

Nisar Ahmed Bhanbhro J.- The Appellants/ Convicts every one namely 1) Qurban Ali @ Guddu son of Muhammad Ali Manghrar and 2) Waheed Ali son of Zakir Manghrar have assailed the judgment dated 07.03.2026 **(impugned judgment)** passed by the Court of Learned Additional District & Sessions Judge I Mirpurkhas / Special Judge S.C.N.C Mirpurkhas **(Trial Court)**, in Special Case No.85 of 2025 “Re The State Versus Qurban Ali @ Guddu and another” for an offence punishable under section 9[1][Sr. No

3] (c) C.N.S. Act 2024 (**“the Act”**), result of the F.I.R. No. O7 of 2025 of police station Excise and Taxation Circle Digri. The Appellants, after trial, were found guilty of the charge, and they were convicted and sentenced to suffer Rigorous Imprisonment for Nine Years each and also imposed fine of Rs 100,000 each, in case of default in payment of fine to further suffer Simple Imprisonment for Six months, with a benefit of section 382-B Cr.P.C.

2. Brief facts germane to the prosecution story as unfolded in F.I.R. are that on 24.07.2025 at 05:40 pm, Complainant AETO Mir Rizwan Ali Talpur of excise Police Digri left the excise police station along with subordinate staff every one namely EC Nasir, EC Zulfiqar Ali, EC Ghulam Muhammad and EC Sikandar Ali vide roznamcha entry No 02. After visiting different places when complainant party reached near Digri Grid Station on Digri - Tando Muhammad Khan Road, they started checking vehicles. Suddenly two persons riding a bike came there from Tando Ghulam Ali side, they were signaled to stop but they did not and tried to skip away. By applying professional tricks suspects were arrested, on search a black color shopper lying on bike between both the persons was secured. The shopper was found containing six big pieces and one small piece of Charas and from body search cash of Rs 500 and 300 was also recovered. Upon probe, accused disclosed their names as Qurban Ali @ Guddu and Waheed Ali. The recovered Charas was weighed, it became 3370 grams, which was sealed at spot in a cloth bag. The accused along with case property were brought at police station, FIR on behalf of the state was recorded.

3. Investigation and followed its course, and report under section 173 Cr.P.C. was submitted before Learned Trial Court for cognizance. On taking cognizance, trial commenced, in compliance to the provisions of section 265-C and 265 - D Cr.P.C. police papers were supplied to the accused and were indicted for charge, which they pleaded not guilty and claimed Trial.

4. In order to prove its case, prosecution examined P.W-1 Complainant AETO Mir Rizwan Ali Talpur, PW - 2 Zulfiqar Ali, PW - 3 Sikandar Hussain (Dispatch Official) and PW - 4 Ghulam Muhammad (author of memos). Thereafter, prosecution closed its evidence. The statement of accused under section 342 Cr.P.C was recorded, wherein they denied the charge, professed innocence and prayed for acquittal, however did not opt to examine any witness in defense or their own statement on oath.

5. After hearing the Learned Counsel for Prosecution and Defence, Trial Court convicted and sentenced the Appellants as aforementioned, hence this appeal.

6. Learned Counsel for the Appellants argued that the contraband material in fact was not recovered but was foisted upon the appellants at the instance of one influential Mir Tarique Talpur. He contended that alleged place of arrest and recovery was a Grid Station situated in the heart of city but none from public was cited as witness. He contended that entire case property was sent for forensic analysis and it was alleged by that recovered property weighed about 3370 grams, however, per forensic report, the contraband substance received by the Laboratory weighed

3356 grams. He next argued that the recovered property was sent to the laboratory with a delay of 04 days; without any explanation, hence, the safe custody and transmission of the case property, the prosecution itself has made questionable. He further argued that entry in Register No.19 was also doubtful, as in charge of the malkhana was not examined. He next submitted that there were material contradictions in the statements of Prosecution Witnesses on the point of patrolling, recovery and arrest of the accused. He, therefore, submitted that prosecution case was doubtful, which as per settled law always goes to favor the accused; hence, submits that by granting this appeal, the impugned judgment may be set aside and the Appellants may be acquitted of the charge.

7. Per contra, Learned Deputy Prosecutor General appearing for the state opposed the appeal on the ground that all the PWs have remained consistent on each material point and minor discrepancies, if any, in the evidence occurred due to passage of time and cannot be considered fatal to the prosecution case. As far as delay in sending parcel to the laboratory for chemical analysis is concerned, learned Deputy Prosecutor General contended that it is fully explained. He therefore, by opposing the appeal asserted to maintain the conviction and dismiss the appeal in hand.

