IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D-264 of 2019

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

Appellants	:	1. Muhamamd Ramzan s/o Ghulam Hussain Awan 2. Muhammad Nadeem s/o Qasim Ali Arain 3. Qasim Ali s/o Muhammad Siddique Arain *Through* M/s Ateeq-ur-Rehman Shaikh & Shabbir Ahmed Malik, Advocates
The State	:	*Through* Mr. Muhammad Farooque Ali Jatoi, Special Prosecutor ANF
Date of hearing	:	14.10.2025
Date of Judgment	:	29.10.2025

JUDGMENT

KHALID HUSSAIN SHAHANI, J.– The appellants Muhammad Ramzan, Muhammad Nadeem and Qasim Ali challenge their conviction and sentence of rigorous imprisonment for life and fine of Rs.300,000/- each under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNS Act"), awarded by the learned Additional Sessions Judge-I/Special Judge for Control of Narcotic Substance (MCTC), Ghotki vide judgment dated 08.11.2019 in Special Case No.03/2017 arising out of Crime No.02/2017 registered at Police Station ANF Sukkur.

2. As per prosecution theory, FIR No.02/2017 dated 24.01.2017 registered at Police Station ANF Sukkur, which reveals that on 24th January, 2017 complainant ANF Inspector Wajid Hussain received credible spy information through high officials that three persons namely Muhammad Ramzan, Qasim Ali and Muhammad Nadeem, residents of Mian Chanoo, District Khaniwal, were transporting substantial quantity of narcotics in Trailer bearing registration No. TLR-018 along with Container No. MNBU-0033013 after receiving the contraband from one Peer Bux Gadani of Ghotki, and that the accused were proceeding towards Mian Chanoo via National Highway and would cross a particular point between 1000 to 1100 hours. Acting upon such information, an ANF police party headed by Assistant Director Manzoor Ahmed Phull departed from the police station vide Roznamcha entry No. 4 at 0815 hours on 24.01.2017, reached Sarhad bypass near Attock Petrol Pump, District Ghotki at approximately 1000 hours, established a checking post, and

at about 1100 hours intercepted the aforementioned trailer with three accused persons.

3. Upon interception and inquiry, the accused identified themselves and allegedly disclosed that charas was concealed behind the driver's seat beneath a quilt, whereupon the police party recovered two white-colored sacks containing 77 packets of charas totaling 96.250 kilograms from the trailer, from each packet 10 grams were segregated and sealed separately in numbered khaki envelopes, personal search of the accused yielded their CNICs, driving licenses, mobile phones and cash amounts, mashirnama was prepared at the spot, the police party returned to the police station with all recovered articles and arrested accused, Entry No. 9 was made in the daily diary, and the FIR was registered under Section 9(c) of the CNS Act at about 1900 hours.

4. Formal charge was framed against the accused on 18.11.2017 at Exhibit 05, to which they pleaded not guilty and claimed trial vide their pleas at Exhibits 6 to 9.

5. To bring home the guilt to the accused, the prosecution examined four witnesses:

> ***a) PW-1 ANF Inspector Wajid Hussain*** *at Exhibit 11, who deposed as complainant and investigating officer. He produced attested copies of entries at Exhibit 11-A, mashirnama of arrest and recovery at Exhibit 11-B, FIR at Exhibit 11-C, letter No.ANF Sukkur 2017/101 dated 25.01.2017 at Exhibit 11-D, note of receiving clerk of chemical examination laboratory at Exhibit 11-E, and positive chemical examiner report at Exhibit 11-F. He also produced criminal records of accused Peer Bux Gadani at Exhibits 11-G to 11-I and criminal record of accused Muhammad Ramzan at Exhibit 11-J.*
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> ***b) PW-2 PC Nasir Waseem Rajput*** *at Exhibit 12, who verified the mashirnama already produced at Exhibit 11-B and corroborated the version of the complainant.*
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> ***c) PW-3 ASI Ali Sher*** *at Exhibit 13, who deposed regarding transmission of the sample parcels to Chemical Examiner Laboratory Karachi and produced roznamcha entry No. 5 at Exhibit 13-A.*
>
> ***d) PW-4 SIP Attaullah Khan****, Incharge of Malkhana/Regional Director ANF Karachi at Exhibit 14, who produced attested PS copy of roznamcha entry No. 451 at Exhibit 14-A regarding safe custody of the case property.*

6. Thereafter, the prosecution closed its side of evidence vide statement at Exhibit 15. The statements of all accused under Section 342 Cr.P.C.

were recorded on 21.10.2019 at Exhibits 16 to 19, wherein they denied the prosecution allegations and stated that they had been falsely implicated in the case by foisting charas upon them. They prayed for justice. However, they did not appear as their own witnesses on oath as required under Section 340(2) Cr.P.C. in disproof of the allegations leveled against them, nor produced any evidence in their defense. The learned trial court, after hearing both sides and appreciating the evidence, convicted the appellants Muhammad Ramzan, Muhammad Nadeem and Qasim Ali under Section 9(c) of the CNS Act vide judgment dated 08.11.2019 and sentenced them to rigorous imprisonment for life and to pay a fine of Rs.300,000/- each, and in default thereof, to further undergo simple imprisonment for six months more. The benefit of Section 382-B Cr.P.C. was extended to the appellants. Accused Peer Bux was acquitted for lack of evidence.

