

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No. D-82 of 2024

Before:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Appellant : Irshad Ali son of Ali Nawaz Channa
Through Mr. Shjeraz Fazal, advocate.
The State : Through, Mr. Mansoor Ahmed Shaikh, DPG
Date of hearing : 13.08.2025
Date of short order : 13.08.2025
Reasons recorded : 15.08.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J. – This criminal appeal under Section 48 of the Control of Narcotic Substances Act, 1997 read with Section 410 of the Criminal Procedure Code, 1898, is directed against the judgment dated 24th July, 2024, rendered by the learned Additional Sessions Judge-I (MCTC), Special Judge for CNS, Khairpur in Special Case No. 181 of 2023, whereby the appellant was convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to suffer rigorous imprisonment for nine years along with a fine of Rs. 80,000/-, and in default of payment of fine, to undergo simple imprisonment for three additional months.

2. The prosecution case, as emanating from FIR No. 64/2023 registered at Police Station Sobhodero on 14th April, 2023, presents a narrative wherein the appellant, Irshad Ali, was allegedly arrested at 1400 hours from bypass link road Mehrab Wah bridge, Taluka Sobhodero, District Khairpur, by a police party headed by complainant ASI Zahoor Ahmed Phul during routine patrolling. The prosecution alleges that upon seeing the police party, the appellant attempted to flee while carrying a blue colored plastic shopping bag, whereupon he was apprehended at a distance of 15-20 paces. The complainant claimed to have recovered 1100 grams of charas in the form of three pieces from the appellant's possession, following which samples of 10 grams from each piece were segregated for chemical analysis, and both the samples and remaining contraband were sealed separately at the spot in the presence of mashirs, namely PC Hakim Ali Sahito and PC Waheed Ali Larik.

3. The investigation was subsequently entrusted to SIP Muhammad Yaseen Hattar, who after completing the requisite formalities, submitted a challan

against the appellant. The prosecution examined four witnesses during the trial including PC Hakim Ali (PW-1) as mashir, ASI Zahoor Ahmed Phul (PW-2) as complainant, SIP Muhammad Yaseen Hattar (PW-3) as investigating officer, and WASI Nisar Ahmed Mangnejo (PW-4) as Incharge Malkhana. The chemical examiner's report confirmed the seized substance as charas, leading to the appellant's conviction by the trial court.

4. The learned trial judge, after examining the evidence and hearing arguments from both sides, framed two points for determination, first, whether the alleged recovery took place as claimed by the prosecution, and second, what should be the appropriate verdict. The trial court answered the first point in the affirmative and convicted the appellant, holding that the prosecution had successfully established its case beyond reasonable doubt. The court dismissed the defense contentions regarding the absence of private witnesses, the existence of a direct complaint filed by the appellant's wife against the police officials, and the alleged contradictions in the prosecution evidence.

5. Before examining the merits of this appeal, it is imperative to delineate the scope and powers of this court in exercising appellate jurisdiction. The jurisdiction of the High Court in criminal appeals is governed by Section 48 of the Control of Narcotic Substances Act, 1997, which provides that an appeal against the order of a Special Court comprising a Sessions Judge or Additional Sessions Judge shall lie to the High Court and shall be heard by a bench of not less than two judges. As established by the Supreme Court in *Anti-Narcotics Force Lahore v. Mst. Fazeelat Bibi* (PLD 2013 SC 361), the right of appeal under Section 48(1) of the CNS Act is comprehensive, encompassing every kind of appeal from every order passed by a Special Court.

