

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Jail Appeal No.D-33 of 2023

Present:

Mr. Justice Shamsuddin Abbasi

Mr. Justice Ali Haider 'Ada'

Appellant:

Meer Khan Bozdar,
Through M/s Shewak RamValecha,
and Zakir Hussain Bozdar, Advocates.

Respondent:

The State,
through Mr. Ali Anwar Kandhro,
Addl: Prosecutor General

Date of Hearing: 17-06-2025.

Date of Short Order: 17-06-2025.

Date of Reason: 15-07-2025.

JUDGMENT

Ali Haider 'Ada -J:- The appellant, Meer Khan, son of Allah Dino Bozdar, has challenged the judgment dated 30-09-2023 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court / Special Judge for Control of Narcotic Substances, Kandhkot, in Special Case No. 27 of 2023. The case arose out of FIR No. 11 of 2023, registered at Police Station Guddu, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. Through the impugned judgment, the learned trial Court convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of fourteen (14) years, along with a fine of Rs. 400,000/- (Rupees Four Hundred Thousand). In case of default in payment of the fine, the appellant was directed to further undergo simple imprisonment for a term of two (2) years. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. On 29-03-2023, the complainant SIP Zahoor Ahmed, along with his subordinate staff, left Police Station Guddu for routine patrolling. At approximately 07:00 a.m., when the police party reached Gate No. 01 of the colony, they noticed a person standing there holding a black shopper (plastic bag). Upon seeing the police, the said person attempted to flee; however, he was apprehended by the police party. Upon search, the police recovered 15 pieces of charas from the black shopper. Additionally, a sum of Rs. 1500/- was recovered from the pocket of the accused's shirt during his personal search. A memo of arrest and recovery was prepared on the spot in the presence of police

officials who acted as mashirs (witnesses). Thereafter, the accused and the recovered property were brought to the police station, where FIR No. 11 of 2023 was registered. Subsequently, the case property and the accused were handed over to the Investigating Officer for further investigation.

3. The Investigating Officer, after conducting the investigation, submitted the final report (challan) against the appellant/accused and sent him up for trial before the learned trial Court. After taking cognizance of the case, the learned trial Court provided the requisite copies of documents to the accused, in compliance with Section 265-C, Cr.P.C. On 24-06-2023, the charge was framed against the appellant/accused, to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution was permitted to lead evidence. In compliance, the prosecution examined the following witnesses:

PW-1: SIP Zahoor Ahmed, the complainant of the case. During the course of his evidence, he produced and exhibited Memo of Arrest and Recovery, Copy of the FIR and relevant entries from the daily diary (*Roznamcha*).

PW-2: Police Constable Shafique Ali, who acted as *Mashir* (witness) of the Memo of Arrest and Recovery as well as the Memo of Place of Incident. He also dispatched the case property to the Chemical Examiner. He exhibited Memo of Place of Occurrence and Road Certificate.

PW-3: Mashooque Ali, the Investigating Officer (IO) of the case. During his testimony, he exhibited relevant *Roznamcha* entries, Entry in Register No. 19, Application submitted by the concerned SHO to the SSP and Chemical Examiner's Report.

PW-4: Muhammad Mureed, the Incharge of Malkhana (storehouse), was also examined by the prosecution.

4. Thereafter, the learned State Counsel filed a statement, thereby closing the prosecution evidence. Subsequently, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C., wherein the appellant/accused professed his innocence, denied the allegations leveled against him, and prayed for acquittal. He did not opt to be examined on oath under Section 340(2), Cr.P.C. In his defense, the accused produced one witness, namely Zulfiqar Ali, who is the brother of the accused. The said defense witness produced the documents: An application under Sections 22-A and 22-B, Cr.P.C. filed before the learned Additional Sessions Judge-I, Mirpur Mathelo, dated 14-03-2023 and order on the said application dated 31-03-2023. A Constitutional Petition filed before the Hon'ble High Court, Sukkur Bench, dated 22-03-2023 and its order sheets dated 22-03-2023, 13-04-2023, and 25-05-2023.

