

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

Criminal Appeal No. D-30 of 2025

[Ali Murad @ Washo v. The State]

Before:

Mr. Justice Riazat Ali Sahar

Mr. Justice Ali Haider 'Ada'

Appellant: Through Mr. Arslan Ali Abbasi, 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 Ali Murad alias Washo son of Hussain Mazari has called in question the legality, propriety and correctness of judgment dated 04.12.2025 passed by the learned Additional Sessions Judge/Special Judge, Control of Narcotic Substances, Kashmore, in Special Sessions Case No.25 of 2025, arising out of Crime No.42 of 2025 registered at Police Station Guddu, District Kashmore at Kandhkot, for an offence punishable under section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, whereby he was convicted under section 265-H(2), Cr.P.C. and sentenced to rigorous imprisonment for nine years with fine of Rs.100,000/- and, in default of payment thereof, to undergo further imprisonment for eighteen months, with benefit of section 382-B, Cr.P.C. Through this appeal, the appellant seeks setting aside of the impugned judgment and his acquittal from the charge.

2. The prosecution case, in chronological sequence, is that on 29.07.2025 ASI Rahib Ali Essani, accompanied by HC Mughaim Khan, PC Amanullah and DPC Najamuddin, left Police Station

Guddu in official mobile No.SPG-224 vide departure entry No.09 at 1100 hours for patrolling. At about 1230 hours the party reached Yaqub Soomro Picket and commenced snap checking. At about 1300 hours, it allegedly noticed the appellant approaching on foot from the northern side while carrying a black plastic shopper. On seeing the police, he allegedly attempted to turn back but was apprehended after ten to fifteen paces. In the absence of private persons, HC Mughaim Khan and PC Amanullah were appointed mashirs. The shopper was said to contain charas which, upon joint weighing through the investigation kit, came to 1100 grams. Upon personal search, two mobile telephones and cash amounting to Rs.2,200/- were also allegedly recovered. The narcotic substance was sealed at the spot, a mashirnama of arrest and recovery was prepared and a photograph of the appellant was taken through the complainant's mobile telephone. The appellant, the case property and the police papers were thereafter brought to Police Station Guddu, where ASI Rahib Ali registered the F.I.R. and made the relevant arrival entries.

3. On the same day, SIP Muhammad Ayub Bullo received the investigation, police papers, custody of the appellant and the case property vide entry No.16 at 1440 hours. He states that the property was deposited in the police malkhana through WPC Abdul Majeed under entry No.18 of Register No.19. He then left vide entry No.17, inspected the place of occurrence on the pointation of the complainant and prepared the site-inspection mashirnama at about 1530 hours in the presence of HC Mughaim Khan and PC Amanullah. The police party returned at about 1630 hours through entry No.21, and statements under section 161, Cr.P.C. were recorded. On 30.07.2025 the Investigating Officer sought permission of the S.S.P. to send the property for chemical examination. On 31.07.2025, he handed the parcel to PC Barkat Ali under Road Certificate No.54 dated 30.07.2025, who deposited it with the Chemical Laboratory, Sukkur at Rohri, on the same day. The laboratory certificate, dated 13.08.2025, records receipt of one parcel bearing three seals, gross weight of 1120 grams and net weight of

1100 grams, containing two large and one small black-brown hard pieces wrapped in brown paper and kept in a black plastic shopper; the substance tested positive as hard charas. After obtaining the C.R.O. and completing the investigation, the Investigating Officer submitted challan before the competent Court.

4. Upon submission of challan, copies of the police papers were supplied to the appellant under section 265-C, Cr.P.C. through receipt at Exh.01. A formal charge was framed on 24.09.2025 at Exh.02 for the offence punishable under section 9(1)(3)(c) of the Sindh Control of Narcotic Substances Act, 2024, to which the appellant pleaded not guilty and claimed trial. To prove the charge, the prosecution examined six witnesses.

