

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

Before:

Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'

Criminal Appeal No.D-59 of 2024

(Mashooque Ali v. The State)

Appellant: Mashooque Ali Khoso, through Mr. Riaz Hussain Khoso, Advocate.

Respondent: The State through Mr. Nazeer Ahmed Bhanwar, D.P.G. Sindh.

Date of hearing: 16.06.2026.

Date of Judgment: 16.06.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- The appellant namely, Mashooque Ali Khoso has assailed the legality and propriety of the judgment dated 18.09.2024, passed by the learned Sessions Judge/ Special Judge for CNS, Kashmore at Kandhkot, in Special Narcotics Case No.14 of 2024, arising out of Crime No.02 of 2024, registered at Excise Police Station Kandhkot Circle, for offence punishable under sections 9(C), Control of Narcotic Substances Act, 1997, whereby, the learned trial Court after full-fledged trial, convicted the appellant and sentenced him to undergo R.I. for a period of Twelve(12) Years and to pay fine of Rs.100,000/- (Rupees one hundred thousand only); and in case of default whereof, he was ordered to undergo simple imprisonment for a period of five months more. However, benefit of section 382-B, Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that complainant Excise Inspector Shamas Din Chachar of Kandhkot Circle lodged FIR, stating that on 25.06.2024 he left Excise police

station circle Kandhkot along with EC Zaffar Ali, EC Waheed Ali, EC Abdul Hameed and EC Tara Chand, vide daily diary entry No.01/04.00 p.m. and when at about 04:30 p.m. reached near Gulsher Mohalla, Kandhkot, where, found a person in possession of black color plastic bag, who appeared there. It is further alleged that person was arrested along with plastic bag. From personal search of accused, on CNIC and cash of Rs.400/0 were recovered. From the plastic bag, recovered from possession of accused, 1150 grams of charas was recovered, property was sealed, such memo of arrest and recovery was prepared on spot; hence, accused was arrested for possessing charas and instant case was registered.

3. After registration of the case, the police conducted investigation and initially submitted challan against the accused for offences punishable under Sections 302 and 34 PPC showing the appellant/accused Ali Hassan and co-accused Hasul as absconders. However, subsequently upon arrest of the appellant a supplementary challan was submitted against him.

4. Charge was framed against the appellant, who pleaded not guilty and claimed to be tried. At the trial, the prosecution examined PW-1 Excise Inspector Shamasuddin Chachar, who produced roznamcha entries, memo of arrest & recovery, FIR, entry of register No.19, receipt of chemical examiner and chemical report. PW-1 EC Zafar Ali Kalwar was also examined and then prosecution evidence side was closed through statement by DPP for the state.

5. Statement of the appellant/accused was recorded under Section 342, Cr.P.C., wherein he denied the allegations and claimed innocence and stated that charas has been foisted upon him in order to show efficiency. However, the appellant/accused neither examined himself on oath in terms of section 340(2), Cr.P.C. nor examined any witness in his defense.

6. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record

convicted and sentenced the appellant through impugned judgment. Hence, the appellant against the said judgment has preferred instant appeal.

7. Learned counsel for the appellant contended that the prosecution has failed to prove its case beyond reasonable doubt. He contended that the entire case rests upon the statements of official witnesses, while no independent person from the locality was associated despite the admitted fact that the place of arrest was a busy area. He further contended that material contradictions exist in the evidence of prosecution witnesses regarding the place of occurrence, distance from the police station, manner of recovery, weighing of charas, preparation of mashirnama, and custody of the case property. Learned counsel contended that the complainant himself acted as Investigating Officer, thereby impairing the transparency and fairness of investigation. He further contended that original Roznamcha entries and Register No.19 were not produced, whereas the *malkhana* entry does not disclose to whom the case property was handed over for transmission to the Chemical Examiner. According to learned counsel, these serious infirmities create reasonable doubt, entitling the appellant to acquittal as a matter of right.

8. Learned D.P.G. Sindh supported the impugned judgment and argued that the prosecution successfully proved recovery of 1150 grams charas from the possession of the appellant through confidence-inspiring evidence of official witnesses. He contended that the statements of PWs are corroborated by documentary evidence, including mashirnama of arrest and recovery, FIR, Roznamcha entries, malkhana record, and report of the Chemical Examiner. He contended that mere non-association of private witnesses is not fatal to the prosecution case where official witnesses have no animosity against the accused. Learned D.P.G. contended that minor discrepancies are natural and do not affect the core of the

prosecution case. He, therefore, prayed for dismissal of the appeal and maintenance of conviction and sentence awarded by the learned trial Court.

9. Heard and perused the record.

10. A careful examination of the evidence produced by the prosecution reveals several material contradictions and serious procedural defects, which collectively render the prosecution case doubtful. The complainant Excise Inspector Shamsuddin stated that the place of incident was situated at a distance of half a kilometer from the Excise Police Station, whereas PW Zafar Ali deposed that the distance was one kilometer. Likewise, the complainant stated that he first noticed the appellant from a distance of 200/300 paces, while PW Zafar Ali stated that the accused was spotted from only 20/25 paces. The complainant further deposed that the police mobile was parked on the northern side of the place of incident, whereas PW Zafar Ali stated that it was parked on the eastern side. These contradictions pertain to the very manner and circumstances of the alleged recovery and cannot be brushed aside as insignificant discrepancies.