7. Aggrieved by the said judgment, the appellants have preferred the instant jail appeal.

8. Learned counsel for appellant Muhammad Ramzan submitted that the appellant is an innocent person falsely implicated by ANF police in a concocted case, and that the alleged incident took place on a busy thoroughfare at a petrol pump in broad daylight yet the complainant deliberately failed to associate any independent person as mashir despite covering 90 kilometers, while material contradictions exist between the complainant and mashir regarding preparation of mashirnama, time consumed at the spot (5 hours 45 minutes versus 5 hours 15 minutes), and recording of statements under Section 161 Cr.P.C., and both admitted that markings "Café" and "1000" on foil packets were not mentioned in mashirnama, demonstrating it was prepared at the police station, that the complainant made damaging admissions including failure to produce accused before Magistrate for recording statement under Section 164 Cr.P.C., failure to produce CDR of accused's mobile phone, and failure to find any independent witness connecting accused with Peer Bux, that there is unexplained delay of about. 8 hours in lodging FIR providing opportunity for manipulation, that prosecution has failed to establish safe custody and safe transmission as no entry was produced showing handing over of charas to malkhana incharge, *malkhana* entry No.451 does not mention time, and samples were delivered two days after recovery without explanation of their custody during intervening period, that material witnesses including AD Manzoor Ahmed Phull and PC Irfan were not examined, chemical examiner's

report is defective, and consequently prosecution has failed to prove its case beyond reasonable doubt.

9. Learned counsel for appellant Qasim Ali submitted that the appellant has been falsely implicated merely on oral statement of co-accused Muhammad Ramzan without any independent evidence, that the alleged recovery was not effected from his exclusive possession as he was merely the conductor of the trailer with no control over the driving cabin or contraband concealed behind driver's seat, that complainant admitted no prior case against appellant was registered at PS ANF establishing he had no previous involvement in narcotic crimes, that mashir PC Nasir Waseem admitted he belongs to same district Khaniwal raising suspicion that personal particulars of accused were disclosed by him to complainant, that alleged incident took place on busy highway yet prosecution failed to associate any independent mashir despite 90 kilometers journey and 5-6 hours recovery proceedings, that material contradictions exist between prosecution witnesses and distinctive markings on foil packets were not mentioned in mashirnama indicating fabrication, that prosecution failed to establish safe custody and safe transmission as no handing over entry was produced, malkhana entry lacks time mention, and samples delivered two days later without custody explanation, that entire prosecution case is based on subordinate ANF officials without independent witnesses, material witnesses were not examined, and there is unexplained 8 hours delay in FIR lodging, and consequently prosecution has failed to prove case against appellant beyond reasonable doubt.

10. Learned counsel for appellant Muhammad Nadeem submitted that the appellant is a young person falsely roped into this fabricated case without credible evidence, that he has been implicated merely on oral statement of co-accused Muhammad Ramzan without recovery from his exclusive possession, that appellant was a minor at the time of incident on 24.01.2017 and was merely a helper accompanying his father, not a co-driver as falsely alleged by prosecution, that complainant admitted no prior case against appellant was registered at PS ANF establishing his non-involvement in narcotic crimes, that mashir PC Nasir Waseem belongs to same district Khaniwal raising suspicion that appellant's personal particulars were supplied by mashir to complainant, that alleged incident took place on busy thoroughfare in broad daylight yet prosecution failed to associate any independent mashir, that material contradictions exist between prosecution witnesses and prominent markings on

foil packets were not mentioned in mashirnama demonstrating subsequent fabrication, that prosecution failed to establish safe custody and safe transmission as no handing over entry was produced, malkhana entry lacks time mention, and samples delivered two days later without custody explanation thereby breaking chain of custody, that material witnesses including AD Manzoor Ahmed Phull and PC Irfan were not examined creating adverse inference, that there is unexplained 8 hours delay in FIR lodging providing opportunity for manipulation, that chemical examiner's report does not comply with mandatory requirements, and consequently prosecution has failed to prove case against appellant beyond reasonable doubt.

11. Learned Additional Prosecutor General for the State vehemently opposed the appeal and submitted that the prosecution has successfully proved its case against the appellants beyond any shadow of reasonable doubt through confidence-inspiring and trustworthy evidence, that although the witnesses examined belonged to ANF, they hailed from different districts namely Hyderabad, Khaniwal, Khairpur and Karachi whereas the accused belonged to Tehsil Mian Chanoo, District Khaniwal and District Ghotki, thus they had no reason to falsely implicate the accused or foist huge quantity of charas upon them, that the version of prosecution witnesses was uniform and consistent inspiring confidence while minor contradictions pointed out by defense do not go to the root of the matter and can safely be ignored, that under provisions of CNS Act, 1997, application of Section 103 Cr.P.C. requiring association of public witnesses has been excluded as elaborated landmarks judgments and it is judicially recognized that people do not willingly act as mashirs in narcotics cases due to fear of drug mafia, that the material charas recovered was sealed on spot, sent to chemical laboratory, and after due test and analysis was certified to be charas through chemical examiner's report which has not been challenged by accused, that the appellants were found in possession and control of the trailer from which huge quantity of contraband was recovered and as per settled law when a person is driving a vehicle, he is incharge thereof and whatever articles lying in it would be under his control and possession with knowledge and awareness attributed to him, that accused Muhammad Ramzan was driving the trailer and Muhammad Nadeem was co-driver as their driving licenses were recovered, accused Qasim Ali was conductor/cleaner, and all three had conscious knowledge about availability of charas because it was recovered on their pointation from behind driving seat beneath quilt and not from secret cavities, that Section 29 of CNS Act casts burden upon accused to establish their

innocence while prosecution has only to show that accused were in physical custody or directly concerned with recovered narcotic substance but appellants produced no document or evidence in self-defense to prove innocence, and that cases relating to narcotics affect society at large and therefore evidence is not to be weighed in golden scales as spread of narcotics has badly affected society and thus cases need to be dealt with sternly.

12. We have heard the learned counsel for the parties at considerable length and have perused the record with their able assistance. We have also examined the judgments cited by both sides. The appeal raises several important questions of law and fact which require careful consideration and determination.