PW-1 HC Mughaim Khan, mashir and member of the patrolling party, was examined on 16.10.2025 at Exh.03. He substantially narrated the departure of the police party, snap checking at Yaqub Soomro Picket, apprehension of the appellant at 1300 hours, recovery of 1100 grams of charas from the black shopper, recovery of Rs.2,200/-, sealing of the narcotic substance and subsequent inspection of the place of occurrence. He produced the mashirnama of arrest and recovery at Exh.03/A, photograph of the appellant at Exh.03/B and mashirnama of inspection of the place of incident at Exh.03/C. In cross-examination, he admitted that two or three cigarette cabins existed near the place and that, before the appellant's arrest, the police party had checked six or seven motorcycles and probably two Mazda vehicles; nevertheless, no cabin-holder or other private person was asked to witness the proceedings. He stated that the appellant was first seen from eight to ten steps and was apprehended by the complainant, whereas in examination-in-chief he had described a collective chase and apprehension by the police party at a distance of ten to fifteen paces. He further stated that approximately thirty minutes were consumed in the spot proceedings; that the

recovered charas comprised three pieces whose individual weights he could not disclose because the whole property had been weighed jointly; that articles used for sealing were brought by DPC Najamuddin from the police mobile; that the serial numbers of the currency notes were not recorded; and that neither the cash nor the mobile telephones were sealed. He also admitted that Sardar Shamsher Khan Mazari had contested a general election against Sardar Salim Jan Mazari, although he professed no knowledge whether the appellant was the former's accountant or munshi.

PW-2 WPC Abdul Majeed, the malkhana in-charge, was examined on 16.10.2025 at Exh.04. He deposed that the Investigating Officer handed the case property to him on 29.07.2025 and that he deposited it in the malkhana through entry No.18 of Register No.19. He produced the original register and its relevant translated copy at Exh.04/A. The entry describes 1100 grams of charas consisting of two large and one small brown pieces contained in a black shopper sealed with three stamps, besides two mobile telephones and Rs.2,200/-. In cross-examination, however, PW-2 made the categorical admissions that the time at which he received the property was not mentioned in the police entry and that the case property was not sealed when deposited in the police malkhana; he separately confirmed that the mobile telephones and cash were also unsealed at the time of deposit.

PW-3 SIP Muhammad Ayub Bullo, the Investigating Officer, was examined on 16.10.2025 at Exh.05. He produced the carbon copy of the F.I.R. and entry No.16 at Exhs.05/A and 05/B; the departure entry for inspection at Exh.05/C; return entry No.21 at Exh.05/D; Road Certificate No.54 at Exh.05/E; the relevant dispatch entry at Exh.05/F;

the entry recording the return of PC Barkat Ali at Exh.05/G; and the laboratory report at Exh.05/H. The S.S.P.'s permission was taken on record as Mark-A. He also identified the site-inspection mashirnama already produced at Exh.03/C and deposed regarding recording of statements under section 161, Cr.P.C., obtaining the C.R.O. and submission of challan. In cross-examination, he admitted that no incriminating material was recovered from the place of incident; that no previous criminal record of the appellant was found; that the interrogation proforma was not completely filled; and that no private person was joined during inspection. He denied that the place was thickly populated and denied false implication at the instance of a political rival. He also acknowledged that the laboratory report merely concluded that the submitted substance contained hard charas.

PW-4 PC Barkat Ali, the dispatcher, was examined on 16.10.2025 at Exh.06. He stated that on 31.07.2025 SIP Muhammad Ayub handed him the case property in sealed condition with Road Certificate No.54, already produced at Exh.05/E; that he deposited the parcel with the Chemical Laboratory, Sukkur at Rohri, on the same day; and that, upon returning to the police station, his statement was recorded. He identified the case property produced in Court. In cross-examination, he stated that the Investigating Officer had also given him Rs.1,200/- as fare charges and denied the suggestion that neither was the property entrusted to him nor deposited by him and that he had procured the laboratory receipt through illegal means.

