

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Special Crl. Jail Appeal No.D-96 of 2023

PRESENT

Mr. Justice Amjad Ali Bohio,J

Mr. Justice Ali Haider 'Ada',J.

Appellant : Through Mr. Rukhsar Ahmed Junejo,
Abdul Muqeem Bandhani. Advocate.

State. : Through Mr. Shafiu Muhammad Mahar
Deputy Prosecutor General Sindh.

Dates of hearing : 04.06.2025

Date of Short Order : 04.06.2025

Date of Reason 11-06-2025

JUDGMENT

Ali Haider 'Ada',J - Through the instant Special Criminal Jail Appeal, the appellant has called into question the legality and propriety of the judgment Dated 19.12.2023, passed by the learned Additional Sessions Judge-I /Special Judge (CNS)/MCTC-I, Sukkur, in Special Case No. 106 of 2023, arising out of FIR No. 145 of 2023, registered under Section 9(c)(b) of the Control of Narcotic Substances (Amendment) Act, 2022 at Police Station "A" Section, Sukkur. By virtue of the impugned judgment, the appellant was convicted and sentenced to undergo rigorous imprisonment for a term of five (05) years and to pay a fine of Rs. 40,000/- (Rupees forty thousand); in default of payment, he was directed to further undergo simple imprisonment for six (06) months. However, the benefit of Section 382-B, Cr.P.C., was extended to him.

2. Briefly stated, the prosecution case is that on 28.05.2023, complainant SIP Hasnain Raza Shah lodged an FIR at the Police Station reporting that while he and his staff were on patrolling duty when at about 1800 hours reached at near Moti Masjid, Qasimabad Market, they observed a person carrying a white shopper bag, on suspicion, they apprehended the present accused/appellant. Upon arrest, a shopper bag containing three pieces of charas weighing 765

grams was recovered from him. A subsequent personal search of the accused also yielded cash amounting to Rs. 20/-. The entire recovery was effected in the presence of police officials acted as mashirs; the memo of recovery and arrest duly prepared, Consequently, FIR was registered against the accused in the name of the State.

3. After the registration of the FIR, investigation was conducted by the police. Upon completion, a challan was submitted before the learned trial Court, charging the accused under Section 9(3)(b) of the Control of Narcotic Substances (Amendment) Act, 2022. The case was thereafter committed for trial. Subsequently, the charge was framed against the accused, to which he pleaded not guilty and claimed trial.

4. During the trial, the prosecution examined three witnesses. PW-1, complainant SIP Hasnain Raza Shah, whose statement was recorded at Ex.3, produced the Roznamcha entries of departure and arrival, as well as the memos of recovery and arrest. PW-2, mashir PC Sajjad Hussain, examined at Ex.4, produced the memo of inspection of the place of incident. PW-3, SIP Farhan Ali, IO/Dispatcher, examined at Ex.5, produced the Malkhana entry, Roznamcha entries pertaining to departure and arrival during the visit to the place of incident, the road certificate, the Roznamcha entry for taking out the property for chemical analysis, and the chemical report. Thereafter, learned State Counsel closed the prosecution evidence by filing the relevant statement. Upon closure of the prosecution evidence, the defence was afforded an opportunity to present its case.

5. The accused recorded his statement under Section 342 Cr.P.C., wherein he refuted all allegations, claiming false implication and asserting that the police acted under pressure from labour charges. Notwithstanding the opportunity, the accused neither examined himself under oath as permitted under Section 342(2) Cr.P.C., nor produced any evidence in his defence to rebut the prosecution case.

6. After, hearing the learned counsel for both parties, the learned Ist Additional Sessions Judge/Special Judge (CNS)/MCTC-I, Sukkur, by judgment dated 19.12.2023, found the accused guilty, convicted and sentenced him accordingly, as noted herein above. Feeling aggrieved, the appellant has preferred the instant appeal.

7. Learned counsel for the appellant submitted that the place of incident is a thickly populated area, as evident from its designation as a market. He argued that the police failed to associate any independent witness or source to corroborate the prosecution's version. Furthermore, it was contended that the prosecution did not examine the head moharar, In charge of the Malkhana, nor was his name included in the list of witnesses. As a result, the safe custody and proper transmission of the recovered material remain unestablished. In light of these deficiencies, learned counsel urged that the appellant is entitled to the benefit of doubt.

8. On the other hand, learned Deputy Prosecutor General submitted that the recovery was effected directly from the appellant, and there exists no motive to falsely implicate him, as no enmity between the parties has been demonstrated. Furthermore, the appellant did not raise any substantive defence regarding his alleged involvement in the case. Accordingly, learned trial court rightly convicted the appellant and the learned Deputy Prosecutor General supported the impugned judgment.

9. Heard learned counsel for the parties and, after careful and thorough appreciation, examined the record and perused the material.

