

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

Criminal Appeal No. D-73 of 2023
[Suhail Ahmed v. The State]

Before:
Mr. Justice Riazat Ali Sahar
Mr. Justice Ali Haider 'Ada'

Appellant: Through Miss Reshma Zangejo, Advocate

The State: Through Mr. Aitbar Ali Bullo, D.P.G.

Date of hearing: 03.09.2026

Date of judgment: 03.09.2026

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through the instant Criminal Appeal, the appellant Suhail Ahmed son of Muhammad Aslam, by caste Brohi, resident of Shamsabad, Sukkur, has called in question the legality and correctness of judgment dated 23.10.2023 passed by the learned Sessions Judge/Special Judge (CNS), Shikarpur, in Special Case No.420 of 2023, arising out of Crime No.75 of 2023 registered at Police Station Lakhi Gate for an offence punishable under section 9(c) of the Control of Narcotic Substances Act, 1997. By the impugned judgment the appellant was convicted under section 265-H(ii), Cr.P.C. for the said offence and sentenced to rigorous imprisonment for nine years with fine of Rs.80,000/- and, in default of payment thereof, to further undergo simple imprisonment for four months. Benefit of section 382-B, Cr.P.C. was extended to him. He seeks setting aside of the impugned judgment and his acquittal from the charge.

2. The prosecution case, stated chronologically, is that on 04.06.2023 ASI Nisar Ahmed Khokhar, accompanied by HC Shafique Ahmed, PC Insaf Ali and driver PC Imdad Ali, left Police Station

Lakhi Gate in Government vehicle No.SPE-624 at 1615 hours for patrolling under departure entry No.15. At about 1700 hours, on the link road leading from Shikarpur to village Hajana near Jeeay Shah Peer, the police party allegedly saw the appellant walking towards Shikarpur with a black plastic shopper in his right hand. On noticing the police he allegedly attempted to move away towards the western side, whereupon he was chased for about thirty paces and apprehended. As no private person was said to be available, HC Shafique Ahmed and PC Insaf Ali were nominated as mashirs. One currency note of Rs.100/- was allegedly recovered from the right-side pocket of the appellant's shirt. The shopper was stated to contain two slabs of charas, one slim and the other large, with the word 'Piyar' written on the slim slab. Both slabs were weighed together on a computerized scale and were stated to weigh 1525 grams. The charas and currency note were sealed separately and the mashirnama of arrest and recovery was prepared. The appellant and the case property were then taken to Police Station Lakhi Gate, where FIR No.75 of 2023 was registered at 1815 hours under section 9(c) of the Act.

3. Arrival at the police station was recorded through entry No.23. At 1845 hours, under entry No.24, the appellant, the two sealed parcels and the case papers were handed over to SIP Ghulam Nabi Shaikh for investigation. The Investigating Officer confined the appellant in the lock-up and handed the parcels to WHC Salahuddin Mahar, who entered them in Register No.XIX at serial No.50 and kept them in the police malkhana. At 1900 hours, the Investigating Officer, the complainant and the same two official mashirs left the police station under entry No.25 to inspect the alleged place of occurrence. The inspection mashirnama was prepared at 1930 hours and statements under section 161, Cr.P.C. were thereafter recorded.

4. On 05.06.2023 the parcel containing the alleged charas was taken from the malkhana and entrusted to PC Ali Muhammad Mahar for delivery to the office of the Chemical Examiner at Rohri under Road Certificate No.101. The Chemical Examiner's report,

bearing Ref./Lab No.2867 and sample No.C-555/2023, records receipt of the parcel on 05.06.2023 with three seals in satisfactory condition, gross weight of 1555 grams and net weight of 1525 grams. It describes two black-brown patties in a black shopper and concludes that the submitted substance contained charas. The report is dated 14.06.2023. The Investigating Officer stated that he received it on 24.06.2023 and thereafter submitted challan before the learned Judicial Magistrate-IV, Shikarpur, who sent the case to the Special Court. The supplied record contains no separate order fixing the date on which copies of the police papers were furnished. Charge under section 9(c) of the Act was framed at Exh.2 on 05.09.2023; the appellant pleaded not guilty and claimed trial through his plea at Exh.3, whereafter prosecution evidence commenced.

