

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Present:

Justice Arbab Ali Hakro

Justice Muhammad Jaffer Raza

Criminal Appeal No.D-65 of 2024

Appellants : 1) Qasim s/o Majhi, Samejo
2) Asghar s/o Usman @ Muhammad Khan, Nohri
Through Mr. Kanji Mal Meghwar, Advocate

State : Through Mr Neel Parkash, Deputy Prosecutor
General, Sindh.

Date of hearing & decision. : **16.04.2026**

Date of Reasons : **21.04.2026**

JUDGMENT

ARBAB ALI HAKRO, J.- The present criminal appeal arises from the judgment dated 07.08.2019, rendered by the learned Additional Sessions Judge-I / Special Judge, Control of Narcotic Substances / Model Criminal Trial Court, Tharparkar at Mithi, whereby the appellants were convicted under Section 9(c) of the Control of Narcotic Substances Act, 1997.

2. The prosecution case, as set out in the FIR and unfolded during trial, is that on 19.07.2019 at 1710 hours, ASI Sachal Rahimoon, In-charge Police Post Kantio, accompanied by PC Sufan Shah, PC Jaffer Khan and driver HC Hakim Ali, departed from the police post vide Roznamcha Entry No.4 for routine patrolling and checking within the jurisdiction. At about 1830 hours, upon reaching the link road leading to village Nayan-Ji-Veerri on the Chachro-Umerkot Road, the police party commenced vehicle checks. During the exercise, a motorcycle approaching from Umerkot was signaled to stop. According to the prosecution, two persons were riding the motorcycle; the person seated on the rear seat was allegedly holding a black plastic shopper between the two riders. Upon inspection, the shopper was found to contain two large slabs and 21 smaller pieces of charas, totaling 1025 grams. The riders

disclosed their identities as Qasim, son of Majhi, and Asghar, son of Usman. During Qasim's personal search, currency notes amounting to Rs.600/- were allegedly recovered, while Rs.300/- were recovered from Asghar. The contraband was sealed on the spot, and a memo of arrest and recovery was prepared in the presence of police mashirs due to the asserted non-availability of private witnesses. The accused, along with the case property and the motorcycle, were thereafter brought to the Police Station Chachro, where FIR No. 58/2019 was registered at 2000 hours.

3. Upon completion of the investigation, the trial court framed a formal charge against both accused on 01.08.2019 for an offence punishable under Section 9(c) read with Section 6 of the Control of Narcotic Substances Act, 1997. The appellants pleaded not guilty and claimed a trial.

4. During the trial, the prosecution examined five witnesses. PW-1 ASI Sachal, the complainant, narrated the alleged recovery, arrest, preparation of the mashirnama, and lodging of the FIR, and produced the relevant entries, mashirnama, FIR and case property. PW-2 PC Sufan Shah, acting as mashir, supported the complainant's version and affirmed the preparation of the mashirnama and sealing of the contraband. PW-3 PC Arab deposed regarding the transportation of the sealed parcel to the Chemical Examiner, Karachi and produced the relevant departure and arrival entries along with the receipt of deposit. PW-4 WHC Badaruddin testified regarding the safe custody of the sealed parcel in the malkhana and produced the corresponding entry of the case property register. PW-5 Inspector Mubarak Ali, the Investigating Officer, detailed the steps of the investigation, including the inspection of the place of recovery, obtaining permission from the Superintendent of Police to dispatch the parcel, and receipt of the chemical examiner's report confirming that the substance was charas.

5. After the closure of the prosecution evidence, the statements of both accused were recorded under Section 342 Cr.P.C. They denied the

allegations in toto, asserted that nothing was recovered from their possession and claimed false implication on account of political rivalry, stating that they were voters of GDA. They neither opted to examine themselves on oath nor produced any evidence in defence.

6. Upon appraisal of the material before it, the trial court held that the prosecution had successfully proved the charge. The trial court found the testimonies of police witnesses trustworthy, the recovery established, and the chain of custody intact. Learned Judge convicted both appellants under Section 9(c) of the CNS Act and sentenced each to rigorous imprisonment for four years and six months, with a fine of Rs.20,000/-, and in default, simple imprisonment for five months. The benefit of Section 382-B Cr.P.C. was extended.

7. Aggrieved by their conviction and sentence, the appellants preferred the present criminal appeal.

8. Learned counsel for the appellants contended that the impugned judgment suffers from grave misreading and non-reading of material evidence. He submitted that the prosecution failed to establish the foundational fact of recovery in the manner alleged, as the testimonies of PW-1 and PW-2 are marred by material contradictions regarding the number of vehicles checked, the place where the contraband was weighed, and the preparation of envelopes for the recovered currency. According to him, these discrepancies undermine the prosecution's story and cast doubt on the entire episode. He further argued that the safe custody and safe transmission of the alleged narcotics were not proved in accordance with the law. PW-3 admitted that he stayed overnight at a hotel in Umerkot with the sealed parcel in his possession, thereby creating a real possibility of tampering or substitution. It was urged that this lapse alone vitiates the prosecution's case, as the chain of custody must remain unbroken and free from suspicion. Learned counsel also submitted that the non-association of any independent mashir, despite the place of occurrence being a public road, casts serious doubt on the veracity of the

alleged recovery. He maintained that the explanation of non-availability of private persons is a stock plea and cannot absolve the prosecution of its duty to ensure transparency, particularly when the entire case hinges on police testimony. It was further argued that the prosecution witnesses contradicted each other regarding the authorship of the FIR, which, according to counsel, reflects a manipulated and doubtful investigation. He submitted that the trial court failed to appreciate that the appellants consistently pleaded false implication due to political rivalry and the prosecution did not rebut this defence with any cogent material. Learned counsel concluded that the prosecution failed to prove its case beyond a reasonable doubt, and it is settled law that even a single reasonable doubt is sufficient to extend the benefit of doubt. He therefore prayed for the setting aside of the conviction and acquittal of the appellants.