5. After the completion of the defense evidence, the defense side closed its case. Thereafter, the learned trial Court heard the arguments advanced by the learned counsel for both sides. Upon conclusion of the arguments, the learned trial Court passed the impugned judgment, whereby the appellant was convicted and sentenced as stated above. The said judgment dated 30-09-2023 has been assailed by the appellant through the present appeal before this Court.

6. The learned counsel for the appellant, while advancing his arguments, inter alia contended that there are material contradictions and discrepancies in the depositions of the prosecution witnesses. He emphasized that no independent witness from the locality was associated with the alleged recovery proceedings, and all the prosecution witnesses examined were official police personnel, thereby raising serious doubts about the veracity and impartiality of the prosecution case. It was further argued that the charas was foisted upon the appellant, who has been falsely implicated. The learned counsel also pointed out that the description of the charas mentioned in the memo of recovery materially differs from the property produced before the trial Court, which casts further doubt on the prosecution's version. Additionally, the learned counsel drew attention to the fact that prior to the registration of the FIR, a petition of habeas corpus was filed against the police of Mirpur Mathelo, who had allegedly shifted the accused to Larkana, where the instant case was registered falsely to cover up illegal detention. He referred to an enquiry report submitted before the Hon'ble High Court of Sindh, Sukkur Bench, by the ASP / SDPO Gambat, in which it was opined that the case is false and that no involvement of the appellant was found in the matter. In light of these submissions and legal deficiencies in the prosecution's case, the learned counsel prayed that the instant appeal be allowed, and the appellant/accused be acquitted of the charge.

7. Conversely, the learned Additional Prosecutor General, appearing on behalf of the State, supported the conviction and sentence awarded by the learned trial Court. He submitted that the prosecution successfully established the charge against the appellant through reliable and cogent evidence, and there was no enmity or motive for the police to falsely implicate the appellant. The learned Law Officer, therefore, prayed for dismissal of the appeal, being devoid of merit.

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

9. As regards the recovery of narcotics, it is an essential and crucial aspect of the prosecution case. In narcotics cases, the recovery forms the foundation of the prosecution's case, and it is on the strength and credibility of such recovery that an accused is either entitled to acquittal or the prosecution succeeds in establishing its case beyond reasonable doubt. According to the prosecution, a total of 15 slabs of charas were allegedly recovered from the possession of the appellant, with a cumulative weight of 9000 grams (9 kilograms). However, a closer examination of the prosecution evidence reveals significant inconsistencies and deficiencies. Firstly, the prosecution failed to establish the individual weight of each slab, as the narcotics were weighed collectively. This omission makes it impossible to ascertain the quantity of each slab. Secondly, during the de-sealing of the case property before the trial Court, it was observed that only 08 slabs were present, contrary to the prosecution's claim of 15 slabs. Out of these, 07 slabs were wrapped in transparent plastic sheets, a fact that was never disclosed by any prosecution witness nor mentioned in any document prepared during recovery. Additionally, 37 small pieces of charas, varying in size, were found, which were not part of the original prosecution case and neither mentioned in the FIR, the memo of recovery, nor in any other document. These discrepancies between the alleged recovery and the property actually produced before the court go to the root of the prosecution's case and create serious doubt about the credibility and authenticity of the recovery proceedings. The failure of the prosecution to account for such material contradictions casts a shadow over the entire case and entitles the appellant to the benefit of doubt. In support of this view, reliance is placed upon the case of *Qalandar Shah vs. The State* (2021 YLR 2349). Further 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. 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

support of this view, reliance is placed upon the case of *Muhammad Arif v. The State* (2023 YLR 2369). Support is also drawn from the judgment rendered in *Mst. Marvi and another v. The State*, (2019 PCrLJ 1133). In this context, 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. This numerical inconsistency was held to have created a significant dent in the prosecution's version. 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.