13. At the outset, it would be pertinent to delineate the well-settled principles of law governing appellate jurisdiction in criminal cases. This Court, while exercising appellate jurisdiction, has the power to reappraise and reassess the entire evidence on record. It is not fettered by the findings of the trial court if such findings are shown to be perverse, arbitrary or suffering from non-consideration or misreading of evidence. However, where two views are possible on the evidence, the view favorable to the accused must be adopted. In cases where prosecution evidence suffers from material contradictions, improvements, or where the chain of circumstances is not complete, or where reasonable doubt exists, the benefit must invariably be extended to the accused. These principles have been consistently reiterated by the superior courts in numerous pronouncements.

14. The prosecution case hinges primarily upon the testimony of PW-1 ANF Inspector Wajid Hussain, the complainant and investigating officer, and PW-2 PC Nasir Waseem Rajput, the mashir. Both are admittedly serving members of the ANF department. While we are conscious of the legal position that official witnesses are as good as independent witnesses in the absence of any enmity or ill-will, and their evidence cannot be discarded merely on the ground of their being police officials, yet greater scrutiny is warranted when the entire prosecution case rests solely on departmental witnesses without any independent corroboration, particularly in cases involving recovery of contraband narcotics where the temptation and opportunity for abuse of authority is manifestly present.

15. A meticulous examination of the evidence of the complainant and the mashir reveals material contradictions and inconsistencies on vital aspects of the case which cannot be brushed aside as minor discrepancies. These

contradictions impinge upon the core of the prosecution story and create serious dents in the credibility of the witnesses.

16. *First,* regarding the preparation of mashirnama, the complainant stated in his cross-examination that he wrote the mashirnama by resting the paper on a clipboard in sitting position "over the Hi-Ace vehicle" without specifying any particular location. Conversely, the mashir specifically deposed that the complainant prepared the mashirnama "by sitting on the back seat of Hi-Ace." This is not a minor variation but a material contradiction. If the mashirnama was indeed prepared at the spot in the presence of mashirs as claimed, both witnesses would have a consistent memory of where and how it was prepared. The variance in their versions raises a legitimate doubt whether the mashirnama was actually prepared at the spot or subsequently fabricated at the police station.

17. *Second,* concerning the time consumed at the place of incident, the complainant deposed that they remained at the spot "for about 5 hours and 45 minutes" in completing all codal formalities including preparation of mashirnama and other proceedings. However, the mashir contradicted this by deposing that they consumed "five hours and fifteen minutes at the spot." This represents a difference of 30 minutes, which is not insignificant. Furthermore, regarding the return journey, the complainant stated they consumed "two hours" from the place of incident to the police station, whereas the mashir stated "two hours and forty-five minutes." These material contradictions on the timing aspects cast serious doubt on the veracity of the prosecution version and indicate that the witnesses have not truthfully narrated the actual sequence of events.

18. *Third,* regarding the recording of statements under Section 161 Cr.P.C., the complainant categorically stated that "I had recorded 161 Cr.P.C. statements of the eye witnesses" at the police station after registration of the FIR. However, during cross-examination, the mashir PC Nasir Waseem stated that "My 161 Cr.P.C. statement was written by one ASI on the directions of Inspector Wajid." This is again a glaring contradiction. The complainant claims that he himself recorded the statements, whereas the mashir asserts that some other ASI recorded his statement at the dictation of the complainant. This inconsistency is material because it shows that the witnesses are not deposing truthfully about even procedural aspects of the investigation.

19. *Fourth,* both the complainant and mashir admitted during cross-examination that "Café and 1000 is written on the foil packets of the charas" but crucially acknowledged that "this thing is not mentioned in the Mashirnama."

This is a significant omission. If the recovery was genuinely made at the spot and the mashirnama was prepared immediately thereafter as claimed, such distinctive markings on the foil packets would certainly have been noticed and recorded in the mashirnama to provide better identification of the recovered articles. The failure to mention such prominent and identifying features in the mashirnama lends credence to the defense plea that the mashirnama was not prepared at the spot but was subsequently fabricated, and the charas was foisted upon the accused.

20. *Fifth*, the mashir PC Nasir Waseem admitted in his cross-examination that he hails from District Khaniwal, which is the same district from which appellants Qasim Ali and Muhammad Nadeem belong. While this fact alone may not be sufficient to discard his testimony, it assumes significance when coupled with the admission that "It is correct that I am from the same district" and the suggestion was put to him that "the names of the accused alongwith their father names and residential addresses were disclosed by me to the Inspector," which he denied. However, the coincidence that a police constable from the same district happens to be present as a mashir in a case involving accused from his own district, and that the accused persons are shown to have voluntarily disclosed their precise parentage and residential addresses immediately upon interception, strains credulity and raises legitimate suspicion about the genuineness of the prosecution story.

21. *Sixth*, significantly, the complainant made crucial admissions during cross-examination which seriously undermine the prosecution case. He admitted:

> *"It is correct that I had not produced the accused Muhammad Ramzan before the Magistrate for recording his 164 Cr.P.C statement, when he had admitted before me that he had purchased the same charas from accused Peer Bux."*

This admission is fatal to the prosecution's case regarding the alleged disclosure by accused Muhammad Ramzan about receiving charas from Peer Bux Gadani. If the accused had indeed made such an incriminating disclosure during investigation, elementary prudence and established investigative practice demanded that such disclosure should have been recorded before a Magistrate under Section 164 Cr.P.C. to lend it evidentiary value and credibility. The failure to do so indicates that no such disclosure was in fact made by the accused.

22. Furthermore, the complainant admitted:

> *"I do not remember the Mobile Phone number, through which, accused Ramzan had contacted accused Peer Bux and I have not produced CDR of that cell number."*

This is another material omission. In this era of modern investigation techniques where Call Data Records constitute crucial corroborative evidence, the failure to obtain and produce CDR of the mobile phone allegedly used by accused Ramzan to contact Peer Bux significantly weakens the prosecution case regarding the alleged nexus between the accused persons.