9. Conversely, learned DPG for the State supported the impugned judgment and submitted that the prosecution witnesses remained consistent, confidence-inspiring and unshaken on all material particulars. He argued that any minor discrepancies, if any, are natural and do not affect the core of the prosecution's case, which is fully corroborated by the positive chemical examiner's report. He contended that the recovery of 1025 grams of charas from the appellants was proved through unimpeached ocular testimony, duly supported by documentary evidence, including the mashirnama, roznamcha entries and the chemical report. According to him, the defence failed to establish any malafides or animus on the part of the police officials to implicate the appellants falsely. He further argued that Section 25 of the CNS Act expressly excludes the application of Section 103 Cr.P.C and therefore the absence of private mashirs is of no legal consequence. He submitted that the chain of custody was duly established through the testimonies of PW-3, PW-4 and PW-5, and the defence could not point out any break or manipulation therein. He maintained that the trial court had rightly appreciated the

evidence and recorded a well-reasoned judgment based on settled principles of law. He therefore prayed for dismissal of the appeal.

10. We have anxiously considered the submissions advanced on behalf of the appellants and the learned Law Officer and have undertaken a meticulous re-appraisal of the entire evidence.

11. The first and foundational requirement in prosecutions under Section 9(c) of the Control of Narcotic Substances Act, 1997, is the establishment of an unbroken, documented and reliable chain of custody from the moment of alleged seizure until the parcel reaches the Chemical Examiner. This requirement is not a matter of procedural nicety; it is a substantive safeguard, the breach of which vitiates the entire prosecution case. The Supreme Court in cases of **Muhammad Nasir**¹, **Zakir Ali**², **Jeehand**³ and **Muhammad Iqbal**⁴ has held in categorical terms that any missing link, contradiction, or undocumented movement of case property renders the chemical examiner's report unreliable and entitles the accused to acquittal.

12. When the evidence of the five prosecution witnesses is examined through this lens, the chain of custody in the present case is found to be fractured at multiple points. PW-1, the complainant, did not depose to whom he handed over the sealed parcel upon reaching the police station. This omission is fatal under *the Nasir* and *Zakir Ali* cases (supra), where identical silence was held to break the chain. PW-2, the mashir, offered no testimony regarding the movement of the sealed parcel after the alleged recovery. PW-3, the carrier to the Chemical Examiner, admitted that he kept the sealed parcel overnight at a hotel in Umerkot. This admission directly triggers the ratio in *the Nasir* case, where overnight custody without supervision was held to create a real possibility of tampering. He further admitted that he did not sign Register No. XIX and did not receive any road certificate.

¹ *Muhammad Nasir v. State* (2026 SCMR 224)

² *Zakir Ali v. State* (2025 SCMR 1644)

³ *Jeehand v. State* (2025 SCMR 923)

⁴ *Muhammad Iqbal v. State* (2025 SCMR 704)

13. PW-4, the Moharrir, produced only an attested photocopy of Register No.XIX, not the original. Under the *Jeehand case* and Article 102 of the Qanun-e-Shahadat Order, 1984, secondary evidence of a mandatory register is inadmissible unless foundational requirements are met, which they were not. PW-4 also contradicted the Investigating Officer regarding the authorship of the FIR and did not depose that he issued any receipt or maintained any road certificate. PW-5, the Investigating Officer, did not produce the road certificate, did not produce the original Register XIX and did not explain the overnight custody of the parcel by PW-3. His testimony is inconsistent with both the Moharrir and the carrier.

14. These cumulative deficiencies are not minor irregularities; they strike at the heart of the prosecution's case. The Supreme Court in the case of **Abdul Ghani**⁵ held that even a single missing link in the chain of custody is sufficient to acquit. In the present case, the chain is not merely missing a link; it is riddled with gaps, contradictions and undocumented transitions. The prosecution has failed to prove that the substance allegedly recovered from the appellants is the same substance that the Chemical Examiner analysed.

15. Once the chain of custody collapses, the chemical examiner's report loses its probative force. The Supreme Court in the case of *Javed Iqbal*⁶ and *Asif Ali*⁷ held that where the chain is unproven, the report cannot be relied upon to sustain a conviction. The prosecution, therefore, fails to discharge its burden of proving the charge beyond a reasonable doubt.

16. In criminal jurisprudence, particularly under a statute carrying severe penal consequences, even a single reasonable doubt must be resolved in favour of the accused. Here, the doubts are neither speculative nor contrived; they arise from the prosecution's own evidence and its failure to comply with mandatory legal requirements. The appellants are, therefore, entitled to the benefit of doubt as of right, not as of concession.

⁵ *Abdul Ghani v. State* (2019 SCMR 608)

⁶ *Javed Iqbal v. State* (2023 SCMR 139)

⁷ *Asif Ali v. State* (2024 SCMR 1408)

17. For the foregoing reasons, this appeal is **allowed**. The conviction and sentence recorded by the trial Court vide impugned judgment dated 07.08.2019, are set aside. The appellants Qasim, son of Majhi, by caste Samejo, and Asghar, son of Usman @ Muhammad Khan, by caste Nohri, are acquitted of the charge under Section 9(c) of the Control of Narcotic Substances Act, 1997, by extending to them the benefit of doubt. The appellants shall be released forthwith, if not required in any other case. The case property shall be dealt with in accordance with the law after expiry of the statutory period.

These are the reasons of our short order dated 16-04-2026.

JUDGE

JUDGE

“Saleem”