5. In order to prove the charge, the prosecution examined exactly five witnesses: ASI Nisar Ahmed Khokhar as PW-1 at Exh.4; HC Muhammad Shafique as PW-2 at Exh.5; PC Ali Muhammad as PW-3 at Exh.6; SIP Ghulam Nabi Shaikh as PW-4 at Exh.7; and WHC Salahuddin as PW-5 at Exh.8. Their evidence, including the matters elicited in cross-examination which bear upon the decision of this appeal, may be noticed separately.

PW-1 ASI Nisar Ahmed Khokhar, complainant and head of the patrolling party, was examined on 14.09.2023 at Exh.4. He narrated the departure, pursuit, arrest, alleged recovery of Rs.100/- and two slabs of charas weighing 1525 grams, sealing of both articles, preparation of the recovery proceedings, registration of the FIR, handover to the Investigating Officer and subsequent inspection of the place of occurrence. He produced departure entry No.15 at Exh.4/A, mashirnama of arrest and recovery at Exh.4/B, FIR at Exh.4/C, entries Nos.23 and 24 on one leaf at Exh.4/D and departure entry No.25 at Exh.4/E; he also identified the appellant and the two parcels in Court. In cross-examination he admitted that the duty-resumption entry of 04.06.2023 had not been produced and its number

was not remembered. He claimed that both mashirs had resumed duty with him at 0800 hours. He stated that during the forty-five-minute journey the party stopped for about ten minutes each at Haji Latif Shah Chowk and Begari Chowk, though he could not recall the exact arrival or departure times; it was daytime and persons were passing at Haji Latif Shah Chowk. He said the appellant was first seen from twenty to twenty-five paces, ran westward into open land and was apprehended about thirty paces from the road. He could not state the exact times of weighing and sealing; according to him the mashirnama was written at 1730 hours, bore the occurrence time of 1700 hours and the proceedings lasted about forty-five minutes. He admitted that the crime number written on the parcel containing the currency note was added at the police station, whereas the remaining identifying marks were written at the spot. He stated that, while proceeding for inspection, many persons met the police party but the Investigating Officer asked none of them to act as mashir. He described lands on all four sides of the place, said the inspection party left the spot at about 1940 hours, and further stated that after handing over the appellant and property he patrolled until 2200 hours. When the defence put its plea of prior arrest by the '15' police and the separate arrest of the appellant's cousin in Crime No.48 of 2023 of Police Station Stuart Ganj, he professed no knowledge of those matters and denied that the recovery was false.

PW-2 HC Muhammad Shafique, one of the two official mashirs, was examined on 14.09.2023 at Exh.5. He substantially supported the complainant regarding patrolling, apprehension of the appellant, alleged recovery of two pieces of charas and Rs.100/-, sealing at the spot and return to the police station. He confirmed the recovery

mashirnama at Exh.4/B and produced the mashirnama of inspection of the place of occurrence at Exh.5/A. In cross-examination, however, he stated that he alone reported for duty at 0800 hours and that ASI Nisar Ahmed and PC Insaf Ali were already present, which did not accord with PW-1's assertion that both mashirs resumed duty with him. He put the distance between the police station and the place of arrest at about three kilometers, whereas the FIR and site-inspection memo mention about two kilometers. He acknowledged that some persons crossed the route between Begari Chowk and the alleged place, and stated that the appellant was seen from twenty to twenty-five paces and apprehended about thirty paces inside open land. He could not recall when the recovery mashirnama was prepared but said the party left the place at about 1800 hours. His description of the site was that Jeeay Shah Peer lay to the west, open land to the east, the link road to the north and houses to the south. He then stated that, after returning from inspection and after his statement under section 161, Cr.P.C. had been recorded, the party again patrolled 'till 0500 p.m.'—a time earlier than the inspection itself. He denied that the alleged charas had not been recovered or that he was deposing falsely.