23. The complainant further candidly admitted:

> *"It is correct that during my investigation, I had not found any independent witness, who had seen the accused Peer Bux, while giving Charas to accused Muhammad Ramzan."*

And:

> *"It is correct that I had no direct evidence against the accused Peer Bux in this case, except criminal record."*

These admissions demonstrate that the entire allegation regarding involvement of Peer Bux Gadani rests on mere surmise and conjecture without any tangible evidence. It is for this reason that the learned trial court rightly acquitted accused Peer Bux. However, the same reasoning applies with equal force to the appellants herein, as their alleged involvement is inextricably linked with the claim that they received charas from Peer Bux, which stands demolished by the acquittal of Peer Bux and the admissions made by the complainant.

24. Most significantly, the complainant admitted:

> *"It is correct that prior to this incident no any case against the present accused (Qasim Ali and Muhammad Nadeem) was registered at PS ANF."*

This admission establishes that appellants Qasim Ali and Muhammad Nadeem had no previous involvement in narcotic crimes and were not known to the ANF prior to this incident, which lends support to their plea of false implication.

25. A conspicuous feature of the prosecution case is the non-examination of several material witnesses whose testimony was crucial for proving the charge. The learned defense counsel has rightly pointed out that the following important witnesses were not examined by the prosecution:

i) *Assistant Director Manzoor Ahmed Phull, who headed the police party and in whose presence the spy information was allegedly*

received. His examination was essential to corroborate the prosecution story regarding receipt of information and formation of the police party.

ii) PC Irfan Simol, who was allegedly appointed as the second mashir along with PC Nasir Waseem and was present throughout the recovery proceedings. The non-examination of this vital mashir creates an adverse inference against the prosecution.

iii) The persons, if any, who unloaded 1,420 sacks of plastic pieces from the container and reloaded them. The mashir admitted: "All the 1430 sacks were unloaded by our colleagues. It is correct that I alongwith Inspector Wajid had not helped them in unloading the sacks." This indicates that several other persons from the police party were present and participated in the proceedings, but none of them were examined as witnesses.

26. In criminal jurisprudence, it is an established principle that non-production of material witnesses gives rise to an adverse inference that had such witnesses been produced, they would not have supported the prosecution case. This principle has been consistently followed by superior courts. The deliberate withholding of natural witnesses creates a dent in the prosecution case which assumes the magnitude of a serious infirmity in narcotics cases where the entire edifice of the prosecution rests on the credibility of official witnesses.

27. Another significant aspect which merits careful consideration is the admitted failure of the prosecution to associate any independent witness during the recovery proceedings. The complainant himself deposed:

"I myself, had asked from so many private persons, who were crossing from there to act as mashirs, but they refused, out of the fear of the Narcotic dealers, therefore, I had appointed my own subordinates PC Nasir Wasim and PC Irfan."

28. The mashir corroborated this version and stated:

"No any private persons had come forward to act as Mashirs... It is correct that place of incident is situated in a very busy national highway. It is correct that we had not associated private persons to act as mashir."

29. While we are cognizant of the legal position that under Section 25 of the CNS Act, the application of Section 103 Cr.P.C. requiring association of respectable persons of the locality has been excluded, and that it is now judicially recognized that public persons are reluctant to act as witnesses in narcotics cases, yet the admitted position that the alleged recovery took place at a busy national highway near a petrol pump in broad daylight at 1100 hours,

and that the police party had traveled a distance of 90 kilometers from PS ANF Sukkur to Sarhad Bypass and would have passed through several populated areas, but failed to associate even a single independent person throughout this journey and during the recovery proceedings, renders the prosecution story highly suspect.

30. The complainant admitted in cross-examination:

"It is correct that place of incident was situated on a busy highway."

If the place of incident was indeed a busy highway with vehicular and pedestrian traffic, and if the recovery proceedings consumed about 5 to 6 hours as deposed by the prosecution witnesses, it defies logic and common sense that not a single independent person could be associated as witness. The deliberate failure to associate independent witnesses, coupled with the appointment of departmental subordinates as mashirs, creates a strong suspicion that the recovery, if at all made, was not genuine and the prosecution sought to avoid independent scrutiny of their actions.

31. One of the most glaring and unexplained infirmities in the prosecution case is the inordinate and unjustified delay in lodging the First Information Report. A meticulous analysis of the timeline reveals serious discrepancies which cast grave doubt on the genuineness of the prosecution story.

32. According to the FIR and the roznamcha entry, the police party left PS ANF Sukkur vide entry No. 4 at 0815 hours on 24.01.2017. The complainant deposed that they reached the place of incident at 1000 hours (covering 90 kilometers in 1 hour and 45 minutes) and effected the recovery at 1100 hours. The complainant stated in his cross-examination that they remained at the spot for 5 hours and 45 minutes completing all formalities, which means they would have left the spot at about 1645 hours (4:45 p.m.). The complainant further stated that the return journey from the place of incident to the police station took 2 hours, which means they would have reached the police station at about 1845 hours (6:45 p.m.).

33. However, the FIR was lodged at 1900 hours (7:00 p.m.), i.e., about 8 hours after the alleged recovery and nearly 15 minutes after reaching the police station. Even if we accept the version of the mashir that the return journey took 2 hours and 45 minutes, they would have reached the police station at about 19:30 hours (7:30 p.m.), which means the recovery was made at 11:00 hours and the FIR was lodged 8 hours later.

