

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANA**

**Criminal Appeal No.D-04 of 2022**

Present:

**Mr. Justice Amjad Ali Sahito  
Mr. Justice Jan Ali Junejo**

Appellant : Mehmoood Khan s/o Abdul Ghani Pathan  
Through Mr. Abdul Baqi Jan Kakar, Advocate

The State : Through Mr. Ali Anwar Kandhro, Addl.P.G

**(Criminal Appeal No.D-05 of 2022)**

Appellant : Shadi Khan s/o Pir Bux by caste Brohi  
Through Mr. Habibullah G.Ghour, Advocate

The State : Through Mr. Ali Anwar Kandhro, Addl.P.G

Date of hearing : 06-05-2025

Date of Judgment: 30-05-2025

**JUDGMENT**

**Jan Ali Junejo, J:-** This single judgment shall decide the fate of captioned criminal appeals filed by the named above appellants who being tried by learned Sessions/Special Judge for CNS, Shikarpur, in CNS Case No.289/2020, outcome of FIR Crime No.02/2020, registered at P.S Excise Town, Shikarpur, were convicted for an offence punishable under Section 9 (c) of Control of Narcotics Substance Act, 1997 and sentenced to suffer rigorous imprisonment for life, with fine of One Million each and in default thereof, to suffer S.I for six months more, with benefit of Section 382-B Cr.PC, vide judgment dated 11.01.2022.

2. The genesis of the facts, culled out from the FIR is to the effect that on 04.03.2020, complainant Habibullah Qazi, AENCO Shikarpur Town, alongwith his subordinates left police station in pursuant to spy information and when reached at main Sui Gas Office Jacobabad road Shikarpur, at around 04.00 p.m, found the vehicle bearing registration No.CE-6162, Sindh, pointed by the

spy, coming from Jacobabad, which was got to halt, carrying a driver with another person. The driver on query disclosed his name as Shadi Khan son of Pir Bux Brohi, r/o Jhat Patt Balochistan. EC Ghulam Akbar Channa and EC Ali Ahmed Shah were associated as mashirs and the bodily search of driver yielded cash of Rs.500/- and his CNIC from his right side pocket, the other person revealed his identity to be Mehmood Khan son of Abdul Ghani Pathan, r/o Jhatt Patt Balochistan, on his bodily search, an amount of Rs.300/- was secured from right side pocket of his shirt. The registration book in the name of one Haji Dad Muhammad son of Sher Muhammad was secured from dashboard of the vehicle. The colorful packets were secured from the secrete cavity beneath the floor of the vehicle, the packets having fruit picture when opened were found containing two patties of Charas and each patti was written thereon 2020. The patties were counted to be 80, making its total as 40 packets and each packet when weighed, came out to be 01 K.G, making a total of 40 K.Gs, 20 grams from each were segregated for chemical examination. Thereafter, the accused were arrested under memo of arrest and recovery, prepared in presence of above said mashirs. On return to police station, the present case under Control of Narcotics Substance, Act, was registered against the accused on behalf of the State.

3. The investigation was conducted by the complainant himself, who recorded 161 Cr.PC statements of PWs, dispatched the recovered contraband Charas to the Chemical Laboratory, Karachi, through EJ Muhammad Hashim and on completion of usual formalities, submitted the final report under section 173 Cr.PC against the appellants before the competent Court of law.

4. The present appellants pleaded not guilty to the charge framed against them and claimed trial.

5. At the trial, the prosecution to establish accusation against the appellants, examined PW-01 Complainant/Excise Inspector

Habibullah at Exh.08, he produced memo of arrest/recovery, FIR of the present case, departure entry, letter addressed to Chemical laboratory Karachi, letter to SHO, P.S New Foujdari Shikarpur for delivery of custody of accused, letter to motor registration authority for verification of vehicle, letter showing vehicle registration detail and chemical report at Exh.9/A to 9/H respectively. PW-02 Mashir/EC Ghulam Akbar at Exh.09. PW-03 Dispatcher/EJ Muhammad Hashim at Exh.10. Thereafter, the learned State Counsel closed the its' side.