6. The appellate court's function, as elucidated by superior courts, is not merely to conduct a fresh trial but to scrutinize whether the trial court's findings are supported by legally admissible evidence and whether the conviction satisfies the stringent standard of proof required in criminal cases. The Supreme Court has consistently held that appellate courts must examine whether the impugned judgment attains the benchmark of an unflawed decision and whether it is consonant with law and evidence, free from unjust and unfair errors apparent on the face of record. The bedrock principle governing criminal jurisprudence in Pakistan is the presumption of innocence, which places an unwavering burden on the prosecution to establish guilt beyond reasonable doubt. This principle, deeply entrenched in our legal system, finds expression in the constitutional guarantee that no person shall be deprived of life or liberty save in accordance with law. As

observed by the Supreme Court in various pronouncements, every accused person is presumed innocent until proven guilty, and this presumption continues until the prosecution succeeds in proving the charge beyond reasonable doubt through legally admissible, confidence-inspiring, trustworthy, and reliable evidence.

7. This Court of has repeatedly emphasized that conviction must be founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favor of the accused. This principle finds its genesis in both common law jurisprudence, which follows the maxim that "it is better that ten guilty persons be acquitted than that one innocent person be convicted," and Islamic criminal law, which emphasizes the Holy Prophet's (PBUH) teaching to "avert punishments when there are doubts". The burden of proof in criminal cases rests entirely on the prosecution, as established by the Latin maxim "ei incumbit probatio qui dicit, non qui negat" the burden of proof rests on who asserts, not on who denies. The accused has no obligation to prove innocence, and the prosecution cannot derive any benefit from the weakness of the defense. As held by the Supreme Court in various cases, the prosecution must establish its case beyond reasonable doubt, and such burden cannot be discharged by pointing to weaknesses in the defense case.

8. A fundamental issue that emerges from the evidence is the complete absence of private witnesses during the alleged recovery proceedings. While Section 25 of the Control of Narcotic Substances Act, 1997 excludes the mandatory application of Section 103 CrPC in narcotic cases, this exclusion does not grant carte blanche to law enforcement agencies to disregard all procedural safeguards. The jurisprudence developed by superior courts establishes that although private witnesses are not mandatory, the prosecution must provide a satisfactory explanation for their non-availability, particularly when the alleged recovery occurs in a public place during daylight hours. In the instant case, the complainant ASI Zahoor Ahmed Phul admitted during cross-examination that he "did not go here and there to associate the private mashir" and waited only about five minutes for private witnesses. This casual approach becomes more problematic when considered alongside the admitted fact that the place of incident was accessible via link roads connecting multiple villages including Newaro, Sagyoon, Bhoonbhatpur, and Sami. The prosecution's explanation that no private person was available appears hollow when juxtaposed against the acknowledgment that the incident occurred at a location where various village link roads converge.

9. The Supreme Court's guidance in Qari Muhammad Ishaq Ghazi v. The State (Criminal Appeal No. 319-L/2017) emphasized that while police

officials can serve as witnesses in narcotic cases due to public reluctance, this does not absolve the prosecution from making genuine efforts to secure independent witnesses when circumstances permit. The casual manner in which the complainant dismissed the possibility of obtaining private witnesses raises questions about the genuineness of the encounter and suggests a predetermined decision to rely solely on official witnesses. The evidence reveals significant contradictions between the testimonies of key prosecution witnesses regarding crucial aspects of the alleged recovery. PW-1 PC Hakim Ali testified that they first observed the accused from a distance of 30-35 paces from their police mobile, stopped the vehicle at 15-20 paces, and apprehended the accused at the same distance. However, PW-2 ASI Zahoor Ahmed Phul provided a different version, stating they saw the accused at 30 paces, stopped at 10 paces, and collectively apprehended him at a distance of 10-15 paces.

10. While minor discrepancies in distance estimates might be understandable, these contradictions become significant when considered in the context of a case where the entire prosecution relies on the credibility of police witnesses who were allegedly present at the same scene simultaneously. The inability of witnesses to provide consistent accounts of basic facts such as distances and positions undermines the reliability of their testimony regarding more complex aspects of the alleged recovery.