PW-3 PC Ali Muhammad, the carrier of the narcotic parcel, was examined on 05.10.2023 at Exh.6. He deposed that on 05.06.2023 SIP Ghulam Nabi Shaikh handed him a sealed parcel of charas under Road Certificate No.101; he deposited it at the office of the Chemical Examiner, obtained acknowledgment, returned to Police Station Lakhi Gate and gave the road certificate to the Investigating Officer. He produced Road Certificate No.101 at Exh.6/A and identified the parcel in Court. In cross-examination he fixed receipt of the parcel at about 1215 hours, departure from Shikarpur on his own motorcycle at 1230 hours and

arrival at the laboratory at 1320 hours. He named Clerk Noor Muhammad as the person to whom he delivered the parcel. He stated that he remained at the laboratory from 1320 hours until 1855 hours, sitting with that clerk, although the stated office hours were 0800 to 1700 hours; he returned to the police station at 1940 hours and his statement under section 161, Cr.P.C. was recorded at about 2000 hours. He denied that no parcel was entrusted to or deposited by him.

PW-4 SIP Ghulam Nabi Shaikh, the Investigating Officer, was examined on 05.10.2023 at Exh.7. He deposed that on 04.06.2023 he received the appellant, a sealed parcel containing 1525 grams of charas, a sealed parcel containing Rs.100/-, the FIR and recovery memo from the complainant; placed the appellant in the lock-up; and caused both parcels to be entered in Register No.XIX and deposited in the malkhana through WHC Salahuddin Mahar. He confirmed the site-inspection memo at Exh.5/A, stated that he recorded statements under section 161, Cr.P.C., and further stated that on 05.06.2023 he dispatched the charas parcel through PC Ali Muhammad under departure entry No.18 at 1230 hours and received Road Certificate No.101 back from him at 1950 hours. He produced the Chemical Examiner's report at Exh.7/A and stated that, after receiving it on 24.06.2023, he submitted the challan. In cross-examination he admitted that the duty-resumption entry was neither remembered nor produced. He disclosed that the inspection party travelled in a white private car belonging to Ghulam Abbas Gopang, then SHO, that the vehicle's registration number was not remembered and that use of the private vehicle was not mentioned in entry No.25. Although he claimed to have tried to associate private persons, he first placed that effort at 2100 hours and then corrected himself to 1950 hours. He

said three or four persons were asked while the party crossed the populated area on leaving the police station, but he neither named them, issued any notice nor recorded this fact in Exh.5/A. He acknowledged that Police Station Lakhi Gate was situated in the middle of the town and that he recorded no statement of a person from the locality. His description of the site was that private lands lay to the west and a link road to the east; he then said the link road lay to the north and Jeeay Shah Peer to the south at a distance of ten to fifteen paces. He paid Rs.1,000/- from his own pocket to the carrier as fare. He professed no knowledge of the defence plea that the appellant and Ghulam Muhammad had been arrested by the '15' police and denied unfair investigation.

PW-5 WHC Salahuddin, the malkhana custodian, was examined on 05.10.2023 at Exh.8. He stated that on 04.06.2023 the Investigating Officer handed him two sealed parcels, one containing charas and the other cash; he entered them at serial No.50 of Register No.XIX and kept them in safe custody. On the following day, according to him, the Investigating Officer took back the charas parcel for transmission to the Chemical Examiner. He produced a copy of the relevant leaf of Register No.XIX at Exh.8/A and identified both parcels in Court. In cross-examination he fixed the return of the charas parcel to the Investigating Officer at about 1230 hours and stated that the Investigating Officer then handed it to PC Ali Muhammad. He acknowledged that, since his statement under section 161, Cr.P.C. had been recorded on 04.06.2023, the next day's removal of the parcel was not mentioned therein. He did not know when PC Ali Muhammad returned to the police station. He maintained that the parcels remained in safe custody and denied the contrary suggestion.

