

IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Criminal Appeal No.D-46 of 2024
(Old Criminal Appeal No.D-147 of 2023)

Present
Justice Amjad Ali Bohio.
Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant/ accused: Muzaffar s/o Muhammad Yousuf Lashari
Through Mr. Kamran Ali Bhatti, Advocate,

Respondent: The State
Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Date of hearing: 26.05.2025.

Date of Judgment: 26.05.2025.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: The appellant /accused Muzaffar s/o Muhammad Yousuf Lashari (hereinafter referred as "***the appellant***"), has filed present Criminal Appeal under section 48 of Control of Narcotics Substances Act,1997 read with section 410 of Criminal Procedure Code, 1898, against the conviction awarded through the impugned judgment dated 14-11-2023 passed in Special Case No. 36/ 2023 by learned Sessions Judge/ Judge for C.N.S Act, Mirpurkhas, (Re: S.V Muzaffar), arising out of F.I.R., No.69/ 2023 under section 9(i)(3)(b) of the Control of Narcotics Substances Amendment Act, 2022 registered at P.S Mehmoodabad.

2.

As per facts of the F.I.R. lodged by complainant SIP Ghulam Hussain Laghari on 30-08-2023 at 1645 hours at Police Station Mehmoodabad, are that on the same date he alongwith his subordinate staff PC Muhammad Ameen, PC Bilawal, DPC Farman Ali left C.I.A Centre Mirpurkhas in official vehicle vide *roznamcha* entry No.08 at 1445 hours for patrolling and arrest of absconders/proclaimed offenders. During patrolling when they reached at Public School *Morr* (curve) at 1530 hours where we saw that a person was standing; he to see police party tried to slip away but after stopping official vehicle apprehended him. On inquiry, he disclosed his name as Muzaffar s/o Muhammad Yousuf Lashari Baloch R/o Volkert Town Mirpurkhas. From his personal search one black colored plastic shopper was recovered from the right side fold of his trouser, which contained one big piece and one small piece of chars, which were wrapped in yellow colored *Panni*. From his further personal search two notes of Rs.100/- each total Rs.200/= were recovered from the left side pocket of his trouser. On weight recovered charas became 515 grams. The whole recovered charas were sealed for chemical examination. Due to non-availability of public mashir, mashirnama of arrest and recovery was prepared in presence of PC Muhammad Ameen and PC Bilawal. Thereafter, they brought the appellant along-with recovered property at police station Mehmoodabad where complainant lodged instant F.I.R.

3.

After completion of the investigation, the I.O submitted Police Report / Challan under Section 173 of the Criminal Procedure Code, 1898. Subsequently, the trial Court has framed the charge

against the Appellant on 25-09-2023 at Ex.2-A, to which he pleaded not guilty and claimed for trial vide his plea at Ex.02-A. During the trial, the prosecution has examined P.W-01 SIP Ghulam Hussain Laghari (Complainant) at Ex.03, P.W-02 PC Muhammad Ameen (eye-witness cum mashir) at Ex.04, P.W-03 WASI Nazar Hussain Jarwar (Incharge *Malkhana*) at Ex/05, P.W-4 SIP Kamran (Investigating Officer) at Ex.06 and P.W-5 PC Shahid (dispatcher) at Ex.07. They produced relevant documents, recovered articles, which were exhibited during their testimony before the trial Court. After the completion of prosecution's evidence, the statement of appellant was recorded under section 342 of Criminal Procedure Code, 1898, at Ex.09 wherein the appellant has denied the allegation of prosecution and claimed his innocence; however he not opted for his examination on oath under section 340(2) of the Criminal Procedure Code, 1898 nor to produce his witness or adduce any evidence in his defense. After hearing arguments advanced by learned counsel for the parties, the trial Court found the appellant guilty and thereby convicted him for offence punishable under section 9(b) of Control of Narcotics Substance Act, 1997 as (Amended) by Act No.XX of 2022 and sentenced to suffer Rigorous imprisonment for five (05) years and to pay fine of Rs.50,000/= (Rupees Fifty Thousand Only) and in case of default in payment of fine amount, he would further undergo simple imprisonment for six (06) months; however, benefit of section 382-B Cr.P.C was extended to him.

4.