***Asif Khan vs The State* (2021 MLD 1192).**

It therefore, evident that according to the statement of Sheikh Muhammad Aslam, (PW.4) 36 packets of charas, each packet contained 12 lither, total weighing 40 Kgs was recovered from the gas cylinder of the car and from each lither, he separated 5/5 grams of charas for chemical analysis but as stated above when the case property was de-sealed in the court the number of lithers contained in all the packets was found as 443 and total weight of the contraband came to 30 Kgs and 924 grams. Moreso number of lithers were also different in each packets. It is further admitted that the prosecution has failed to bring on record the individual weight of each packet of charas and lithers, which fact is irreconcilable, went root of the case and badly damaged the case of the prosecution. In this manner, it cannot be determined whether the case property produced before the court was the same property which was taken into possession from the accused at the time of occurrence and subsequently handed over to Moharrar malkhana. The depositions of the aforementioned star witnesses of prosecution regarding recovery of contraband at the spot, makes the case of the prosecution highly doubtful

10. Moreover, it is noted that the place of occurrence, as described by the prosecution, was a residential colony, which, by its very nature, is a populated and busy area. Despite this, the prosecution failed to associate any independent witness from the locality to witness the alleged arrest and recovery proceedings. While it is true that police officials are competent witnesses under the law, when the circumstances permit the availability of independent witnesses, it becomes imperative and obligatory to associate them in order to lend credibility and impartiality to the prosecution's case. In the present case, the admitted position from the evidence is that the area was a busy and public place, yet the prosecution chose to rely solely on police officials, without

offering any explanation for non-association of neutral witnesses. Such omission adversely affects the reliability of the prosecution's version and raises serious doubt regarding the transparency of the alleged recovery. In this regard, guidance may be sought from the judgments titled *Muhammad Aslam v. The State* (2011 SCMR 820) and *Ghulam Shabbir and another v. The State* (2023 YLR 153).

11. Furthermore, according to the prosecution, after registration of the FIR, the case property was handed over to the Investigating Officer, who then claimed to have deposited the same with the Incharge of Malkhana. The Incharge Malkhana also affirmed in his deposition that the case property was duly received and deposited in the Malkhana. However, a careful perusal of the documentary evidence, particularly the entry in Register No. 19, which records the receipt and custody of case property in the Malkhana, paints an entirely different picture. The said entry does not show that the property was deposited either by the Investigating Officer or the Incharge Malkhana. Instead, the entry reflects that the property was deposited by the complainant himself, which is contrary to the oral evidence produced by the prosecution witnesses. This inconsistency between the oral testimony and documentary record seriously undermines the prosecution's claim regarding the safe custody and chain of custody of the case property. 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).

12. During the course of perusal, it has also come on record that prior to the registration of the FIR, the brother of the appellant, namely Zulfiqar Ali, filed a petition before Honourable Sindh High Court at Sukkur Bench on 22-03-2023, stating that the present appellant was illegally detained by the Ghotki District Police. The police officials were impleaded as respondents in the petition. Notice was issued, and on 13-04-2023, the order sheet reflects that Court directed the DIG to appoint a gazetted officer not below the rank of ASP to conduct an inquiry into the matter. Pursuant to this direction, an ASP was appointed who carried out a thorough inquiry and concluded that the case against the appellant was false, declaring the appellant innocent. The order sheet of the petition further indicates that the officer was directed to submit the

report before the learned trial Court. It was incumbent upon the prosecution to examine the said inquiry officer as a witness, either as part of the prosecution evidence or as the subsequent Investigating Officer. The failure to call the inquiry officer as a witness reflects an intentional and deliberate omission, which undermines the credibility and completeness of the prosecution's case.

13. 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).

14. Upon a thorough evaluation of the evidence on record, and in view of the detailed legal analysis and reasoning delineated hereinabove, it is apparent that the prosecution has failed to satisfactorily discharge the burden of proof necessary to establish the guilt of the accused/appellants. Owing to the existence of substantial and material doubts in the prosecution's case, the appellants are entitled to the benefit of doubt in accordance with well-settled principles of criminal jurisprudence. Consequently, by a short order dated 17-06-2025, this appeal was allowed by this Court. The appellant was acquitted of charge, and the impugned judgment of conviction and sentence, awarded by the learned trial Court, was accordingly set aside. The appellant was ordered to be released forthwith, unless his detention was warranted in any other matter. Accordingly, these are the detailed reasons that underpin the said short order.

JUDGE

JUDGE