6. After the above evidence, the learned prosecutor closed the prosecution side at Exh.9. The appellant's statement under section 342, Cr.P.C. was recorded at Exh.10 on 11.10.2023. He denied the alleged recovery as false, said that he did not know about the sealing and chemical examination, and made no claim to the alleged charas or cash. He attributed the depositions against him to the witnesses being police officials interested in the case. In answer to the concluding question, he stated that he and his cousin Ghulam Muhammad had come to Shikarpur on a motorcycle; that the '15' police arrested them and demanded money; and that, upon their refusal, he was falsely booked in the present case while his cousin was booked in Crime No.48 of 2023 at Police Station Stuart Ganj under section 9(b) of the Act. He professed innocence and prayed for acquittal. The appellant declined to examine himself on oath under section 340(2), Cr.P.C. and did not call a defence witness or produce a defence document.

7. The learned trial Court treated the complainant and PW-2 as unanimous on the date, time, place, manner of arrest and recovery; considered their account corroborated by the Investigating Officer, malkhana custodian, carrier, police entries and positive Chemical Examiner's report; and held that the parcel had reached the laboratory within twenty-four hours through an unbroken chain. Relying upon *Mushtaq Ahmad v. The State and another* (2020 SCMR 474), it held that the official witnesses had no apparent reason to falsely implicate the appellant and that a substantial quantity of narcotic could not ordinarily be foisted. It further held that section 103, Cr.P.C. stood excluded by section 25 of the Act, treated the discrepancies as minor, and rejected the defence as an unsupported afterthought, observing also that the appellant had not examined himself on oath or led defence evidence. Consequently, by judgment dated 23.10.2023, the appellant was convicted and sentenced in the terms already set out in paragraph 1 above, with benefit of section 382-B, Cr.P.C. In selecting the lesser punishment under the Sindh amendment to section 9, the learned trial Court noted that the

prosecution had not shown the appellant to be involved in another case of like nature, treated him as a first offender and recorded his age as twenty-four years. No compensation was awarded. The Court also directed under section 517, Cr.P.C. that 1525 grams of charas be destroyed and that the unclaimed sum of Rs.100/- be deposited in the District Treasury after the prescribed period or decision of the appeal.

8. Learned counsel for the appellant contended that the prosecution had failed to prove conscious possession and recovery beyond reasonable doubt because the official witnesses materially contradicted one another regarding the fixed boundaries of the alleged place, their duty commencement, the distance and route, the attempt to procure private mashirs, and the continuation of patrolling after the inspection. She argued that the recovery was shown in broad daylight and the police admittedly encountered persons on the route, yet no independent witness was associated; the Investigating Officer's assertion that he attempted to do so at 1950 hours was irreconcilable with the inspection memo prepared at 1930 hours and the complainant's departure from the spot at about 1940 hours. It was further contended that the same police officials acted as mashirs of recovery and inspection; PC Insaf Ali, the second mashir and the official said to have held the appellant while the memo was written, was withheld; and neither driver PC Imdad Ali nor laboratory Clerk Noor Muhammad was examined. Learned counsel submitted that the original Register No.XIX was not produced, entry No.18 allegedly authorizing dispatch was not exhibited, the malkhana custodian placed removal of the parcel at 1230 hours whereas the carrier claimed receipt at 1215 hours, and the carrier's designation in Exh.7/A as 'HC' did not correspond with his deposition as a 'PC'. His prolonged unexplained presence at the laboratory beyond its stated office hours, and the discrepancy of ten minutes regarding his return to the police station, were also pressed into service. It was urged that the site visit in an unrecorded private vehicle, the absence of any inquiry into the specific plea of prior

arrest by the '15' police, and the learned trial Court's adverse comment upon the appellant's election not to testify disclosed further misappraisal. According to learned counsel, the positive laboratory result could establish only the nature of the substance received there, not its alleged recovery from the appellant where the recovery account and connecting custody trail were doubtful. She accordingly prayed that the conviction and sentence be set aside and the appellant be acquitted.

