

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.D-46 of 2024
Criminal Jail Appeal No.D-58 of 2024

Present:

Mr. Justice Shamsuddin Abbasi

Mr. Justice Ali Haider 'Ada'

Appellant: Barkat Bakhrani
through Mr. Pardeep Kumar B. Butani,
Advocate

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

Date of Hearing: 10-06-2025

Dated of Decision: 24-06-2025

JUDGMENT

Ali Haider 'Ada -J:- The appellant, namely Barkat, son of Shahmore Khan alias Shahmurad, by caste Bakhrani, has assailed the judgment dated 04-07-2024, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court / Special Judge for Control of Narcotic Substances, Kandhkot, in Special Case No.42 of 2023, arising out of FIR No.77 of 2023, registered at Police Station Tangwani, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. The learned trial Court convicted the appellant and sentence him to undergo rigorous imprisonment for a term of nine (09) years, and to pay a fine of Rs.80,000/- (Rupees Eighty Thousand only) and in default whereof, to further suffer simple imprisonment for a term of two (02) years. However, the benefit of Section 382-B, Cr.P.C, was extended to him.

2. Brief facts of the prosecution case are that on 18-11-2023, at about 1400 hours, the appellant/accused was apprehended by a police party of Police Station Tangwani, headed by SIP Qamaruddin, at the road leading from Tangwani City towards Suhbat Golo, near Haibat Railway Crossing. Upon his personal search, two (02) large slabs and one (01) small piece of charas, collectively weighing 2000 grams, were recovered from his possession, along with a cash amount of Rs.100/- (Rupees One Hundred only). Consequently, the above-mentioned FIR No.77 of 2023 was registered at Police Station Tangwani, under Section 9(c) of the Control of Narcotic Substances Act, 1997.

3. Thereafter, upon completion of the usual investigation, a report under Section 173, Cr.P.C. (challan) was submitted before the learned trial Court. Subsequently, a formal charge was framed against the appellant/accused, to which he pleaded not guilty and claimed to be tried in accordance with law.

4. In order to substantiate the charge against the appellant/accused, the prosecution examined a total of five (05) witnesses.

PW-1, the Investigating Officer, was examined, who produced on record the memo of place of incident, entry of Register No.19, relevant Roznamcha entries, letter addressed to SSP Kashmore @ Kandhkot, road certificate, and the report of the Chemical Examiner.

PW-2, namely Hazoor Bux, the Dispatcher, produced Roznamcha entries pertaining to the departure and return related to the dispatch of case property to the Forensic Science Laboratory and its subsequent receipt at the police station.

PW-3, SIP Qamaruddin, the Complainant, deposed regarding the arrest and recovery proceedings and produced the memo of arrest and recovery, FIR, and the relevant Roznamcha entries reflecting departure from and arrival at the police station.

PW-4, Gul Muhammad, acted as Mashir of both the memo of arrest and recovery, as well as the mashirnama of place of incident.

PW-5, WHC Attaullah Shah, the Incharge of Malkhana, was examined to prove the safe custody of the case property.

Thereafter, the learned Prosecutor closed the side of the prosecution.

5. Thereafter, the learned trial Court recorded the statement of the appellant/accused under Section 342 Cr.P.C, wherein he categorically denied all the allegations leveled against him by the prosecution. He professed innocence and claimed that he had been falsely implicated by the police in the instant case. However, neither the appellant/accused opt to examine himself on oath under Section 340(2), Cr.P.C., nor did he produce any witness in his defence.

6. Learned counsel for the appellant, while advancing his arguments, has inter alia contended that material contradictions and discrepancies appearing in the depositions of the prosecution witnesses and no independent witness from the locality was associated with the alleged recovery proceedings and all the witnesses examined by the prosecution

are official police personnel. Learned counsel further maintained that the charas was foisted upon the appellant, who has been falsely implicated in the case. He prayed that, in view of the foregoing circumstances and legal deficiencies, the instant appeal may be allowed and the appellant/accused be acquitted of the charge.