6. The appellant Mehmood Khan in his statement recorded under section 342 Cr.PC at Exh.12, denied the allegations leveled against him by the prosecution and stated as under;

*"I am innocent. I am Chowkidar at Fish pond of one Muhammad Rafique Brohi, village Haji Khuwasti Brohi Taluka Shikarpur. I was arrested from Kundan Chowk Shikarpur. When I got down from the Wagon, Excise Inspector demanded bribe from me which I could not able to pay hence involved in this case. Neither I am driver nor cleaner as alleged by complainant. Pray for justice."*

7. Appellant Shadi Khan Brohi in his statement under Section 342 Cr.PC also denied the prosecution allegations by stating as under;

*"I am innocent and falsely been implicated by complainant party at the instance of owner of vehicle. I was not present in the vehicle but arrested from Jacobabad and complainant after taking huge amount from owner of the vehicle made me in place of actual accused. I am poor person and could not paid amount demanded by complainant. Pray for justice."*

Both the appellants did not examine themselves on oath in disproof of the charge, nor led any evidence in their defence.

8. The learned trial Court after hearing the parties counsel and on assessment of the evidence, convicted and sentenced the appellants vide impugned judgment dated **11.01.2022**, which they have assailed here by preferring the instant appeals separately.

9. Learned counsel for appellant Mehmood Khan argued that the present appellant has been arraigned in this case falsely by the complainant on his failure to grease the palm of the police, as he is neither driver nor cleaner of the vehicle and that he has no nexus with the alleged contraband Charas; that there are several conflicts in the evidence of prosecution witnesses, which has lost credibility of their testimony; that learned trial Court has committed illegality while convicting the present appellant, holding him guilty of the charged offence by way of impugned judgment, which requires interference by this Court. In such situation, the present appellant deserves to be acquitted.

10. Learned counsel for appellant Shadi Khan argued that the appellant being innocent has been implicated in this case falsely by foisting upon him a huge quantity of Charas; that there are material contradictions in the evidence of prosecution witnesses, which have rendered the credibility of their evidence at stake; that it is quite unbelievable and does not appeal to the prudent mind that how such a huge quantity was checked, weighed, separated for chemical analysis and sealed at the spot in such a short span of time; that no record is collected during course of investigation against the appellant in respect of selling Charas, which in fact was never available with the prosecution to suggest that he is previously involved or convicted by any Court of law in offences of like nature, as such, he has falsely been implicated by the police at the instance of owner of the vehicle from whom the complainant took huge amount and made him in place of actual accused; that the place of recovery is frequented by traffic and public yet not a single passerby there-from was taken to witness the recovery proceedings; that the recovered case property was sent to the Chemical Laboratory with deliberate delay of one day which has not been explained plausibly; that the Chemical Examiner's report is not with protocol of the test, hence, it has lost its' sanctity in the eyes of law; that the safe custody/transmission of Charas to the Chemical Examiner has also not been established; that the

evidence of such interested witnesses requires independent corroboration, which is also lacking in the present case; that the complainant and his witnesses are Excise officials and no independent person has been cited to witness the recovery proceedings, which has clearly disregarded the mandatory provision of Section 103 Cr.PC. Summing up his submissions, he contended that the prosecution has miserably failed to prove its case against the appellant and in such circumstances he is entitled to his acquittal.

11. Per contra, learned Addl.P.G for the State while consenting with the findings of impugned judgment has contended that the prosecution has successfully proved its case against both the appellants who were found carrying the huge quantity of Charas through a Car; that the evidence of prosecution witnesses is consistent with each other on all material aspects of the case, which is further strengthened from the documents produced by them at trial; that the Excise officials had no hostility to foist such a huge quantity of narcotics substance against the appellants of its own, therefore, learned trial Court has committed no illegality while passing the impugned judgment, which is based upon the sound reasoning and thus it requires no interference by this Court. He lastly prayed for dismissal of the instant Criminal Appeals.

12. We have heard learned counsel for the parties and have minutely gone through the material made available on record with their able assistance.

13. It is the case of prosecution that on 04.03.2020, acting on a tip-off, both the appellants were apprehended with recovery of 80 packets of Charas from the secrete cavity of the vehicle driven by appellant Shadi Khan, while the appellant Mehmood Khan was seated in the said vehicle. The seized contraband was weighed and found to be 40 kilograms in total. A sample of 20 grams from each packet was separated for chemical analysis.