8. Heard Learned Counsel for the parties and perused material available on record with their able assistance.

9. On re-appraisal of evidence, it can be safely held that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The prosecution evidence is replete with material

contradictions and findings of the Trial Court suffered from misreading and non reading of evidence for the following reasons:

a. *It is prosecution case that contraband material viz. Charas weighing 3370 grams was recovered from the possession of appellants, and such photographs were captured at the place of recovery. From scanning of the photographs produced in evidence as Exhibit 3/A to 3/N, it cannot be held safely that the appellants were in possession of recovered contraband. Rather it appears from the photographs that appellants were sitting on the bike and getting their documents checked. The photographs did not either depict the contraband material or that the place of incident was located near a grid station.*

b. *Prosecution has alleged that six big pieces and one small piece of the contraband were recovered, however, description on the recovered contraband is not detailed in F.I.R, recovery memos and depositions of witnesses. The recovered contraband material was de-sealed in the open court during evidence of witnesses, the pieces were found containing words "Sher - I Sindh." Besides per Chemical report produced in the Trial Court as Exhibit 3/S, the pieces were wrapped in golden panni and contained golden monograms. This marked difference in the recovered contraband articles remained unexplained in memo of recovery and arrest, F.I.R and statements of witnesses. .*

c. *Though provisions of the section 103 of the Code of Criminal Procedure, 1908 (Cr.P.C.) were excluded in the proceedings of arrest and recovery relating to the Narcotics case. However, to authenticate the recovery proceedings, it has been*

made obligatory upon police to record video of the recovery proceedings, but in the present case no video was recorded but photographs of recovery proceedings were allegedly taken. Such important piece of evidence was skipped and not produced in evidence before Trial Court to dispel any impression of foisting property or false implication of appellants. The help of modern technology devices further supports the prosecution case and in case of any loopholes in the prosecution evidence, the accused would not get benefit of the same, as he would not be in position to damage video recordings, once this piece of evidence is successfully brought before Court, the burden will shift to the accused to establish that contraband material was foisted upon him. Article 164 of the Qanun-e-Shahadat Order, 1984 encourages the collection of evidence which may become available because of modern devices. Section 17 of "the Act" also envisaged that recovery proceedings must be filmed through video recordings. The production of evidence generated through modern devices would form a substantial piece of evidence in favor of prosecution and help the Court to believe in the existence of a fact that the incident as alleged by the prosecution has occurred, then the burden would shift on the defence to disprove charges. In presence of such a piece of evidence the credibility of witness would hardly be shattered as the entire proceedings would be available before the Court in the shape of video.

d. In the instant case, the contraband was recovered on 24.07.2025, and was sent to the Forensic Laboratory for analysis through EC Sikanadr Hussain on 28.07.2025 without explanation. PW -01 AETO Mir Rizwan has not explained about

the safe custody of the contraband articles during the intervening period. In evidence PW Mir Rizwan deposed that property was handed over to In Charge of Malkhan, but the said witness was not produced before Trial Court to establish that the case property from the point of recovery to its transmission to Chemical Laboratory remained under safe custody. The samples were sent to the Laboratory after Four days and delay in sending the samples remained unexplained. The prosecution witnesses failed to demonstrate in evidence that in whose custody contraband material remained during the intervening period. Per Laboratory Report (available at page 53 of the paper book), the contraband substance weighed 3356 grams which is contrary to recovery claim of 3370 grams. Though PW - 03 Sikandar Hussain who transmitted the samples to laboratory for chemical check was examined but he did not utter a single word that who handed over the property to him. The safe custody and transmission of the contraband material to the Laboratory was compromised, which created dent in the prosecution case and doubt so created ought to be resolved in favor of the accused being a blue-eyed child of the criminal law. The Prosecution witnesses have contradicted each other on material points. viz - a - viz manner of arrest and recovery.

e. The complainant, while appearing before the Trial Court, had produced the sealed parcels of the case property allegedly recovered from both appellants which were de-sealed in the Court, but it was not observed whether the parcels bore the seal of police or of the forensic lab. Moreover, the report of the forensic science laboratory fails to specify to whom the

remaining material was returned by the Chemical Examiner. The PW - 1 who is complainant and I.O. of the case also failed to explain that when the parcels were received from the laboratory, who received them and where were they placed, before they were presented in the court, the prosecution failed to prove that the material produced before the Court was actually the same which was originally recovered from the appellants and sent to the chemical examiner

f. Fair, impartial and strong investigation is always considered pivotal to prove the prosecution cases. In cases related to drugs peddling, it is always expected that investigation remained aloft, leaving no room for the accused to get benefit of any lapses on the part of prosecution. A consequence of poor investigation, not supported by evidence adversely affects the cases of the prosecution. It is time that all institutions act professionally and use all available lawful means to obtain evidence. To curb the drug peddling, it is right time to convict the persons involved in this agonizing trade and it is only possible when prosecution starts with a perfect investigation mechanism. In the present case right from recovery to filing of report under section 173 Cr.P.C entire investigation process remained compromised, which tilted balance in favor of accused.