The Counsel for the appellant has contended that impugned judgment is contrary to law and principles settled by the superior courts; that the impugned judgment is result of misreading and non-reading of the evidence available on record; that the trial Court failed to consider that there are material contradictions in the evidence of prosecution witnesses; that impugned judgment rests upon testimony of interested witnesses, which remains unsupported and uncorroborated by some independent evidence, which has caused miscarriage of justice; that specific description of pieces of charas are not mentioned in the memo as well as in FIR nor deposed by the PWs in their evidence which creates doubt in the prosecution case but same was totally ignored by the trial court; that there is unexplained delay of one day in sending the case property to the chemical examination; that time of depositing the sealed parcel of case property in *Malkhana* is not mentioned in the entry of Malkhana Register but learned trial court did not consider such fact; that though alleged place of incident was situated on main road but no private person was associated as Mashir or witness in this case; that trial court did not consider the conflicting evidence of PWs and illegally and unlawfully convicted the appellant without recording proper finding and reasons; that the impugned Judgment is based on the evidence of interested PWs, who made major and material contradictions in their evidence, but trial court has not considered such contradictions; that the trial court has erred in not applying its judicial mind to the fact that all the witnesses are police officials being interested and their

evidence cannot be safely believed or relied upon being the interested witnesses and independent corroboration is lacking; that no recovery has been made from the possession of appellant and alleged recovery was foisted upon him; that prosecution has failed to prove the charge against the appellant beyond reasonable shadow of doubt. Lastly he prayed for setting aside the impugned judgment and acquittal of the appellant.

5. On the other hand, learned Deputy Prosecutor General rigorously opposed the contentions while arguing that the sample of recovered charas was sent to the Chemical Examiner within stipulated period of 72 hours; that the report of Chemical Examiner is in positive; that Police officials are as good witnesses as others; their evidence remained unshaken during cross examination and on the basis of available record no interference is warranted by this court. Lastly he prayed for dismissal of instant Appeal.

6. The prosecution has failed to prove safe custody and safe transmission of case property from the date and time of recovery and its seizure till the dispatch to the chemical laboratory. Upon perusal of examination of the evidence, comprises upon the evidence of prosecution witnesses it seems that from the recovery of case property by the raiding officer of the CIA police from crime scene till its deposit with the chemical laboratory there are serious variations, inconsistencies and contradictions. The PW-1 SIP Ghulam Hussain Laghari (Ex.03) has deposed that: ***“Then the accused and recovered property were***

brought at police station Mehmoodabad where I lodged FIR No. 69 of 2023. I handed over the memo of arrest and recovery FIR, case property and accused to SIP Kamran Halepoto.” The Malkhana Incharge, PW-3 WASI Nazar Hussain (Ex.05) has deposed that in Cross examination that “I handed over the case property to PC Shahid after permission from SIP Kamran.” PW-5 PC Shahid (Ex.07) has deposed that “*On 31-08-2023 I was called at PS Mehmoodabad. At 6.00 a.m I went to PS Mehmoodabad and the SHO handed over me one sample of case property and papers for depositing the same with chemical examiner”.* The prosecution has failed to establish an unimpeachable and reliable chain of custody for the case property. PW No.3, the Incharge Malkhana (Official Storeroom), initially stated that he handed over the case property to PC Shahid. However, this claim was not corroborated by PC Shahid, who instead testified that the SHO had entrusted him with the case property for deposition at the Chemical Laboratory. This contradiction casts serious doubt on the safe custody and transmission of the case property. Consequently, the prosecution has not presented compelling evidence to prove the integrity of the chain of custody.

The prosecution has further failed to establish the safe custody of the case property due to contradictions in testimonies and official records. PW-4 SIP Kamran (Ex.06) testified during cross-examination that “*“At 1700 hours I handed over the case property to WASI Nazar for depositing in police Malkhana”.*” The said PW-4 in same breath has stated that he handed over

the case property to WASI Nazar at 1700 hours for deposition in the police Malkhana. However, Exh 5/A—Entry No 63 of Register No.XIX—indicates that the case property was actually deposited at 1645 hours on 30-08-2023 with reference to SIP Kamran Ali Halepoto. This factual discrepancy directly contradicts the testimony of PW-4 SIP Kamran.

8. Such contradictions cast serious doubts on the integrity of the prosecution's case. Additionally, no plausible explanation or valid justification has been provided to reconcile this inconsistency, particularly in light of PW-1 SIP Ghulam Hussain Laghari's testimony, which states that the case property was handed over at 1700 hours. This stark contradiction between the witness testimonies and official records undermines the credibility of the prosecution's claim regarding the safe custody of the case property.
9. The prosecution has also failed to incorporate the independent or private witness. The P.W-1 SIP Ghulam Hussain Laghari in his evidence deposed that ***"It is correct that I did not ask any private person to be a mashir of arrest and recovery"***.
10. In the case of Appellant, there was an unhindered possibility to engage an independent person to witness the search and arrest of the Appellant. The PW-01 in his Examination-in-Chief has admitted the availability of private persons or independent witnesses but he has chosen not to join them in order to safely proof the recovery of narcotics. It means there was a deliberate avoidance of obtaining an independent mashir on the free ride of Section 25 of the CNS Act, 1997 by false deposition by PW-01.