9. Conversely, learned D.P.G. for the State supported the impugned judgment and maintained that the case had been proved beyond reasonable doubt. He submitted that the appellant was apprehended at the spot while personally carrying the shopper; the FIR was lodged promptly at 1815 hours; the recovery witnesses agreed on every material feature, namely two slabs, the identifying word 'Piyar', total net weight of 1525 grams and separate sealing of the charas and currency note; and there was no proved animus for foisting such quantity. It was argued that section 25 of the Act excluded section 103, Cr.P.C., official witnesses were competent witnesses, and ordinary differences of recollection concerning directions, minutes, distance and duty timings could not displace their consistent account of possession. The prosecution had examined the malkhana custodian and the carrier; the parcel was delivered to the Chemical Examiner on the very next day under Road Certificate No.101; the laboratory found all three seals satisfactory and recorded a net weight and physical description fully corresponding with the prosecution case; and the result was positive for charas. The defence plea was unsupported by any document or witness, while the appellant elected neither to testify on oath nor to lead evidence. Relying upon *Mushtaq Ahmad v. The State and another* (2020 SCMR 474), learned D.P.G. prayed for dismissal of the appeal.

10. We have heard the learned counsel for the appellant as well as the learned D.P.G. for the State and have carefully perused the impugned judgment, evidence available on record and the entire record and proceedings with their able assistance.

11. An appeal against conviction requires this Court to make an independent and complete reappraisal of the evidence and to determine whether the finding of guilt can safely stand on proof beyond reasonable doubt. The initial and enduring burden lies upon the prosecution. **Wazir Mohammad v. The State (1992 SCMR 1134)** explains that the prosecution must prove its case to the requisite criminal standard, whereas an accused need only create doubt in that case. **Shamoon alias Shamma v. The State (1995 SCMR 1377)** further holds that the prosecution must discharge that burden irrespective of the plea raised in defence and cannot fall back upon weakness of the defence to establish guilt. **Ayub Masih v. The State (PLD 2002 SC 1048)** reiterates that a conviction must rest on certain and trustworthy proof and that reasonable doubt is to be resolved in favour of the accused. These principles assume particular importance where, as here, the alleged recovery was witnessed and documented entirely by police officials and the recovered article constitutes the central incriminating evidence.

12. At the outset, fairness requires acknowledgment of the features supporting the prosecution. The FIR followed the alleged occurrence without substantial delay; the complainant and PW-2 consistently spoke of two slabs in a black shopper, of the word 'Piyar' upon the smaller slab, and of a combined weight of 1525 grams; the malkhana custodian and carrier were both examined; and the parcel reached the laboratory on the following day. Exh.7/A records satisfactory seals, two black-brown patties in a black shopper and a net weight of 1525 grams, followed by a positive result for charas. There is no conflict between its gross weight of 1555 grams and net weight of 1525 grams because the former necessarily includes packing. Nor are the differences of ten or fifteen minutes, the variance of two and three kilometers, or inability to recall every stop, viewed separately, sufficient to overturn a conviction. The real question is whether the core account of recovery and the evidentiary link connecting that recovery with the substance tested remain reliable when the prosecution evidence is considered as a whole.