11. One of the most troubling aspects of the prosecution case concerns the sudden availability of a digital weighing scale at the scene. PW-1 PC Hakim Ali testified that he "brought the digital scale of silver colour from investigation bag lying in police mobile." However, the complainant ASI Zahoor Ahmed Phul never mentioned carrying any investigation bag when departing from the police station for patrolling duties. The roznamcha entry regarding their departure for patrolling makes no reference to any investigation equipment being carried. This unexplained availability of specialized equipment raises serious questions about the spontaneous nature of the alleged encounter. If the police were on routine patrolling duty as claimed, the presence of a digital weighing scale suggests either prior knowledge of the intended operation or a level of preparation inconsistent with a chance encounter. The prosecution's failure to provide any explanation for this anomaly creates a reasonable doubt about the genuineness of the recovery proceedings.

12. The integrity of narcotic cases fundamentally depends upon establishing an unbroken chain of custody from the point of recovery until examination by the chemical examiner. The Supreme Court in Mst. Sakina Ramzan

v. The State (2021 SCMR 451) has elaborated that the chain of custody begins with seizure by law enforcement officers, followed by separation of representative samples, storage with the law enforcement agency, and dispatch to the testing laboratory. This chain must be unbroken, unsuspicious, indubitable, safe, and secure, as any gap impairs the conclusiveness and reliability of the chemical examiner's report. In the present case, PW-4 WASI Nisar Ahmed Mangnejo, the Incharge Malkhana, admitted during cross-examination that he handed over the case property to the investigating officer for chemical examination "with the delay of 04 days" without providing any satisfactory explanation. The investigating officer deposited the samples at the chemical laboratory on 17th April, 2023, three days after the alleged recovery, but failed to adequately explain the custody arrangements during this interim period.

13. The Supreme Court has consistently held that safe custody and safe transmission of drugs from the spot of recovery until receipt by the Narcotics Testing Laboratory must be satisfactorily established, as this forms the foundation for the chemical examiner's report, which is the main evidence for conviction purposes. Any break in this chain renders the report unreliable and incapable of sustaining conviction. The unexplained delay in transmission, coupled with the lack of detailed custody records, creates a substantial gap in the prosecution's case that cannot be overlooked.

14. Perhaps the most damaging aspect of the prosecution case is the existence of Criminal Direct Complaint No. 06/2023 filed by the appellant's wife, Mst. Samina Naz, against the very police officials involved in this case. The complaint, filed on 11th May, 2023, alleges that the appellant was arrested from his house without an arrest warrant, thereby violating constitutional rights. The complainant ASI Zahoor Ahmed Phul himself admitted the existence of this complaint during cross-examination. The trial court's dismissal of this complaint as an "afterthought" reflects a fundamental misunderstanding of the dynamics involved in police-citizen interactions. The delay in filing the complaint cannot automatically be construed as evidence of its falsity, particularly when considering that families facing police action often require time to understand available legal remedies and overcome initial shock and intimidation. The complaint's existence, combined with the appellant's consistent denial and claim of false implication, creates reasonable doubt about the prosecution's version of events.

15. Moreover, the selective knowledge of prosecution witnesses regarding this complaint reveals concerning inconsistencies. While the complainant admitted its existence, other prosecution witnesses, including the

investigating officer, claimed ignorance of the complaint. This disparity in knowledge among police officials involved in the same case suggests either poor communication within the force or deliberate concealment of material facts.

16. The examination of the accused under Section 342 CrPC reveals significant procedural lapses that violated the principles of natural justice. The questions put to the appellant failed to address crucial pieces of evidence, including the alleged possession of a digital weighing scale, the specific manner of apprehension, and the allegations contained in his wife's direct complaint. The Supreme Court has emphasized that examination under Section 342 CrPC is based on the principle of "audi alteram partem" and requires every incriminating piece of evidence to be specifically brought to the accused's notice to enable proper explanation. The perfunctory nature of the Section 342 examination in this case deprived the appellant of a fair opportunity to explain material evidence against him. This procedural violation assumes greater significance in a case where the prosecution relies entirely on the testimony of interested witnesses and where serious allegations of mala fide conduct have been raised.