10. Admittedly, all the prosecution witnesses are police officials; however, it is now a well-settled principle of law, reiterated in plethora of judgments of Honorable Supreme Court, that the testimony of police officials was as good as that of the private persons from public and it cannot be discarded merely on account of their official status unless

mala fides, bias, or prior enmity is proved. But it will never mean that evidence of a witness who performs job in police or excise department be accepted straight without the real test of appreciation.

11. On meticulous examination of the record, it is noted that the prosecution has failed to establish the recovery of narcotics from possession of appellants-convicts Qurban Ali and Waheed Ali. The prosecution has failed to furnish a consistent and trustworthy ocular account of the occurrence. Furthermore, the prosecution has failed to demonstrate the safe custody and unimpaired transmission of the sealed samples from the place of recovery to the Police Station and thereafter to the Forensic Laboratory. In particular, when the in charge of the malkhana was not brought in the witness box, leaving an inference that his evidence may not have supported the prosecution case. In the present case, unexplained deficiencies regarding safe custody created serious doubt about the veracity of the prosecution case.

12. In the case of **Abdul Raheem and another V. The State (2026 S C M R 1516)** Honorable Supreme Court of Pakistan, has been pleased to hold that:

7. The manner in which the investigation was conducted, the recovery effected, the material sent to the forensic science laboratory, its return by the examiner, and the subsequent retention of the parcels by the I.O., instead of redepositing them in the Malkhana, all are short of the settled principles governing due process and fair trial. It is settled principle of criminal jurisprudence that the benefit of a slightest doubt arising in the prosecution s case must be extended to the accused, especially when the complainant acts in his dual capacity as an I.O. Under such circumstances, the act of the complainant is not free from

doubt. Both the fora below mis-appreciated the evidence and failed to extend the benefit of doubt to the petitioner, which is an illegality; hence, they came to a wrong conclusion. The judgments of the fora below are, therefore, not sustainable.

13. In another case of **Mehmood Khan and others V. The State (2026 S C M R 1606)** Honorable Supreme Court of Pakistan held that:

7. It is by now a settled principle of law that in narcotics cases, the prosecution is required to affirmatively establish safe custody and safe transmission of the recovered substance and even a single missing link in the chain of custody creates doubt sufficient to entitle the accused to benefit thereof. The prosecution is under legal obligation to prove that from the moment of alleged recovery till receipt by the office of chemical examiner, the case property remained protected from every possibility of tampering or substitution. Failure in this regard strikes at the root of the prosecution case.

14. It is settled principle of law that multiple circumstances were not necessary to create dent in prosecution story, a single circumstance creating reasonable doubt in prudent mind is sufficient to discredit prosecution story, and benefit of such doubt has to be resolved in favor of accused not as a matter of grace but as a matter of right. It is always the prosecution burdened to prove its case beyond shadow of doubt and once it fully discharges its burden then it shifts to the defence. Reliance in this regard may be made on the dicta laid down by Honorable Supreme Court of Pakistan in the case of **Ahmed Ali and another Versus The State (2023 S C M R 781)** wherein it was held that “Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the

accused to its benefit, not as a matter of grace and concession but as a matter of right.”

15. For what has been discussed herein above, the prosecution has failed to prove its case against the appellants beyond shadow of reasonable doubt, benefit of which, ought to be given to the accused. Consequently; instant appeal is allowed. The impugned judgment dated 07.03.2026 is set aside. The Appellants/ Convicts namely 1) Qurban Ali @ Guddu son of Muhammad Ali Manghrar and 2) Waheed Ali son of Zakir Manghrar are acquitted of the charge of Special Case No.85 of 2025 “Re The State Versus Qurban Ali @ Guddu and another” for an offence punishable under section 9[1][Sr. No 3] (c) C.N.S. Act 2024 (the Act), result of the F.I.R. No. O7 of 2025 of police station Excise and Taxation Circle Digri.

16. These are the reasons for short order of the earlier part of the day, through which the instant appeal was allowed.

JUDGE

JUDGE

Approved for Reporting

“Saleem”