14. Upon meticulous assessment of the evidence and record, it has been observed that the prosecution witness (PW-01), Complainant/Excise Inspector Habibullah Qazi, who also acted as the investigating officer of the case, provided testimony regarding the recovery of the narcotics (charas) and outlined the investigatory measures undertaken by him. Following the arrest of the appellants, both the accused persons and the recovered contraband were brought to the concerned police station, with departure/arrival entry duly recorded in the roznamcha. On the same day i.e 04.03.2020, the samples taken from the recovered charas were dispatched to the Chemical Laboratory, Karachi, through PW-03 EJ Muhammad Hashim vide Letter No.Excise 18/2020, dated 04.03.2020, which were received there on 05.03.2020. The Chemical Examiner's report was subsequently received in positive. Consequently, the investigating officer submitted a final report under Section 173 Cr.P.C (Challan) against both accused persons before the Court of competent jurisdiction, who also produced supporting documents marked at Exh.8/A to 8/H respectively.

15. In corroboration with the testimony of PW-01, the prosecution examined PW-02 EC Ghulam Akbar, who endorsed the version adduced by the complainant. The complainant further asserted that the recovered charas was forwarded to the Chemical Laboratory Karachi through PW-03 EJ Muhammad Hashim. Thereafter, the prosecution closed its side of the evidence through a statement dated 04.12.2021, recorded at Exh.11.

16. It is pertinent to underscore that the evidentiary value of the Chemical Examiner's Report is inherently contingent upon the integrity of the chain of custody. It is the obligation of the prosecution to establish and maintain an unbroken and secure chain of custody, particularly in view of the pivotal role played by the Chemical Examiner's Report under the Control of Narcotic Substances Act, 1997. The only means by which the authenticity

of the recovered substance's arrival at the Chemical Examiner's office can be ensured is through demonstrable proof of a safe and uninterrupted chain of custody.

17. Upon examination of the record, it is evident that the prosecution has failed to establish that the recovered sample parcels (charas) were kept in secure custody at the police station (Malkhana). The prosecution did not produce the Moharar responsible for maintaining the Malkhana Register, which is a critical lapse. The complainant/investigating officer (I.O.) of the case during his evidence deposed that ***"I secured 40 packets of Charas having 80 patties, weighing 40 K.Gs. Each packet was weighed and found to be 01 K.G. I put 20 packets in one sack and remaining 20 packets in another sack and sealed the same at the spot for sending for analysis. On 04.03.2020, I prepared letter and dispatched the property for analysis to Chemical Examiner Karachi through EJ Muhammad Hashim Chandio. Muhammad Hashim took property in a Coach, I and ETO bore travelling expenses. Charas was kept by me in Excise Office."***

18. The other material defects have also been noticed in the evidence of the complainant/I.O, wherein he deposed that "It is correct that the hotels and pumps were situated on the way but I did not take private persons to act as mashir. I conducted their search and searched their vehicle. I conducted search of vehicle myself. ***The spy gave me information at P.S at about 1430 hours in presence of EJ Muhammad Hashim and other staff. It is correct that in this case, I have shown vehicle belonging to Datsun Company. There are two sections in Excise police, one relates to offences regarding taxation and other relating to narcotics. I have not acquired any training for detecting narcotics offence.*** It is correct that now I am posted at Karachi. I have been directed to report in office of Secretary Excise. I have not been assigned any posting/assignment. It is correct that in

one case I had shown accused escaped leaving vehicle loaded with narcotics substance. The inquiry was conducted. I was directed to report at head office. ***It is correct that in the inquiry, it was suggested that I shall not be posted in crime recovery side. It is correct that I have been reverted and inquiry was conducted in narcotics cases. It is correct that in the inquiry, it was suggested that I shall not be posted on crime recovery side.***”

19. The version of the complainant/I.O has been devastated by his own PW-02 Mashir EJ Ghulam Akbar, who in his evidence deposed that ***“The spy information was received by the complainant himself. It was not received in our presence. Charas was taken out from cavity by me. It is correct that color and number of vehicle is not noted down in the memo of recovery. Toyota Hi-Lux Pickup was recovered in this case. Vehicle was not of Datsun Company.”***

20. PW-03 EJ Muhammad Hashim in his examination in chief deposed that “On 04.03.2020, I was posted as Excise Constable at Excise P.S Town Shikarpur. On said date, I received case property in Crime No.02/2020 from complainant Habibullah for taking to laboratory. ***I took property under letter and handed over the same in laboratory at Karachi on 05.03.2020.*** He in his cross examination deposed that ***“complainant handed over me property by taking it from his office.”***