34. This delay of about 8 hours in lodging the FIR is neither explained nor justified by the prosecution. In cases involving recovery of contraband narcotics during the course of patrolling or checking, where the police party is already mobile and equipped with communication facilities, and where no investigation is required before lodging the FIR as all material facts are within the personal knowledge of the complainant, there is no justification for any delay whatsoever in promptly reporting the matter and lodging the FIR

35. The delay assumes greater significance in the present case because during this interregnum of 8 hours, the accused persons remained in the custody of police along with the alleged contraband, providing ample opportunity for manipulation, fabrication and foisting of false evidence. The delay raises a strong inference that the FIR was not lodged immediately upon the alleged recovery but was registered after due deliberation, consultation and preparation of a concocted story.

36. The Hon'ble Supreme Court in a long line of consistent judgments has held that delay in lodging FIR, particularly in cases of recovery of narcotics, creates doubt about the genuineness of the prosecution story and if not satisfactorily explained, entitles the accused to the benefit of doubt. In the present case, the prosecution has offered no explanation whatsoever for the delay, much less a satisfactory one.

37. We now proceed to examine what, in our considered view, constitutes the most critical and fatal flaw in the prosecution case is the failure to establish safe custody and safe transmission of the case property, particularly the samples sent to the chemical examiner for analysis. This aspect assumes paramount importance in narcotics cases where the chemical examiner's report forms the bedrock of the prosecution case. If the prosecution fails to establish an unbroken, secure and trustworthy chain of custody from the moment of recovery till the receipt of samples by the chemical examiner, the entire edifice of the prosecution crumbles.

38. The law on this aspect has been authoritatively settled by the august Supreme Court of Pakistan in a series of landmark pronouncements, prominent among them being the judgments in *The State through ANF vs. Imam Bakhsh and others* (2018 SCMR 2039) and *Khair-ul-Bashar vs. The State* (2019 SCMR 930). These judgments have laid down comprehensive guidelines regarding the mandatory requirements for establishing safe custody and safe transmission of narcotic substances.

39. In the seminal judgment in *Imam Bakhsh's case* (2018 SCMR 2039), the Hon'ble Supreme Court, expounded the law in the following lucid terms:

> *"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic or its representative samples makes the report of the Chemical Examiner fail to justify conviction of the accused."*

40. In the subsequent case of *Zahir Shah alias Shat vs. The State* (2019 SCMR 2004), the Supreme Court further emphasized:

> *"This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."*

41. In *Mst. Sakina Ramzan vs. The State* (2021 SCMR 451), the Supreme Court again reiterated:

> *"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative*

> *samples of the seized narcotic drug, storage of the representative samples of the seized narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. Any break or gap in the chain of custody makes the chemical examiner report unreliable."*

42. Applying the aforesaid principles to the facts of the present case, we find that the prosecution has woefully failed to establish safe custody and safe transmission of the case property through credible and confidence-inspiring evidence. The gaps and lacunae in the chain of custody are so glaring that they render the chemical examiner's report incapable of sustaining the conviction.

43. *First,* regarding the safe custody at the police station, the complainant merely stated in his examination-in-chief:

> *"At PS after writing the crime number over the charas, same were placed in Malkhan in safe custody."*

44. However, during cross-examination, he candidly admitted:

> *"It is correct that I have not produced entry, through which, I had handed over the charas to the incharge of Malkhana."*

This admission is fatal to the prosecution case. The prosecution has failed to produce any document, entry or record showing when, at what time, and to whom the complainant handed over the case property for deposit in the malkhana. In the absence of such documentary evidence, there is no way to verify whether the case property was immediately deposited in malkhana after reaching the police station or whether it remained in the personal custody of the complainant or some other official, thereby providing opportunity for tampering, substitution or manipulation.

45. *Second,* PW-4 SIP Attaullah Khan, who was examined as the Incharge of Malkhana, produced roznamcha entry No. 451 at Exhibit 14-A regarding receipt of case property. However, during cross-examination, he admitted:

> *"It is correct that I have produced attested PS copy of such entry No.451. It is correct that in entry no time has been mentioned."*

This is a serious lacuna. Form No.22.70 of Register No. XIX prescribed under the Police Rules, 1934 mandates that entries in the malkhana

register must contain the date and time of receipt of property, description of property, name of the person from whom received, and other essential particulars. The failure to mention the time of deposit in entry No. 451 makes it impossible to verify the actual time when the case property was received in the malkhana and creates doubt about the safe custody.

46. *Third*, the complainant deposed:

> *"On the next day, through ASI Ali Sher Memon, I had dispatched the samples of charas to the chemical laboratory Rohri, but since at that time, there was no incharge available, at Rohri, therefore, they had directed us to dispatch the same samples to the Sindh Chemical Lab Karachi, where, ASI had delivered on 26.01.2017."*

This means that the samples were dispatched from the police station on 25.01.2017 (one day after the recovery on 24.01.2017) but were delivered at the Sindh Chemical Laboratory Karachi on 26.01.2017, i.e., two days after the recovery. The prosecution has not explained what happened to the samples during this period of two days. Where were the samples kept during the night of 25.01.2017? In whose custody were they? Were they kept in any secure place or facility? All these questions remain unanswered.

47. *Fourth*, PW-3 ASI Ali Sher, who was examined as the official who transported the samples to the chemical examiner, merely stated:

> *"On 25.01.2017, I was posted as ASI at ANF PS Sukkur. On the same day, Inspector Wajid Hussain, while taking one sack Bachka from Malkhana had handed over to me for delivering the same to Chemical Laboratory Rohri, vide Roznamcha entry No.5... I went to the Chemical Examiner Rohri alongwith sack Bachko of charas, but at Rohri dispatch clerk had informed me that the post of Chemical Examiner was lying vacant, hence, I returned back, at PS ANF Sukkur, from where, I proceeded to Karachi and delivered the same charas to the Sindh Lab at Karachi on 26.01.2017."*

48. ASI Ali Sher's testimony is conspicuously silent on several crucial aspects:

i) He does not state at what time on 25.01.2017 he received the samples from the complainant.

ii) He does not describe the condition of the seals on the parcel when he received it.

iii) He does not state at what time he left for Rohri and at what time he reached Rohri.

iv) He does not state at what time he returned from Rohri to PS ANF Sukkur.

v) He does not state at what time he proceeded from Sukkur to Karachi and by what mode of transport.

vi) Most crucially, he does not state where he kept the samples during the night of 25.01.2017 before delivering them to Karachi on 26.01.2017.