13. We are also mindful that section 25 of the Control of Narcotic Substances Act, 1997 excludes the application of section 103, Cr.P.C. to searches and arrests under the Act. The evidence of a police official is not to be rejected merely because of official status. *Mushtaq Ahmad v. The State and another* (2020 SCMR 474), relied upon by the State and the learned trial Court, sustained reliance upon police witnesses who had no axe to grind, remained consistent throughout and furnished confidence-inspiring evidence of the recovery. That rule is unobjectionable. Its necessary qualification, however, is contained in its own facts: official evidence must first survive ordinary tests of probability, consistency and confidence. Statutory exclusion of section 103, Cr.P.C. removes a formal requirement; it neither converts official testimony into conclusive proof nor relieves the prosecution of its burden. The present case must therefore be tested on its own record and not by assuming the factual reliability which had been found in *Mushtaq Ahmad*.

14. The first material difficulty concerns the alleged place of occurrence. Exh.5/A is a contemporaneous document prepared at 1930 hours to verify that place. It records the link road towards Shikarpur on the north, the link road towards village Hajana on the south, agricultural land on the west, and agricultural land with the graveyard of Jeeay Shah Peer on the east. PW-2, a signatory to that very memo, placed Jeeay Shah Peer on the west, open land on the east, the road on the north and houses on the south. PW-4, who prepared it, first put private land on the west and a link road on the east, then put the link road on the north and Jeeay Shah Peer on the south at ten to fifteen paces. PW-1 described lands on all four sides. Recollection may legitimately vary on fleeting details, but north, south, east and west are fixed features, and a road, agricultural land, houses and a shrine or graveyard are not interchangeable objects. The witnesses who claimed jointly to have inspected the place could not agree upon its elementary boundaries when they deposed a few months later. The contradiction therefore directly impairs the corroborative value of Exh.5/A and creates doubt whether the

inspection occurred in the manner recorded. The distinction between harmless and material discrepancy was explained in **Zakir Khan v. The State (1995 SCMR 1793)**: minor variations may be overlooked, but contradictions touching a material feature must be taken into account. The present divergence falls in the latter category.

15. The explanation for excluding independent persons from the later site proceedings is equally unsatisfactory. PW-1 expressly stated that many persons met the party on the way and PW-4 asked none of them to act as mashir. PW-4, in direct conflict, claimed that he asked three or four persons while leaving the police station through a populated area, but could name none, issued no notice and recorded no such effort in Exh.5/A. More significantly, he first placed the attempt at 2100 hours and then corrected it to 1950 hours. Both times post-date the preparation of Exh.5/A at 1930 hours; even the corrected time follows PW-1's stated departure from the spot at about 1940 hours. That assertion could not explain the absence of an independent person from a proceeding already completed. We do not hold that want of a private mashir, by itself, nullified either the alleged recovery or inspection. It assumes evidentiary significance because the police witnesses materially differ on whether any effort was made, the alleged recovery was in daylight near a link road used by the public, and the official account itself required independent assurance.

16. Other discrepancies must be assigned their proper weight. PW-1's claim that both mashirs resumed duty with him at 0800 hours differs from PW-2's evidence that he reported alone and found PW-1 and PC Insaf Ali already there. PW-1 said the later patrol continued until 2200 hours, whereas PW-2 placed renewed patrolling after the 1930-hour inspection and recording of his statement but then said it continued only until 1700 hours, an impossible sequence on the stated date. PW-4 admitted that the inspection party used a white private car belonging to the then SHO, but entry No.25 did not disclose that vehicle and he could not recall its registration number. The duty commencement and small

differences of distance or minutes might, in isolation, be ordinary lapses of memory. The impossible post-inspection timing and the omission of the inspection vehicle from the contemporaneous entry are of a different quality. Read with the contradictory boundaries and the untenable account of efforts to secure private mashirs, they make the police chronology and the claimed site verification unsafe as corroboration of the disputed recovery.