7. On the other hand, the learned Deputy Prosecutor General, appearing on behalf of the State, has vehemently supported the conviction and sentence awarded by the learned trial Court. He submitted that the prosecution has successfully established the charge against the appellant/accused through reliable evidence. The learned Law Officer, therefore, prayed for dismissal of the appeal being devoid of merit.

8. Heard arguments advanced by the learned counsel for the respective parties and examined the material available on the record.

9. Firstly, while examining the prosecution evidence, the first witness produced before the learned trial Court was the Investigating Officer, who deposed that the case property was deposited in the Malkhana through WHC Attaullah, under Entry No.36 of Register No.19. However, perusal of the said entry revealed that the name of the depositor is conspicuously missing, which casts a serious doubt upon the safe custody of the recovered substance. Furthermore, it is noted that the Register No.19 produced in evidence is not maintained on the prescribed proforma, as required under the the Police Rules 1934 and standard procedure for handling case property. For the ready reference the same is as under:

FORM No. 22-70	
POLICE	STATION
_____	_____
DISTRICT	
Register No. XIX. Store - Room Register (Part-I)	
Column 1, -- Serial No.	
2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.	
3. -- Date of deposit and name of depositor.	

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.

6. -- How disposed of and date.

7.-- Signature of recipient (including person by whom despatched).

8. -- Remarks.

(To be prepared on a quarter sheet of native paper).

10. This irregularity creates a serious dent in the present case, when the very entry in Register No.19, purporting to reflect the deposit of the recovered narcotics in safe custody suffers from defects and omissions, including the absence of the depositor's name and use of a non-prescribed proforma, the entire process of safe custody becomes doubtful. Once the foundational document intended to establish safe custody is tainted with suspicion, the benefit of such doubt must necessarily go to the accused, as it directly weakens the prosecution case. Thus, the prosecution has failed to establish the unbroken chain of custody, which is a mandatory and indispensable requirement in cases involving the recovery of narcotics. Any break in the chain of custody or failure to demonstrate compliance with these procedural safeguards, renders the prosecution's case doubtful. Support for this view is drawn from the judgments of the Hon'ble Supreme Court in *Abdul Haq v. The State* (2025 SCMR 751), *Muhammad Iqbal v. The State* (2025 SCMR 704), *Asif Ali and another v. The State* (2024 SCMR 1408), and *Javed Iqbal v. The State* (2023 SCMR 139).

11. Moreover, the relevant columns in Register No.19 have been left blank in the instant case, which further reinforces the doubt regarding proper documentation and handling of the case property. Reliance is placed upon the case of *Muhammad Qaseem v. The State* (2025 PCr.LJ 328). Furthermore, the Investigating Officer (PW-1) deposed that the case property was sent to the Forensic Science Laboratory (FSL), Larkana, through PC Hazoor Bux. However, the report of the Chemical Examiner available on record reflects that the case property was in fact analyzed at the Chemical Laboratory Sukkur, situated at Rohri, and not at FSL Larkana, as claimed by the prosecution.

12. The place of occurrence, as narrated by the prosecution, is situated on a public road leading from Tangwani Town to Suhbat Golo, which is admittedly a busy thoroughfare surrounded by residential localities. It has further been admitted by the Investigating Officer during cross-examination that the area is inhabited by members of the Dahani and Gola communities. Despite this, no private person was associated as a mashir to the alleged recovery proceedings. Although it is correct that Section 25 of the Control of Narcotic Substances Act, 1997, excludes the strict application of Section 103 Cr.P.C, it does not confer unchecked discretion upon the police to completely dispense with the inclusion of independent witnesses, particularly where the alleged recovery takes place in a populated and accessible area. The failure to associate any impartial and independent witness in such circumstances casts serious doubt on the transparency of the recovery proceedings. In this regard, reliance may be placed on the case of *Muhammad Aslam v. The State (2011 SCMR 820)*, *Ghulam Shabbir and another vs. The State (2023 YLR 153)*.

