary scale the charas was weighed”*** is a major dent in the case of prosecution. The prosecution witness-1 who was the Raiding officer and complainant, has also not confirmed in his testimony with regard to the question of 03 seals and narrative of 03 seals is also inconsistent with the Report of Chemical Examiner Exhibit 5/C which expressly stated that only one seal parcel was received at the Chemical Laboratory.

12. The third important thing is the evidence of Raiding-cum-seizing Officer, Arresting Officer, Recovery Officer, and Complainant PW-1 Shoukat Ali so also the evidence of the Mashir of seizure, recovery and arrest PW-2 Narain Das have revealed that on 27.11.2022 after seizure of case property and preparation of Memorandum of Recovery at about 05.00 pm, the case property was brought at Police Check post Husri and thereafter at about 06.10 p.m. FIR was registered at PS

Husri. Notably, at the relevant time when the case property was brought into the PS Husri, District Hyderabad, the said Case property was directly not deposited by the Raiding-cum-Seizing Officer in the Malkhana (Store room) of the Police Station. On the contrary, the PW-01 and PW-2 has admitted that the said case property was taken over to Police Check Post Husri and the case property was not directly brought at the Police Station Husri and only thereafter the case property was handed over to the Investigation Officer at the place of posting of the Investigation Officer at the Police Post Husri instead of depositing in the Malkhan (store room). Both Mashir of event and complainant / seizing-cum-arresting officer contradicted to each other on material point such PW-1 Shoukat Ali deposed that **“About 20 minutes were consumed in completion of all formalities at the spot** while on the same line Narain Das (PW-2) has stated that **“About 30-40 minutes were consumed in completion of all formalities at the spot.”**

13. The Fourth important thing is the absence of Road certificate in the police file and non-production of road certificate through which the case property was sent or transmitted to the Chemical laboratory for chemical analysis. The fourth important thing is the silence of the prosecution witnesses with regard to the color of recovered narcotics. The memorandum of recovery exhibit 3/A and the FIR do not reveal the color of recovered narcotics charas. On the contrary, the Certificate of chemical analyzed report exhibit 5/C reveals that seven dark brown, different sizes, pieces of charas were examined at the said Chemical laboratory. This has led us to form an opinion that the description of case property as has given in the memorandum of recovery and in the FIR is not the same which has been given in the certificate exhibit 5/C. The alleged contraband of narcotics substance (charas) was sent to

the Chemical Laboratory after delay of 02 days without any satisfactory explanation about the intervening period of 02 days as to where the case property was kept and this has adversely led us to draw an adverse inference against the prosecution about its safe custody and safe transmission of the case property. It is settled principles of law that, whenever question of safe custody and safe transmission is raised and the chain of custody is broken, the report of the chemical examiner loses its sanctity and cannot be relied upon safely to convict an accused person. Reliance can be placed on the case “**State vs. Imam Bakhsh 2018 SCMR 2039**).

14. The Honorable Supreme Court of Pakistan in case “**Qaisar and another versus the State**”, (2022 SCMR 1641) has observed that:

“in absence of establishing the safe custody and safe transmission, the element of tampering cannot be excluded in this case. The safe chain of custody and transmission was pivotal as the entire construct of the Act, 1997 and the Control of Narcotic Substance (Government Analysis Rules), 2001 rest upon the report of the analyst. It is prosecution bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e the safe custody or safe transmission of the representative samples, makes the report of Chemical examiner worthless and unreliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of Chemical examiner.”

15. It is mandatory for the Prosecution to undergo two tests for case property. Firstly, to recover, seize, present in charge sheet or challan and to establish safe custody by preparation of documents flawless in description, accuracy, deposit in safe custody with proper status and secondly, safe transmission of it under proper documents from safe custody to Chemical Lab and from Chemical laboratory to the Police and production before the Court as an admissible evidence. Any violation of it would lead to draw a negative inference that led basis for acquittal of an accused. Reliance can be placed on the cases ***“Qaiser and another v. The State” (2022 SCMR 1641) (supra); “Ikramulah v. The State” (2015 SCMR 1002), “The State v. Imam Bakhsh” (2018 S'CMR 2039), “Abdul Ghani v. The State” (2019 SCMR 608), “Kamran Shah v. The State” (2019 7 SCMR 1217), “Mst. Razia Sultana v. The State” (2019 SCMR 1300), “Faizan Ali v. The State” (2019 SCMR 1649), “Zahir Shah alias Shat v. State through AG KPK” (2019 SCMR 2004), “Haji Nawaz v. The State” (2020 SCMR 687), “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), “Gulzar v. The State” (2021 SCMR 380).***