21. It needs the utmost mention that in the present case, the alleged recovery was effected on 04.03.2020 and it was kept by the complainant in his office, without maintaining any entry in roznamcha or in property register and later he dispatched the same to the Chemical Laboratory Karachi through PW-03 EJ Muhammad Hashim that too without keeping such entry in the roznamcha, while it was received in the Laboratory on 05.03.2020, also without maintaining the entry of arrival of said dispatcher at police station. No explanation in this regard is furnished by the



prosecution that where the property was lying since date of its receipt and delivery to the Laboratory. All such lapses on the part of the investigation officer has impaired the transparency of the investigation and has made the entire exercise questionable. Moreover, the prosecution has not substantiated either the secure transmission of the sample parcel to the relevant laboratory or its safe custody while in the office of concerned P.S. There is a conspicuous absence of any justification on record for the non-production of this essential evidence, despite the legal requirement for its establishment. The Honourable Supreme Court of Pakistan, in following precedents commencing from a judgment reported in 2012 and in several subsequent decisions, has consistently held that failure on the part of the prosecution to prove the safe custody and secure transmission of recovered narcotics warrants the acquittal of the accused. The guidelines have also been taken from the following cases:-

**(1) Muhammad Hashim v. The State, PLD 2004 SC 856, (2) Amjad Ali v. The State, 2012 SCMR 577, (3) Ikramullah and others v. The State, 2015 SCMR 1002, (4) Taimoor Khan and another v. The State and another, 2016 SCMR 621, (5) The State through Regional Director ANF v. Imam Bakhsh and others, 2018 SCMR 2039, (6) Mst. Razia Sultana v. The State and another, 2019 SCMR 1300, (7) Khair-ul-Bashar v. The State, 2019 SCMR 930, (8) Zahir Shah alias Shat v. The State, 2019 SCMR 2004, (9) Unreported Judgment dated 10.03.2025 passed by the Honourable Supreme Court of Pakistan in Criminal Petition No.1187/2021 Re-Jeehand v. The State, (10) Mst. Sakina Ramzan v. The State, 2021 SCMR 451, (11) Qaiser Khan v. The State, 2021 SMR 363, (12) Abdul Ghafoor v. The State and another, 2022 SCMR 819, (13) Ishaq v. The State, 2022 SCMR 1422, (14) Muhammad Shoaib and another v. The State, 2022 SCMR 1006, (15) Subhanullah v. The State, 2022 SCMR 1052, (16) Rustam Ali v. The State, 2023 PCr.LJ Note 112, (17) Said Wazir and another v. The State, 2023 SCMR 1144, (18) Javed Iqbal v. The State, 2023 SCMR 139, (19) Muhammad Hazir v. The State, 2023 SCMR 986, (20) Asif Ali and another v. The State, 2024 SCMR 1408 and (21) Sarfraz Ahmed v. The State, 2024 SCMR 1571.**

22. The overall discussion coupled with the aforementioned contradictions in the evidence of prosecution witnesses, led us towards a unanimous conclusion that the prosecution has miserably failed to establish the guilt against the appellants. It is a settled proposition of law that the prosecution is bound to prove its case beyond a shadow of a doubt. If a reasonable doubt arises in the prosecution case, its' benefit must be extended in favor of the accused not as a grace or concession, but as a matter of right. Likewise, it is also a well embedded principle of criminal justice that it is not necessary that there must be so many doubts in the prosecution case, if there is a reasonable doubt arising out of the prosecution evidence attracting the judicious mind, the same would be considered sufficient for giving its benefit to the accused. In this respect, the reliance can be placed upon the case of ***Mohammad Mansha v. The State (2018 SCMR 772);-***

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted.” Reliance in this behalf can be made upon the cases of *Tarique Parvez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Mohammad Akram v. The State (2009 SCMR 230)* and *Mohammad Zaman v. The State (2014 SCMR 749)*.”***

23. For what has been discussed supra, we have no hesitation to say that the learned trial Court while committing illegality has come to an erroneous conclusion by holding the present appellants guilty of the charged offence. Consequently, the instant Criminal

Appeals bearing Nos.04 & 05 of 2022 are **allowed**. The conviction and sentence recorded against the present appellants Mehmood Khan and Shadi Khan Brohi vide impugned judgment are **set aside** and they are **acquitted** of the charge by extending them benefit of the doubt. They shall be released forthwith if not required in any other custody case.

**JUDGE**

**JUDGE**