49. The prosecution has not produced roznamcha entry No. 7 which allegedly relates to ASI Ali Sher's departure for Karachi. The only entries produced are entry No. 5 regarding his departure for Rohri on 25.01.2017 (Exhibit 13-A) and entries Nos. 6 and 25 allegedly showing departure and arrival (Exhibit 5/A and 5/B), but these entries are vague and do not establish the safe custody and secure transmission of the samples.

50. *Fifth*, the most damaging aspect is the admission by ASI Ali Sher during cross-examination:

> *"It is correct that I had no knowledge, how many pieces of charas were lying in the sack as same was already sealed."*

This admission establishes that ASI Ali Sher did not verify the contents of the sealed parcel before transporting it. He did not check whether the seals were intact and genuine. He merely accepted the sealed parcel from the complainant and transported it. In such circumstances, how can it be said with certainty that the samples which were delivered to the chemical examiner were the same samples which were segregated at the spot? The possibility of tampering, substitution or manipulation during the custody of the complainant or during the two-day gap between recovery and delivery to chemical examiner cannot be ruled out.

51. In the landmark case of *Ikramullah and others vs. The State* (2015 SCMR 1002), the Hon'ble Supreme Court held that the prosecution's failure to even name or produce the police official who took the samples to the chemical examiner, and to prove that the samples remained untampered, led to the conclusion that safe custody and safe transmission of the recovered narcotics were not established, and consequently the accused were acquitted.

52. Similarly, in *Muhammad Ishaq vs. The State* (2022 SCMR 1422), the Supreme Court emphasized that when the prosecution "was silent as to where" the drug samples remained for days after the recovery, and key custodial

witnesses were missing, the "element of tampering" becomes a real possibility and the accused must be given benefit of doubt.

53. In *Qaiser and another vs. The State* (2022 SCMR 1641), the Supreme Court observed:

> *"In absence of establishing the safe custody and safe transmission, the element of tempering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory."*

54. In the case at hand, the prosecution has manifestly failed to establish:

i) That the case property was immediately deposited in the malkhana upon reaching the police station;

ii) That the malkhana entry was made with proper date, time and particulars;

iii) That the samples remained in safe custody in the malkhana under lock and key;

iv) That the samples were handed over to ASI Ali Sher in sealed condition with seals intact;

v) That the samples remained in safe custody during the two-day period between recovery and delivery to the chemical examiner;

vi) That no tampering, substitution or manipulation of samples took place during this period;

55. These gaps and lacunae in the chain of custody are so glaring and fundamental that they render the chemical examiner's report unreliable and incapable of sustaining conviction. The element of tampering, substitution or manipulation cannot be excluded. In view of the authoritative pronouncements of the Supreme Court, the benefit of any doubt arising from broken chain of custody must be extended to the accused.

56. Another significant aspect which requires consideration is the compliance of the chemical examiner's report with the mandatory requirements prescribed under Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001. While the report at Exhibit 11-F mentions the tests performed and concludes that each envelope contains "chars piece," a careful perusal reveals certain deficiencies.

57. In the landmark judgment of *Khair-ul-Bashar vs. The State* (2019 SCMR 930), the Hon'ble Supreme Court held:

> *"In the present case examination of the report of the Government Analyst mentions the tests applied but does not provide their results except a concluding result, presumably of all the tests, which is not sufficient. The Report also does not signify the test protocols that were applied to carry out these tests. Hence, the mandatory requirement of law provided under Rule 6 has not been complied with and, thus, it is not safe to rely on the Report of the Government Analyst... As a conclusion, it is reiterated, that the Report of the Government Analyst must mention (i) all the tests and analysis of the alleged drug (ii) the result of the each test(s) carried out along with the consolidated result and (iii) the name of all the protocols applied to carry out these tests."*

58. While we refrain from expressing a definitive opinion on whether the chemical examiner's report in the present case fully complies with the stringent requirements laid down in Khair-ul-Bashar's case, the fact remains that when the chain of custody itself stands broken and the safe custody and safe transmission have not been established, the report loses its evidentiary value regardless of its internal compliance with technical requirements.

59. The learned trial court convicted the appellants primarily on the reasoning that they were in "conscious possession" of the trailer from which charas was recovered, and that as per settled law, when a person is driving a vehicle, he is incharge of it and whatever articles lying in it would be under his control and possession. The trial court relied upon several judgments of the Supreme Court including *Muhammad Shah vs. The State* (PLD 1984 SC 297), *Said Shah vs. The State* (PLD 1987 SC 288), *Shahzada vs. The State* (1993 SCMR 149), *Shah Wali vs. The State* (1993 SC 32), and *Kashif Ameer vs. The State* (PLD 2010 SC 1052).

60. While we do not dispute the legal proposition that the driver of a vehicle can be presumed to be in conscious possession of the contents of the vehicle, this principle is not absolute and must be applied with caution keeping in view the facts and circumstances of each case. The principle is based on the presumption that a person driving a vehicle would ordinarily have knowledge of what is being transported in the vehicle under his charge. However, this

presumption is rebuttable and can be displaced by showing circumstances which create reasonable doubt about conscious possession or knowledge.