17. The prosecution also withheld PC Insaf Ali, the second nominated mashir of both the recovery and the site inspection. According to PW-1, that official kept the appellant in custody while the recovery memo was written, and his signatures appeared on both material mashirnamas. He was therefore a natural and material witness capable of resolving the conflicts between PW-1, PW-2 and PW-4. No reason for not examining him appears on the record. Article 129(g) of the Qanun-e-Shahadat Order, 1984 permits the Court to presume that evidence withheld would, if produced, be unfavourable to the person withholding it. *Lal Khan v. The State* (2006 SCMR 1846) recognizes that the prosecution need not multiply witnesses, but non-production of a natural and material witness may warrant such an inference. The omission of driver PC Imdad Ali would not independently be decisive; nor was the prosecution obliged to call every person named in the papers. The unexplained withholding of PC Insaf Ali, however, is material in the particular circumstances because he was the only other attesting witness common to both disputed proceedings. The non-examination of Clerk Noor Muhammad also left the carrier's unusual laboratory timeline without confirmation from the person identified as the recipient.

18. The custody and transmission of narcotic material form a substantive link, not a technical formality. In ***Ikramullah and others v. The State* (2015 SCMR 1002) and *The State through Regional Director, Anti-Narcotics Force v. Imam Bakhsh and others* (2018 SCMR 2039)**, the Honourable Supreme Court emphasized proof of safe custody and safe transmission as indispensable to reliance upon a Government Analyst's report. ***Zahir***

Shah alias Shat v. The State through Advocate-General, Khyber Pakhtunkhwa (2019 SCMR 2004) explains that a break in either aspect impairs the conclusiveness and reliability of that report. *Qaiser Khan v. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363)* and *Mst. Sakina Ramzan v. The State (2021 SCMR 451)* describe the required chain as unbroken, safe, secure and free from suspicion from seizure through storage and delivery. *Javed Iqbal v. The State (2023 SCMR 139)* and *Asif Ali and another v. The State through Prosecutor General, Punjab (2024 SCMR 1408)* reiterate that the prosecution must establish each step, recovery, preparation of the parcel, malkhana custody and transmission—and that a missing link inures to the accused. The same standard has more recently been reaffirmed in *Muhammad Iqbal v. The State through P.G. Sindh (2025 SCMR 704)*, *Abdul Haq v. The State (2025 SCMR 751)* and *Farman Ali and another v. The State (2025 SCMR 1730)*. The requirement is not satisfied merely by promptness; the movement must also be proved by coherent oral and documentary evidence.

19. Applied here, the parcel was indeed sent promptly and PW-5 and PW-3 supplied evidence for the principal stages. Nevertheless, the contemporaneous record was incomplete and the oral timings did not align. PW-5 said that the Investigating Officer removed the parcel from the malkhana at 1230 hours, but PW-3 claimed it had already been delivered to him at 1215 hours. PW-4 asserted that dispatch occurred under entry No.18 at 1230 hours, yet that entry was neither produced nor marked as an exhibit. Only a copy of the relevant leaf of Register No.XIX, and not the original register, was produced at Exh.8/A. PW-3 placed his return at 1940 hours and PW-4 at 1950 hours. More importantly, PW-3 stated that he arrived at the laboratory at 1320 hours but remained there with Clerk Noor Muhammad until 1855 hours, almost two hours beyond the office hours which he himself gave as ending at 1700 hours; the record does not explain why. Exh.7/A describes the carrier as ‘HC Ali

Muhammad B.No.3152', whereas the witness who claimed transmission testified as PC Ali Muhammad. That unexplained difference of designation would not alone destroy the chain, just as the differences of ten or fifteen minutes would not. But the unproduced departure entry, non-original malkhana record, unexplained post-office-hours laboratory narrative and carrier-description anomaly together prevent the documentary and oral trail from being treated as wholly free from suspicion.