13. In cases under the Control of Narcotic Substances Act, where punishments are primarily determined by the quantity of the recovered substance, the exact measurement and documentation of the recovered narcotics plays a crucial role in establishing the prosecution's case. In the instant case, according to the version of the complainant, the recovered contraband substance was in the shape of two large slabs and one small piece of charas, having a total weight of 2000 grams (2 kilograms). However, a significant omission on part of the prosecution is evident from the fact that no effort was made to determine the separate weight of each slab or piece at the time of recovery. This lack of specificity regarding the quantity of each portion of the contraband raises serious doubts against the recovery process. In support of this view, reliance is placed upon the case of *Qalandar Shah vs. The State (2021 YLR 2349)*.

14. Furthermore, a material discrepancy that goes to the root of the prosecution case is evident from the deposition of PW-4, the mashir, who stated during his examination-in-chief that two slabs of charas bore a golden stamp and that one slab was wrapped in a red-colored transparent plastic sheet. However, this significant descriptive detail neither mentioned whatsoever in the memo of arrest and recovery, nor reflected in the contents of the FIR. More importantly, the Report of Chemical

Examiner is also completely silent regarding the presence of any stamp or distinctive wrapping on the recovered substance. This omission is not of a technical nature; rather, it raises serious doubts about the identity of the case property. The failure to mention such essential physical characteristics in the initial documentation, coupled with the absence of any corroboration in the chemical analysis report, creates a material contradiction and renders the recovery proceedings highly doubtful. In the case of *Muhammad Arif v. The State* (2023 YLR 2369), this Court held that the failure of the prosecution to mention the description of the bag in which the narcotic substance was allegedly stored either in the recovery memo or the FIR was a material omission. Support is also drawn from the judgment rendered in *Mst. Marvi and another v. The State*, 2019 PCrLJ 1133). In this context, further reliance is placed upon the case of *Ahsan Marfani vs the state* 2022 YLR Note 5, this Court held that:

14. The description available on the charas were not mentioned in the mashirnama of arrest and recovery to show and to prove that the charas produced before the chemical analyzer and the Court at the time of evidence was same and was recovered from the accused. The complainant admitted this fact during his cross examination when the property was de-sealed before the court , complainant stated that it is fact that the slab of chars present in court having monogram and such monogram is not mentioned in mashirnama. It is fact that charas is available in cartoon.

15. Moreover, the date of the alleged incident, as reflected in the FIR, is 18.11.2023, whereas the record reveals that the case property was dispatched to the Chemical Laboratory on 23.11.2023, a delay of over 72 hours, in violation of the requirement laid down under the Control of Narcotic Substances (Government Analysts) Rules, 2001, which obligate the Investigating agency to ensure dispatch of the sealed sample to the chemical laboratory within 72 hours of its recovery. This unexplained delay of two days is not supported by any cogent or plausible justification from the prosecution. Neither the Investigating Officer nor the other witnesses have offered any explanation as to why the case property was retained beyond the period without being forwarded to the laboratory. Such inordinate and unexplained delay raises a reasonable apprehension of tampering, substitution, or manipulation of the case property, thereby seriously damage the chain of safe custody and transmission. In the instant case, the aspect of delay in sending the samples for chemical analysis, as well as the issue of safe custody and transmission of the recovered narcotics, casts serious doubt on the quality of the prosecution's