61. In *Muhammad Noor and others vs. The State* (2010 SCMR 927), relied upon by the learned counsel for appellants, the Supreme Court held:

> *"Possess' as mentioned in S.6 of Control of Narcotic Substances Act, 1997, means that it is necessary to show that accused had article which turned out to be narcotic drugs. Prosecution must prove that accused was knowingly in control of something in the circumstances, which showed that he was assenting to be in control of it and it is not necessary to show in fact that accused had actual knowledge of that which he had. Knowledge is an essential ingredient of the offence as word 'possess' connotes in the context of S.6 of Control of Narcotic Substances Act, 1997."*

62. The court further held:

> *"If case is of possession of narcotic drugs than first prosecution has to establish the fact that narcotic drugs were secured from the possession of accused then Court is required to presume that accused is guilty unless accused proves that he was not in possession of such drugs. It is necessary for prosecution to establish that accused has some direct relationship with narcotic drugs or has otherwise dealt with it. If prosecution proves detention of articles or physical custody of it then burden of proving that accused was not knowingly in possession of the article is upon him."*

63. In the present case, the prosecution has failed to establish that the appellants had conscious knowledge of the presence of charas in the trailer. The charas was allegedly concealed behind the driver's seat beneath a quilt (Razai), not lying openly in the vehicle. The prosecution story itself indicates that the appellants disclosed the location of charas upon inquiry. However, the veracity of this story is seriously doubtful in view of the following circumstances:

i) The complainant admitted that he did not produce accused Muhammad Ramzan before a Magistrate for recording his statement under Section 164 Cr.P.C. regarding the alleged disclosure. If the disclosure was genuine, it should have been recorded under Section 164 Cr.P.C.

ii) The prosecution has not established any motive for the appellants to transport such huge quantity of narcotics. The prosecution story

about receiving charas from Peer Bux Gadani and delivering to absconding accused Shafaullah stands demolished by the acquittal of Peer Bux and the non-production of any evidence connecting the appellants with Shafaullah.

iii) The complainant admitted that prior to this incident, no case against appellants Qasim Ali and Muhammad Nadeem was registered, indicating that they had no previous involvement in narcotic crimes.

iv) Most importantly, when the prosecution's own evidence regarding the actual recovery is shrouded in doubt due to material contradictions, failure to associate independent witnesses, delay in FIR, and failure to establish safe custody and safe transmission, the question of conscious possession becomes academic.

64. The learned Additional Prosecutor General has laid considerable emphasis on the fact that the appellants did not appear as their own witnesses on oath as required under Section 340(2) Cr.P.C. in disproof of the allegations. While it is true that the appellants chose not to avail themselves of this provision, it is well-settled that the accused cannot be compelled to give evidence, and no adverse inference can be drawn from the exercise of the right to remain silent. The burden of proving guilt beyond reasonable doubt always remains on the prosecution and never shifts to the accused. If the prosecution evidence is insufficient, doubtful or untrustworthy, the accused is entitled to acquittal regardless of whether he produces any evidence in defense.

65. The learned trial court and the learned Additional Prosecutor General have placed reliance on Section 29 of the CNS Act which creates a presumption that the accused has committed the offence unless the contrary is proved. Section 29 provides:

"In any trial under this Act, it shall be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act."

66. However, this presumption arises only after the prosecution has discharged its initial burden of proving that the accused was found in possession of the narcotic substance. The Hon'ble Supreme Court in numerous judgments has clarified that Section 29 does not absolve the prosecution from proving the foundational facts. The prosecution must first establish through credible evidence that:

i) The accused was found in possession of the contraband;

ii) The contraband was seized from the possession of the accused;

iii) The seized substance was sent to the chemical examiner;

iv) The chemical examiner certified the substance to be a narcotic drug.

67. Only after these foundational facts are established does the presumption under Section 29 come into play, and the burden shifts to the accused to prove that he was not knowingly in possession. However, if the prosecution fails to establish the foundational facts through trustworthy and credible evidence, or if the prosecution evidence suffers from material contradictions and infirmities, or if the prosecution fails to establish safe custody and safe transmission of the narcotic substance, the presumption under Section 29 does not arise at all.

68. In the present case, as discussed in detail above, the prosecution has failed to establish the foundational facts through credible and trustworthy evidence. The prosecution evidence suffers from material contradictions, the prosecution has failed to associate independent witnesses, there is unexplained delay in lodging the FIR, and most crucially, the prosecution has failed to establish safe custody and safe transmission of the case property. In such circumstances, the presumption under Section 29 cannot be invoked to fill the gaps and lacunae in the prosecution evidence.

69. The prosecution case alleges that during inquiry at the spot, the appellants disclosed that the charas was concealed behind the driver's seat beneath the quilt. However, this alleged disclosure has no evidentiary value for the following reasons:

i) *The alleged disclosure was not recorded under Section 164 Cr.P.C. before a Magistrate, despite the complainant admitting that the accused made such disclosure during investigation.*

ii) The alleged disclosure was not followed by any recovery. The prosecution case is that upon pointation by the accused, the charas was recovered from behind the driver's seat. However, there is no independent witness to such pointation and alleged discovery.

iii) The mashirnama does not specifically record that the accused pointed out the location of charas. It merely states that charas was recovered from behind the driving seat.

iv) Most importantly, when the entire prosecution story is shrouded in doubt due to the infirmities discussed above, the alleged confession or disclosure also becomes suspect and cannot be relied upon.

70. In the administration of criminal justice, the benefit of doubt is not a matter of grace or concession but a valuable right of the accused. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. The standard of proof required in criminal cases

is much higher than in civil cases. While absolute certainty is not required, the evidence must be of such quality and strength that it excludes every reasonable hypothesis of innocence.