PW-5 ASI Rahib Ali Essani, complainant and head of the patrolling party, was examined on 23.10.2025 at Exh.07. He supported the prosecution version regarding departure at 1100 hours, arrival at Yaqub Soomro Picket at 1230 hours, apprehension of the appellant at 1300 hours,

recovery of 1100 grams of charas, two mobile telephones and Rs.2,200/-, sealing of the narcotic property, preparation of the mashirnama and registration of the F.I.R. He produced departure entry No.09 at Exh.07/A and the subsequent arrival entry, F.I.R. and completion entry at Exhs.07/B to 07/D. In cross-examination, he admitted that he had remained posted at Police Station Guddu for two to three years and had found no criminal case against the appellant during that period. He stated that six or seven motorcycles and two Mazda vehicles had been checked immediately before the appellant was noticed; that shops and a cigarette cabin were situated in the vicinity; and that no official was present at the police picket before the arrival of his party. He nevertheless denied that members of the public were passing at the relevant time. He stated that the officials jointly apprehended the appellant and that he personally conducted the search, which differs in detail from PW-1's statement that the complainant alone apprehended him.

PW-6 Inspector Iqtader Hussain, described in the impugned judgment as the second Investigating Officer, was examined at Exh.08 and produced the Chemical Examiner's report at Exh.08/A. The same report records receipt of the parcel through PC Barkat Ali under memorandum No.54 dated 30.07.2025 and the conclusion that the submitted substance was hard charas. No further material portion of his deposition is reproduced in the record supplied with this appeal.

5. After completion of the evidence of PW-6, the prosecution closed its side by a statement which the impugned judgment also describes as Exh.08, notwithstanding that PW-6 is shown at the same exhibit number; this appears to be an exhibit-numbering error in the impugned judgment. The statement of the appellant under section 342, Cr.P.C. was thereafter recorded at

Exh.09. He denied the alleged recovery as false, professed no knowledge of the malkhana entry and maintained that he had been implicated by the police at the instance of political rivals through planting of charas. He neither examined himself on oath under section 340(2), Cr.P.C. nor produced any witness or document in defence.

6. The learned trial Court held that the ocular account furnished by PW-1 and PW-5 was consistent on the material particulars of date, time, place and recovery; that safe custody stood proved through PW-2 and Register No.19; that transmission within seventy-two hours stood proved through PW-3 and PW-4; and that the positive laboratory report furnished confirmatory evidence. It further held that section 20 of the Act of 2024 excluded section 103, Cr.P.C; that the photograph at Exh.03/B corroborated the prosecution and there was no statutory requirement of video recording; and that, after the prosecution had discharged its initial burden, the appellant failed to rebut the case under Article 122 of the Qanun-e-Shahadat Order, 1984. The Court accordingly convicted and sentenced him as stated in the opening paragraph, directed that the sentences in default would follow non-payment of fine, extended the benefit of section 382-B, Cr.P.C., took him into custody and ordered disposal of the case property after expiry of the appellate period.

7. Learned counsel for the appellant contended that the prosecution failed to prove the alleged recovery and the identity, safe custody and safe transmission of the substance beyond reasonable doubt. He argued that the recovery was conducted by an ASI who was not shown to be an authorised officer under the Act of 2024; that no video of the raid, seizure, inspection or arrest was made despite the express command of section 17(2); and that the single photograph at Exh.03/B merely depicted the appellant after apprehension and could not establish the recovery process. He placed particular reliance on PW-2's admission that the property was unsealed when deposited in the malkhana, which directly contradicted the recovery witnesses, the entry at Exh.04/A, the Investigating Officer and the

dispatcher. He further argued that no private witness was associated despite nearby cabins, shops and passing vehicles; that PC Amanullah and DPC Najamuddin, who were material participants in the alleged apprehension, weighing and sealing, were withheld; that the versions of PW-1 and PW-5 differed regarding the manner of apprehension; and that the title of the recovery memo referred to one mobile while the witnesses, charge and malkhana entry referred to two. It was submitted that the trial Court ignored the cross-examination, wrongly shifted the burden to the appellant, and treated a positive chemical report as a substitute for proof that the substance tested was the same substance allegedly recovered. Learned counsel, therefore, prayed that the conviction and sentence be set aside and the appellant be acquitted by extending the benefit of doubt.