16. We have also minutely examined the exhibit 6/A, which is copy of Registered No.XXIX. We have noticed that it is a copy of the registered number XXI and not the original. Even the date and time of the Entry Number 49 has not been mentioned in corresponding column. We have further noticed that no entry or detail or date and time has been mentioned with regard to the discernment and safely returned of the case property from the Chemical Laboratory before



producing in the trial Court undeceive. Therefore, the prosecution has failed to prove the safe custody and safe transmission on this ground also. The Hon'ble Supreme Court in the case **"Ahmed Ali & another vs. The State" (2023 SCMR 781)** held that:

"Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tempered with until that time. **A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.**"

17. We are mindful that conviction can be awarded to an Accused or maintained by this Court on the basis of direct oral evidence of only one eye-witness if same is reliable, trustworthy and confidence-inspiring as has been held by the Supreme Court of Pakistan in cases reported **"Muhammad Ehsan vs. The State" (2006 SCMR 1857)** and **"Niaz-Ud-Din v. The State" (2011 SCMR 725)**. However, the Hon'ble Supreme Court has greatly emphasized in narcotics cases reported as **"Ikramullah Vs. The State" (2015 SCMR 1002)** **"Amjad Ali Vs. The State" (2012 SCMR 577)**, **"Haji Nawaz Vs. The State" (2020 SCMR 687)** and **"Qaiser Khan Vs. The State" (2021 SCMR 363)** that safe custody or safe transmission of the Narcotics to be considered and

focused carefully and if it is not substantiated or based on unpersuasive evidence, the Report of Government Analyst becomes doubtful and unreliable. The prosecution is under mandatory duty to prove its case not only beyond reasonable doubt but also lays with burden of proof of safe-custody and safe-transmission of case property under Article 117 of the Qanun-e-Shahadat Order, 1984. The Supreme Court of Pakistan held in cases **“Javed Iqbal v. The State” (2023 SCMR 139)**; **“Mst. Sakina Ramzan v. The State” (2021 SCMR 451)** and **“Qaiser Khan v. The State” (2021 SCMR 363)** that the chain of events—series of things linked, connected or associated together, would have to demonstrate and prove by the prosecution and if any link is missing or division occur, the benefit would go in favor of the accused.

**18.** We hold that impugned Judgment of Conviction based on unpersuasive evidence of broken safe custody and safe transmission of the case property that causing miscarriage of justice. In conclusion, we refer about the doctrine of benefit of doubt. The rule of benefit of doubt is essentially the rule of prudence which cannot be ignored while dispensing justice. The steadily commandment of law necessitate unremitting attention for conviction that it must be based on unimpeachable evidence and certainty of guilt and where any doubt emerges would indispensably favor the Accused. The Hon’ble Supreme Court of Pakistan has ruled down in several cases 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. Reliance can be placed on **“Tariq Pervez v. The State”, (1995 SCMR 1345)**, **“Riaz Masih alias Mithoo v. The State”, (1995 SCMR 1730)**, **“Muhammad Akram**

*v. The State”, (2009 SCMR 230), “Hashim Qasim and another v. The State”, (2017 SCMR 986), “Ikramullah Vs. The State”, (2015 SCMR 1002), “The STATE through Regional Director ANF V. IMAM BAKHSH and others (2018 SCMR 2039)”, and “KHAIR-UL-BASHAR V. The STATE”, (2019 SCMR 930).*

19. It is trite law that single dent in the case of prosecution is sufficient for acquittal as held in cases *“Rehmatullah vs. The State” (2024 SCMR 1782); “Muhammad Mansha versus The State” (2018 SCMR 772), “Abdul Jabbar and another versus The State” (2019 SCMR 129), “Mst. Asia Bibi versus The State and others” Crl. Appeal No.40132/2023 8 (PLD 2019 SC 64) and “Amir Muhammad Khan versus The State” (2023 SCMR 566).* Consequently, the instant appeal is **allowed** and the impugned Judgment dated 06.05.2023 of conviction passed by learned Illrd Additional Sessions Judge/Special Judge (CNSA), Hyderabad in Special Case No.264 of 2022 is **set aside** and the Appellant is acquitted from the charge. He is ordered to be released from the custody forthwith if he is not required in any other custody case/crime.

JUDGE

JUDGE