71. The Hon'ble Supreme Court in *Tariq Pervez vs. The State (1995 SCMR 1345)* held:

> *"The golden rule in the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."*

72. In *Muhammad Mansha vs. The State* (2018 SCMR 772), the Supreme Court observed:

> *"The concept of proof beyond reasonable doubt, though not defined in law, has to be determined keeping in view the facts and circumstances of each case, meaning thereby that the evidence must be of such a quality and standard that a reasonable person would, without any hesitation, act upon it as a matter of fact. If the evidence is not confidence inspiring, or the same creates doubts, suspicion or misgivings in the mind of the Court, as to the guilt of the accused, then he deserves to be acquitted. In such like eventuality it is safer to acquit a guilty person than to punish an innocent."*

73. The benefit of doubt is not a fanciful or hypothetical doubt but a reasonable doubt. However, when the prosecution evidence suffers from material contradictions, when material witnesses have not been examined, when the prosecution has failed to establish safe custody and safe transmission, when there is unexplained delay in lodging the FIR, and when independent witnesses have not been associated, the cumulative effect of all these infirmities creates not a fanciful doubt but a very real and substantial doubt about the guilt of the accused, which must be resolved in favor of the appellants.

74. Having examined the evidence on record with meticulous care and having analyzed the various aspects of the prosecution case in light of the settled principles of law laid down by the superior courts, we have no hesitation in holding that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The cumulative effect of the various infirmities, lacunae and contradictions in the prosecution case, particularly the failure to

establish safe custody and safe transmission of the case property, creates such grave doubt about the genuineness of the prosecution story that it would be unsafe to sustain the conviction.

75. To recapitulate, the prosecution case suffers from the following fatal flaws:

i) Material contradictions between the evidence of the complainant and the mashir on vital aspects including preparation of mashirnama, time consumed at the spot, recording of statements under Section 161 Cr.P.C., which create serious doubt about the credibility of witnesses.

ii) Admission by both complainant and mashir that prominent markings "Café" and "1000" written on foil packets were not mentioned in mashirnama, indicating that mashirnama was not prepared at the spot.

iii) Deliberate failure to associate any independent witness despite the alleged recovery taking place at a busy highway in broad daylight.

iv) Non-examination of material witnesses including AD Manzoor Ahmed Phull, PC Irfan Simol (second mashir), and other members of the police party.

v) Unexplained and inordinate delay of approximately 8 hours in lodging the FIR.

vi) Damaging admissions by the complainant including failure to record statement of accused under Section 164 Cr.P.C., failure to obtain CDR, failure to find independent witness connecting accused with Peer Bux Gadani, and absence of any previous criminal record of appellants Qasim Ali and Muhammad Nadeem.

vii) Most critically, complete failure to establish safe custody and safe transmission of the case property through credible documentary evidence. The prosecution failed to produce entry showing handing over of case property to malkhana incharge; the malkhana entry does not mention time of receipt; there is an unexplained gap of two days between recovery and delivery of samples to chemical examiner; the custodial witness ASI Ali Sher did not verify contents of sealed parcel; and there is no evidence regarding where samples were kept during the intervening period.

76. Each of the above infirmities, considered in isolation, may perhaps be capable of explanation or may not be sufficient to cause acquittal. However, when these infirmities are viewed cumulatively and in their totality, they create such grave and serious doubt about the genuineness of the prosecution story that it becomes impossible to sustain the conviction. The benefit of such doubt must invariably be extended to the appellants.

77. The failure to establish safe custody and safe transmission is, by itself, fatal to the prosecution case in view of the authoritative pronouncements of the Supreme Court in *Imam Bakhsh* (2018 SCMR 2039), *Khair-ul-Bashar* (2019 SCMR 930), *Zahir Shah* (2019 SCMR 2004), *Abdul Ghani* (2019 SCMR 608), *Kamran Shah* (2019 SCMR 1217), *Ikramullah* (2015 SCMR 1002), *Muhammad Ishaq* (2022 SCMR 1422), *Qaiser* (2022 SCMR 1641), and *Mst. Sakina Ramzan* (2021 SCMR 451). In all these cases, the Supreme Court has consistently held that any break in the chain of custody impairs and vitiates the conclusiveness and reliability of the chemical examiner's report, thus rendering it incapable of sustaining conviction.

78. We are conscious that narcotics trafficking is a heinous crime which causes immense harm to society and particularly to the youth of the nation. Drug dealers and smugglers deserve no sympathy and must be dealt with severely. However, in our zeal to combat this menace, we cannot throw caution to the wind and discard the fundamental principles of criminal jurisprudence which require proof beyond reasonable doubt. The ends do not justify the means. If we were to uphold convictions based on doubtful and defective evidence, we would not only be doing injustice to the individuals concerned but would also be undermining the entire criminal justice system.

79. The prosecution has ample powers and resources to investigate narcotics cases properly, to associate independent witnesses, to maintain proper chain of custody, to prepare contemporaneous records, and to produce clinching evidence. If despite having all these facilities and powers, the prosecution chooses to present a case riddled with contradictions, lacunae and infirmities, it cannot expect the courts to fill the gaps by resorting to conjectures and presumptions.

80. In the present case, we are not convinced that the prosecution has discharged its burden of proving the guilt of the appellants beyond reasonable doubt. The various infirmities and lacunae in the prosecution case, particularly the failure to establish safe custody and safe transmission, create such reasonable doubt that we are constrained to extend the benefit thereof to the appellants.

81. For the reasons discussed above, this Criminal Jail Appeal is allowed. The impugned judgment dated 08.11.2019 passed by the learned First Additional Sessions Judge/Special Judge for Control of Narcotic Substance (MCTC), Ghotki in Special Case No.03/2017 is set aside. The appellants

Muhammad Ramzan son of Ghulam Hussain Awan, Muhammad Nadeem son of Qasim Ali Arain and Qasim Ali son of Muhammad Siddique Arain are acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997 by extending them benefit of doubt.

82. The appellants are stated to be in custody. They shall be released forthwith if not required in any other case.

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