8. Conversely, learned D.P.G. for the State supported the impugned judgment and contended that the appellant was apprehended at the spot while carrying 1100 grams of charas; that PW-1 and PW-5 were consistent on all essential features of the recovery; and that official witnesses are as competent as private witnesses, particularly when section 20 of the Act of 2024 excludes the application of section 103, Cr.P.C. He submitted that the original Register No.19, Road Certificate and laboratory receipt were produced; that PW-4 independently proved delivery of the sealed parcel on 31.07.2025; and that the laboratory found three seals intact and confirmed the entire net weight of 1100 grams as hard charas. According to him, the photograph at Exh.03/B supplied objective corroboration, the alleged political motive remained unsubstantiated, and the discrepancies concerning the manner of apprehension or number of mobile telephones were peripheral and incapable of dislodging an otherwise reliable recovery. He accordingly prayed for dismissal of the appeal and maintenance of the conviction and sentence.

9. 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.

10. In an appeal against conviction, this Court is obliged to undertake its own complete and independent reappraisal of the evidence, keeping in view that the burden of proving every essential ingredient of the charge beyond reasonable doubt remains throughout upon the prosecution. A statutory presumption or the rule relating to facts especially within the accused's knowledge can operate only after the prosecution has first established the foundational facts of lawful recovery, conscious possession, identity of the substance and an intact evidentiary chain. In **Abdul Majeed v. The State (2011 SCMR 941)**, the Honourable Supreme Court reiterated that the basic burden remains upon the prosecution throughout and does not shift merely because the accused has denied the charge or has not proved a defence plea. The learned trial Court's approach that the appellant was required to prove his innocence once official witnesses had repeated the recovery narrative therefore calls for close scrutiny against the actual quality of that evidence.

11. The first defect concerns the lawful competence of the officer who effected the search, seizure and arrest. Section 2(c) of the Act of 2024 defines an authorised police officer as an officer or official not below the rank of Sub-Inspector authorised by the Regional Police Officer. Section 17(1) vests warrantless powers in an officer not below the rank prescribed therein, while section 18 permits seizure and arrest in a public place only by an officer authorised under section 17. The prosecution's own case is that ASI Rahib Ali Essani led, searched, seized and arrested. He was below the minimum police rank stated in section 2(c), and neither he nor any prosecution witness produced an authorisation from the competent authority. This is not a case of an authorised officer being assisted by a subordinate; the foundational acts themselves were performed by the unauthorised ASI. In **Peer Bux v. The State (C.P. No.D-725 of 2025, decided on 27.05.2025)** by the High Court of Sindh, while construing sections 17 and 18 of the provincial Act, it was held that a

warrantless recovery initiated by an ASI lacking the requisite rank and authorisation materially weakens the legality of the proceedings. The same statutory defect is present here and remained wholly unaddressed by the trial Court.

12. The second statutory defect is equally plain. Section 17(2) commands that video recording of all raids, seizures, inspections and arrests shall be made by the officer in-charge of the operation. The Act came into force on 28.10.2024, whereas the alleged occurrence took place on 29.07.2025; the obligation was therefore fully operative. No witness claimed that any video was made. The still photograph at Exh.03/B, showing the appellant after apprehension with the patrolling party, neither records the search nor demonstrates the opening, weighing or sealing of the shopper and cannot be equated with the continuous statutory record of the operation. In **Zahid Sarfraz Gill v. The State (2024 SCMR 934)**, the Honourable Supreme Court highlighted the evidentiary value of readily available mobile-phone photography and video in narcotics recoveries; **Muhammad Abid Hussain v. The State (2025 SCMR 721)** again stressed modern-device evidence and the correspondingly exacting standard of proof in prosecutions carrying severe punishment. In **Waseem Ahmed v. The State (2025 MLD 1930) and Peer Bux (supra)**, this Court treated non-compliance with section 17(2) of the Act of 2024 as a material procedural deficiency. We do not rest acquittal on this omission alone; nevertheless, it deprives the disputed police recovery of the objective safeguard deliberately enacted by the legislature.