20. Exh.7/A deserves its full but proper evidentiary value. It shows that a sealed parcel bearing three satisfactory seals was received on 05.06.2023 and that the 1525 grams of net substance in it tested as charas. Its reference to two patties in a black shopper corresponds with the broad description in the FIR and recovery memo. We therefore do not doubt the analytical conclusion regarding the substance actually received and tested. A Chemical Examiner's report, however, does not by itself prove the anterior fact that the tested substance was recovered from the particular accused. That connection depends upon credible proof of the seizure and the chain which links it to the laboratory. Where the recovery witnesses disagree on the physical locus and surrounding proceedings, a material attesting witness is withheld, and the custody documentation contains the gaps just identified, the positive report cannot retrospectively cure those deficiencies. The authorities cited in the preceding paragraph draw precisely that distinction between chemical identity and evidentiary identity.

21. The defence plea was not affirmative proof of prior arrest, and we do not treat it as such. Yet it was specific: the appellant named the '15' police, his cousin, a motorcycle, a demand for money and Crime No.48 of 2023 of Police Station Stuart Ganj under section 9(b) of the Act. The substance of that plea was put to PW-1 and PW-4, who merely professed lack of knowledge; no inquiry or objective verification by the Investigating Officer is shown. In any event, the learned trial Court fell into error in using the appellant's election not to examine himself on oath or lead defence evidence as

reinforcement for the prosecution. Section 340(2), Cr.P.C. affords an accused an option to testify; the prosecution's burden is not lightened by non-exercise of that option. Wazir Mohammad and Shamoon *alias* Shamma, *supra*, make clear that weakness or absence of defence evidence cannot fill an evidentiary gap left by the prosecution. The plea is relevant here only to the limited extent that prosecution evidence independently found doubtful was not restored to certainty by a bare rejection of the defence.

22. We are conscious that defective investigation, standing alone, does not necessarily justify acquittal where trustworthy substantive evidence proves the charge. This is not such a case. The investigation reproduced the same official witnesses for the site inspection; failed to record any independent person from the locality; did not reconcile the mutually inconsistent site boundaries; did not produce the dispatch entry relied upon by the Investigating Officer; did not explain the carrier's designation or laboratory timeline; and did not verify the specific circumstance advanced in support of false implication. These omissions matter because the direct recovery account itself was not independently secure. Their cumulative effect is to deprive that account of the corroboration needed to sustain a serious conviction, rather than merely to reveal imperfect police work.

23. The cumulative effect of the proved infirmities is decisive: irreconcilable descriptions of the alleged place; a chronologically impossible explanation for efforts to obtain independent mashirs; a defective post-inspection chronology; an unrecorded private inspection vehicle; withholding of the second common mashir; and a custody trail which, despite prompt delivery and satisfactory seals, lacked the complete contemporaneous record and bore unexplained anomalies. These doubts arise from the prosecution's own witnesses and documents and touch both the recovery and its evidentiary continuity. *Tariq Pervez v. The State (1995 SCMR 1345)*, *Muhammad Akram v. The State (2009 SCMR 230)*, *Muhammad Mansha v. The State (2018 SCMR 772)*

and Mst. Asia Bibi v. The State and others (PLD 2019 SC 64)

consistently declare that even one circumstance creating reasonable doubt in the mind of a prudent person entitles an accused to its benefit as a matter of right, not grace or concession. Here the doubts are several, mutually reinforcing and sufficient to make the conviction unsafe.

24. For the foregoing reasons, Criminal Appeal No.D-73 of 2023 was allowed vide our short order dated 03.09.2026, whereby the impugned judgment of conviction and sentence dated 23.10.2023 passed by the learned Sessions Judge/Special Judge (CNS), Shikarpur, in Special Case No.420 of 2023 was set aside and the appellant Suhail Ahmed was acquitted of the charge by extending to him the benefit of doubt, with a direction that he be released forthwith if not required to be detained in any other custody case.

Above are the reasons for the short order dated 03.09.2026.

JUDGE

JUDGE

Qazi Tahir PA*