11. The prosecution witnesses also contradicted each other regarding the recovery proceedings. The complainant stated that the recovered charas was weighed without the plastic bag, whereas PW Zafar Ali deposed that the weight was obtained along with the plastic bag. Similarly, according to the complainant, the mashirnama of arrest and recovery was prepared by EC Zafar Ali and EC Waheed Ali on his dictation, whereas PW Zafar Ali testified that the same was prepared by EC Abdul Waheed. Such inconsistencies strike at the authenticity of the recovery proceedings and cast serious doubt upon the truthfulness of the prosecution version. The evidence of the prosecution witnesses is further inconsistent regarding the physical features of the place of incident. The complainant described the surroundings by stating that there was a Degree

College wall on one side, a street on another side, a wall on the western side and a vacant plot on the eastern side. In contrast, PW Zafar Ali stated that there were houses on the northern and southern sides and roads on the eastern and western sides. These mutually destructive versions create uncertainty regarding the actual place where the alleged recovery was effected.

12. Another significant aspect of the case is that although the complainant admitted during cross-examination that the place of occurrence was a busy area where people frequently passed, no independent person from the locality was associated with the recovery proceedings. The explanation offered by PW Zafar Ali that no private witness was available is inconsistent with the statement of the complainant himself. The failure to associate independent witnesses, despite their availability, adversely affects the credibility of the alleged recovery and gives rise to an inference that the prosecution deliberately avoided independent corroboration. The prosecution has also failed to establish an unimpeachable chain of custody of the alleged narcotics. The complainant admitted that he did not produce the original Roznamcha book and also failed to produce the original Register No.19 before the trial Court. More importantly, Entry No.2 of Register No.19 (Ex.03/D) does not mention the name of the official to whom the case property was entrusted for onward transmission to the office of the Chemical Examiner. This omission creates a serious gap in the chain of safe custody and safe transmission of the case property. Furthermore, neither the CNIC number allegedly recovered from the appellant nor the particulars of the currency notes were mentioned in the mashirnama, FIR or *malkhana* record, which further weakens the prosecution case.

13. It is also noteworthy that the complainant himself acted as the Investigating Officer. Although not illegal per se, such a course of action requires strict scrutiny of the evidence

because the same person who initiated the case also conducted the investigation. In the present case, where the evidence is already suffering from material contradictions, omissions and procedural irregularities, the fact that the complainant and Investigating Officer were one and the same person further diminishes the reliability and impartiality of the prosecution case.

14. Having examined the entire evidence with utmost care, it appears that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The evidence of the prosecution witnesses is fraught with material contradictions regarding the distance of the place of incident from the police station, the distance from which the appellant was allegedly noticed, the location of the police vehicle, the manner in which the recovered charas was weighed, the authorship of the mashirnama, and even the physical features of the place of occurrence. These are not minor discrepancies attributable to lapse of memory; rather, they relate to the core features of the prosecution story and substantially impair the credibility of the witnesses. Apart from these contradictions, the prosecution withheld the best available evidence by failing to produce the original Roznamcha and original Register No.19. The *malkhana* entry is also deficient inasmuch as it does not disclose the name of the person to whom the case property was handed over for transmission to the Chemical Examiner. Consequently, the prosecution failed to establish a complete and unbroken chain of custody of the alleged narcotics. The omission to mention the particulars of the CNIC and currency notes allegedly recovered from the appellant, coupled with the failure to associate any independent witness despite the admitted availability of private persons at the place of occurrence, further weakens the prosecution case¹.

¹ 'NAZIR AHMED v. The STATE' [PLD 2009 Karachi 191] and 'MUHAMMAD KHALID v. The STATE' [1998 SD 155].

15. The cumulative effect of these infirmities creates serious doubt regarding the truthfulness of the prosecution version and the genuineness of the alleged recovery. It is a settled principle of criminal law that where a circumstance creates reasonable doubt in the mind of a prudent person regarding the guilt of an accused, the benefit of such doubt must be extended to him as a matter of right and not of concession². In the present case, the prosecution evidence not only suffers from a single doubt but from a series of doubts arising out of material contradictions, procedural irregularities and missing links in the chain of custody.

16. For what has been discussed above, the prosecution cannot be said to have established the charge against the appellant beyond reasonable doubt. Consequently, the appeal was **allowed** by us by short order dated 16.06.2026, whereby the impugned judgment was **set aside** and the appellant Mashooque Ali was acquitted of the charge. He was directed to be released forthwith if his custody is not required in any other case. Above are the detailed reasons for such short order.

JUDGE

JUDGE

*Qazi Tahir PA**

²TARIQ PERVAIZ v. The STATE [1995 SCMR 1345] and 'MUHAMMAD AKRAM v. The STATE [2009 SCMR 230].