17. The trial court's observation that the quantity of 1100 grams could not have been planted by police officials due to its substantial value reflects a misconception about the burden of proof in criminal cases. The accused is not required to explain how contraband might have been planted; rather, the prosecution must establish beyond reasonable doubt that the recovery was genuine and lawful. The quantum of alleged contraband cannot serve as a substitute for proper procedural compliance and credible evidence. This approach contradicts established legal principles that place no burden on the accused to prove innocence or explain the mechanics of false implication. As held by superior courts, the prosecution's case must stand or fall on its own merits and cannot derive strength from the accused's inability to prove how evidence might have been fabricated.

18. The trial court's treatment of the defense contentions reveals a predetermined mindset favoring the prosecution. The court dismissed the direct complaint as an afterthought without adequately considering its implications for the credibility of prosecution witnesses. Similarly, the court failed to address the unexplained availability of the weighing scale and the contradictions in witness testimony regarding distances and positioning. The court's reliance on cases such as *Matti-Ullah v. The State* (Criminal Petition No. 18 of 2019) appears misplaced, as those precedents dealt with situations where prosecution witnesses successfully withstood rigorous cross-examination without revealing significant contradictions

or procedural violations. In contrast, the present case involves multiple infirmities that collectively undermine the prosecution's credibility.

19. Most critically, the trial court failed to apply the fundamental principle that requires resolution of reasonable doubts in favor of the accused. The Supreme Court has consistently held that findings of guilt cannot be based merely on high probabilities but must rest surely and firmly on evidence produced, as mere conjectures and probabilities cannot substitute for proof. The trial court's conviction of the appellant despite multiple procedural lapses and contradictions violates this cardinal principle of criminal jurisprudence.

20. Upon comprehensive examination of the evidence and legal principles applicable to this case, several conclusions emerge that compel interference with the trial court's judgment. The prosecution has failed to discharge its fundamental obligation to prove guilt beyond reasonable doubt. The cumulative effect of procedural violations, contradictory testimony, questionable chain of custody, and credible allegations of mala fide conduct creates reasonable doubt that cannot be resolved in favor of conviction. The case law relied upon by the prosecution regarding the acceptability of police witnesses in narcotic cases presupposes that such witnesses provide credible and consistent testimony free from material contradictions. However, when official witnesses themselves present contradictory accounts and when serious procedural irregularities are apparent, the mere fact of their official status cannot cure these fundamental defects.

21. The principle established in *Zahir Shah alias Shat v. The State* (2019 SCMR 2004) that safe custody and safe transmission must be satisfactorily established has not been met in this case. The unexplained delay in chemical examination, coupled with inadequate custody records, creates a break in the chain that renders the chemical examiner's report unreliable for conviction purposes. Furthermore, the existence of the direct complaint, while not conclusive proof of false implication, certainly adds to the reasonable doubt that permeates this case. When considered alongside other infirmities, it creates a pattern that suggests the prosecution's version may not be entirely truthful.

21. In light of the foregoing analysis, this court finds that the prosecution has failed to establish the appellant's guilt beyond reasonable doubt. The trial court's conviction cannot be sustained when viewed against established legal principles governing narcotic cases and constitutional requirements of due process. The multiple procedural violations, material contradictions, and gaps in the chain of custody, when considered cumulatively, create reasonable doubt that must be resolved in favor of the appellant. The golden thread of criminal jurisprudence

requires that guilt be established through credible, reliable, and legally admissible evidence free from reasonable doubt. The prosecution in this case has fallen short of meeting this stringent standard. While the fight against narcotics trafficking is undoubtedly important for society, it cannot be pursued at the expense of fundamental rights and procedural safeguards that form the cornerstone of a fair criminal justice system.

22. Consequently, this criminal appeal was allowed. The judgment dated 24th July, 2024, passed by the learned Additional Sessions Judge-I (MCTC), Special Judge for CNS, Khairpur in Special Case No. 181 of 2023, was set aside. The appellant Irshad Ali was acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997 vide short order dated 13.08.2025, with the directions to be released from custody forthwith, if not required in any other custody case. These are the detailed reasons thereof.

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