version. In this context, guidance can be drawn from the case of *Ghulam Shabbir and another v. The State (2023 YLR 153)*, wherein the learned Division Bench of this Court observed that a delay of two days in sending the samples to the Forensic Science Laboratory could not be brushed aside lightly. The Court held that such delay raises a legitimate apprehension of tampering with the narcotic substance, thereby rendering the safe custody and safe transmission highly doubtful. Similarly, in the case of *Nadir Hussain v. The State (2025 YLR 487)*, the Court emphasized that when the recovered narcotic substance is kept in the malkhana for an unexplained period prior to being sent for chemical analysis, the possibility of tampering cannot be ruled out unless the prosecution proves, through convincing evidence, the uninterrupted chain of custody. Failure to do so materially affects the prosecution's case. Further reliance is placed on the judgment in *Shahzaib alias Wadero Feroze v. The State (2024 YLR 1298)*, where it was reiterated that any unexplained or unreasonable delay in dispatching the samples to the forensic laboratory casts serious doubt upon the evidence and the handling of the seized contraband. In light of the above judicial pronouncements, the prosecution in the present case has failed to satisfactorily establish the continuous and secure chain of custody of the recovered narcotic substance, which is an essential requirement under the law.

16. A crucial dent in the prosecution case emerges from the deposition of PW-4, the mashir, who categorically deposed before the learned trial Court that the case property presented consisted of four small pieces along with two large slabs of charas. However, this assertion is in direct contradiction to the contents of the FIR, the memo of arrest and recovery, as well as the Chemical Examiner's report, all of which refer only to two large slabs and one small piece of charas, without any mention of four small pieces. This contradiction is neither minor nor inconsequential, as it strikes at the very identity and quantity of the narcotic substance allegedly recovered from the accused. Such discrepancies materially affect the prosecution's case, particularly in cases contraband substance, where the weight, shape and form of the narcotics are essential elements not only for establishing guilt, but also for determining the quantum of punishment. In this regard, reliance may be placed on the judgment rendered in *Naeem Ahmed and others v. The State and others (2021 MLD 1772)*, wherein the

learned Division Bench of the Lahore High Court observed that although, as per the prosecution's version, 10 grams from each of the 425 recovered bags of charas were separated for chemical analysis, the report of the Punjab Forensic Science Agency reflected that 427 samples were actually received and analyzed. This numerical inconsistency was held to have created a significant dent in the prosecution's version.

17. It is settled principle of Law that the benefit of doubt must be extended to an accused if there exists even a single circumstance that creates reasonable doubt regarding his guilt in prudent mind. It is not necessary that there be a multitude of doubts or inconsistencies. A solitary, credible doubt is sufficient to entitle the accused to an acquittal. Reliance in this regard is placed upon the authoritative judgments of the Hon'ble Supreme Court in *Sajjad Hussain v. The State (2022 SCMR 1540)*, *Abdul Ghafoor v. The State (2022 SCMR 1527)* and the judgment of the Division Bench of this Court in *Nadir Hussain v. The State (2025 YLR 487)*.

18. As, the Learned counsel for the appellant submitted that the appellant also filed a jail appeal bearing Criminal Jail Appeal No. D-58 of 2024, and through his Advocate, another appeal bearing Criminal Appeal No. D-46 of 2024 is pending. It is contended that the appellant intends to press the appeal filed through counsel, while the jail appeal is not being pressed on the ground that, in view of the pendency of Criminal Appeal No. D-46 of 2024, the jail appeal has become infructuous. It is further submitted that both appeals were filed within the prescribed limitation period and the appellant has opted to pursue the appeal filed through his learned counsel. Since the appeal filed through learned counsel is being pressed and treated as the leading appeal, the jail appeal, having become infructuous, is hereby dismissed as not pressed.

19. In view of the foregoing discussion, reasons, and legal infirmities highlighted above, we are of the considered view that the prosecution has failed to establish its case against the appellant beyond a reasonable shadow of doubt. Consequently, the instant appeal is allowed. The conviction and sentence recorded by the learned trial Court against the appellant vide judgment dated 04.07.2024 are hereby set aside. The appellant is acquitted of the charge under Section 9(c) of the Control of

Narcotic Substances Act, 1997. He shall be released forthwith, if not required to be detained in any other case.

JUDGE

JUDGE