11. We are mindful about the exclusion of Section 103 Cr.P.C. in the cases registered under the Control of Narcotics Substance Act, 1997 as envisaged under section 25 of the Act ibid, which reads as under:

"25. Mode of making searches and arrest: The provision of the Code of Criminal Procedure, 1898, except those of Section 103, shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these sections."

(underlining supplied for emphasis)

12. A bare perusal of Section 25 of the Control of Narcotics Substance Act, 1997 expound that while making search and arrest, it is not absolute to avoid the provisions of Section 103 Cr.P.C. In our humble view, seizing officer has to meet the pre-conditionality. For instance, the compliance of Section 21 of the CNS Act, 1997 for non-compliance of Section 103 of the Code by invoking Section 25 of the CNS Act, 1997 or that by the time warrant could be obtained, a possibility either of escape of the accused from crime scene or conceal or removal of evidence may involve which may put the prosecution in trouble to unearth the evidence. The Hon'ble Supreme Court in cases reported **"Zardar vs. The State" (1991 SCMR 458); "The State vs. Muhammad Amin" (1999 SCMR 1367)** and in last citation it has been held that:

"It is not an absolute requirement that in every case witness of the public must necessarily be produced. It depends upon the facts of each case. In the case in hand the Police Officers

were in the ordinary course of duty looking for the suspects and effant.”

13. A conviction may be awarded to an accused or upheld by this Court based on the direct oral testimony of a single eyewitness, provided that such testimony is credible, reliable, and instills confidence, as established by the Supreme Court of Pakistan in *Muhammad Ehsan vs. The State (2006 SCMR 1857)* and *Niaz-Ud-Din v. The State (2011 SCMR 725)*.
14. However, in narcotics cases, the Hon'ble Supreme Court has underscored the critical importance of ensuring the safe custody and secure transmission of seized contraband. In rulings such 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)*, the Court has held that any failure to establish these safeguards—or reliance on weak evidence—renders the Government Analyst's report doubtful and unreliable.
15. Under Article 117 of the Qanun-e-Shahadat Order, 1984, the prosecution is obligated with legal burden to prove its case beyond a reasonable doubt and under Article 121 of ibid Order prosecution has to prove case through evidence including demonstrating the safe custody and transmission of case property. Additionally, in *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)*, the Supreme Court has ruled that the chain of custody must be meticulously proven, establishing a continuous and unbroken sequence of

events. Any missing or disrupted link in this chain entitles the accused to the benefit of doubt.

16. The present case stands out due to the glaring deficiencies in the evidence presented by the prosecution. The evidence is not only susceptible to serious doubts but also fails to meet the legal standards prescribed under Article 2(iv) and Article 117 (legal burden) or Article 121 (evidential burden) of the Qanun-e-Shahadat Order, 1984.
17. We hold that the impugned judgment of conviction is based on unpersuasive evidence concerning the broken chain of safe custody and transmission of the case property, ultimately resulting in a miscarriage of justice.
18. In conclusion, we refer to the doctrine of *benefit of doubt*, a fundamental principle of prudence that must not be overlooked in the dispensation of justice. The steadfast command of law necessitates unwavering scrutiny in matters of conviction, requiring un-impeachable evidence and certainty of guilt. Whenever reasonable doubt arises, it must inevitably favor the accused.
19. The prosecution is under an obligation to adduce evidence that is credible, untainted, and capable of withstanding judicial scrutiny. However, in this instance, the evidence falls short of the required standard, raising concerns regarding its reliability and admissibility. Such inadequacies in proving the necessary elements of safe custody and transmission severely undermine the prosecution's case, entitling the accused to the benefit of doubt.

20. The Hon'ble Supreme Court of Pakistan has consistently ruled that an accused does not need to be confronted with multiple circumstances raising doubt; rather, even a single event that reasonably casts uncertainty in the mind of a prudent person regarding the accused's guilt is sufficient to entitle him to acquittal as a matter of right—rather than an act of 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), and “*Hashim Qasim and another v. The State*”, (2017 SCMR 986).
21. The Hon'ble Supreme Court in the case “*Ahmed Ali & another case (supra)*” 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.**”

22.

It is a well-established principle of law that even a single flaw in the prosecution's case is sufficient to warrant acquittal. The burden lies on the prosecution to prove its case beyond a reasonable doubt, and any inconsistency, contradiction, or gap in the chain of evidence entitles the accused to the benefit of doubt 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).***

23.

Therefore, the impugned Judgment of conviction dated 14.11.2023 passed by Sessions Judge/Special Judge (CNS) at Mirpurkhas is set aside and the Appellant is acquitted from the charge and it is ordered to release the Appellant if he is not involved in any other case and is not required in any other case.

JUDGE**JUDGE**