10. After scanning the material available on record, it appears that the place of incident is near Moti Masjid, Qasimabad, which, as reflected in the site memo, is a busy and thickly populated area, also described as a market. The memo of inspection of the place of incident further indicates the presence of a fish market on the western side and several shops on the eastern side. Despite this, neither the complainant nor the Investigating Officer associated any independent witness from the locality at the time of alleged recovery and at the time of visiting place of incident. Although Section 25 of the Control of Narcotic Substances Act, confers an overriding effect and excludes the mandatory application of Section 103 Cr.P.C., it does not dispense with the general requirement of associating independent witnesses, particularly in circumstances where they are readily available. The prosecution has not offered any explanation for its failure to secure such corroboration, nor has it made any effort to rebut the presumption of deliberate omission. This lack of independent support weakens the prosecution case. In this regard, reliance may be placed on the case of *Muhammad Aslam v. The State* (2011 SCMR 820) and in case of *Mst. Marvi and another v. The State* (2019 PCrLJ 1133).

11. The mashirnama of recovery reflects that the contraband substance allegedly recovered from the possession of the appellant bore a golden-coloured stamp affixed to it, serving as a distinct identification mark. However, this important feature was not corroborated through the oral testimony of the prosecution witnesses during trial. Notably, neither the complainant nor the mashir made any reference in their depositions to the presence of such a distinguishing stamp on the seized narcotics. The absence of this vital detail in the ocular account of the witnesses, despite its explicit mention in the documentary record, sabotages the evidentiary value of the prosecution's case. Support is drawn from the judgment rendered in *Mst. Marvi and another v. The State*, cited *supra*.

12. Furthermore, the complainant deposed that upon reaching the police station, he handed over the case property, custody of the accused, memo of arrest and recovery, as well as the FIR, to the Investigating Officer, namely SIP Farhan Ali. This fact was also admitted by SIP Farhan Ali during his examination, who confirmed that he received the relevant documents, case property and custody of the accused from the complainant on 28.05.2023, which is also the date on which the FIR was registered. The I.O. further stated that he subsequently handed over the case property to a police official, one WHC, for placing the same in the malkhana under an entry in Register No. 19. However, upon perusal of the relevant Register No. 19, it was revealed that the entry regarding the deposit of the case property in the malkhana was neither made by the I.O. nor by the WHC, as claimed. Surprisingly, it was the complainant himself who made the entry in the register. This is a significant omission, as the complainant, during the course of his testimony, did not disclose this fact at any stage. There is no explanation on record as to how or under what authority the complainant, who was neither the I.O. nor the WHC or Incharge Malkhana made such an official entry in the police record pertaining to the safe custody of the recovered contraband. This unexplained irregularity casts serious doubt on the safe transmission of the chain of custody. It is a well-established that the prosecution bears the burden to prove, beyond reasonable doubt, that every step of the recovery and post-recovery process was conducted strictly in accordance with law. This includes the initial recovery from the accused, preparation of sample parcels, deposit in the malkhana, ensuring safe custody and the secure transmission of the samples to the chemical examiner. 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)**.

13. In Addition, Investigating Officer deposed during trial that he handed over the case property to the WHC for its placement in the malkhana of Police Station under Entry No. 61 of Register No. 19. According to the I.O, the said entry was duly made in the malkhana register. However, it is a matter of record that neither the WHC nor the Head Moharrar, who would have been responsible for receiving and documenting the deposit of case property in the malkhana was produced by the prosecution as a witness during trial. The omission to examine this material witness is not a mere procedural lapse but one that strikes at the root of the prosecution's case. The evidence of the WHC or the Moharrar was crucial, particularly when the I.O. himself stated that he had merely handed over the property and relied on the said official to ensure its lawful deposit and documentation. In the absence of the testimony of the official who actually received and recorded the deposit, there remains a flaw in the chain of custody. It is a settled principle of law that the chain of custody must be unbroken, and every link in the process of handling the case property must be established through credible evidence. When a crucial link such as the deposition of the WHC or Moharrar responsible for the property's custody is missing, the benefit of doubt must go to the accused. Reliance in this regard is fortified by the judgment of this Court in case of *Muhammad Afzal v. The State (2024 YLR 1797)*.

14. It is settled principle of criminal jurisprudence 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)*, wherein it was consistently held

that a single circumstance giving rise to reasonable doubt is sufficient to vitiate the prosecution's case and entitles the accused to acquittal.

15. For the foregoing reasons, we are of the considered view that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The evidence on record is afloat with inconsistencies and material omissions, which have irreparably weakened the prosecution's case. Consequently, we have no hesitation in holding that the prosecution has failed to discharge its burden of proof against the appellant.

16. In view of the above, the instant appeal is hereby allowed. The conviction and sentence recorded by the learned trial Court vide its judgment dated 19.12.2023 is set aside. The appellant, Abdul Muqem, is acquitted of the charge leveled against him. He shall be released forthwith, unless he is required to be detained in connection with any other case. These are the detailed reasons for our short order dated 04.06.2025.

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