13. The most damaging infirmity lies in the custody of the alleged narcotic substance. PW-1 and PW-5 maintained that it was sealed at the spot; entry No.18 at Exh.04/A describes a black shopper sealed with three stamps; PW-3 stated that he deposited the property in the malkhana; and PW-4 claimed that a sealed parcel was later delivered to him. PW-2 Abdul Majeed was, however, the very official who physically received and stored the property. His categorical admission was that the case property was not sealed

when deposited in the malkhana. That admission is not a peripheral discrepancy. It directly contradicts the documentary entry proved through the same witness and destroys the assurance that the recovered substance entered safe custody in the condition in which it allegedly left the spot. The prosecution neither sought an explanation nor reconciled how unsealed property became the three-sealed parcel later received by the laboratory.

14. The law governing this issue is settled. In *Amjad Ali v. The State* (2012 SCMR 577), *Ikramullah and others v. The State* (2015 SCMR 1002), *The State through Regional Director, ANF v. Imam Bakhsh and others* (2018 SCMR 2039), *Mst. Razia Sultana v. The State and another* (2019 SCMR 1300), *Zahir Shah alias Shat v. The State through Advocate-General, Khyber Pakhtunkhwa* (2019 SCMR 2004), *Qaiser Khan v. The State* (2021 SCMR 363), *Gulzar v. The State* (2021 SCMR 380), *Mst. Sakina Ramzan v. The State* (2021 SCMR 451), *Zubair Khan v. The State* (2021 SCMR 492), *Javed Iqbal v. The State* (2023 SCMR 139), *Ahmed Ali and another v. The State* (2023 SCMR 781), *Asif Ali and another v. The State* (2024 SCMR 1408) and *Jeehand v. The State through Prosecutor General Balochistan* (2025 SCMR 923), the Honourable Supreme Court consistently held that the prosecution must establish an unbroken, safe, secure and documented chain from seizure, sealing and malkhana custody to transmission and receipt by the laboratory. A break or serious doubt in any link renders the analyst's report unsafe as a basis for conviction. The two-day interval between recovery and delivery on 31.07.2025 would not by itself be fatal because the dispatcher was examined and the road certificate produced. Here, however, the interval began with an admitted unsealed deposit. A laboratory's notation that it later received a parcel with satisfactory seals proves the condition of the parcel upon receipt; it does not explain when, by whom or under what safeguards the seals were affixed after the unsealed malkhana deposit.

15. Nor was the custody of the seal itself established. PW-1 stated that DPC Najamuddin brought the sealing articles from the police mobile, but the prosecution did not examine him or show to whom the seal was entrusted after use. PC Amanullah, the second mashir named in both mashirnamas, was likewise not examined. Their non-production assumes importance because Najamuddin was said to have supplied the investigation kit and sealing material, while Amanullah allegedly witnessed the entire recovery, weighing and sealing. Article 129(g) of the Qanun-e-Shahadat Order, 1984 permits the Court to presume that evidence which could be and is not produced would, if produced, be unfavourable to the person withholding it. Although the prosecution is not bound to multiply witnesses, the omission to examine these available and material participants cannot be viewed in isolation from PW-2's express admission and the absence of a video record.

16. We are mindful that section 20 of the Act of 2024 excludes section 103, Cr.P.C. and that testimony of a police official is not to be rejected merely on account of official status. The absence of private mashirs is therefore not, standing alone, a legal ground for acquittal. Yet the surrounding circumstances remain relevant to credibility. Both PW-1 and PW-5 admitted that shops or cabins existed nearby and that several motorcyclists and two Mazda vehicles had just been checked. No effort to associate any such person was shown. Against that background, the discrepancy whether the appellant was apprehended by the complainant alone or jointly by the police party, and the inconsistency between the recovery memo's title referring to one mobile and the charge, witnesses and malkhana record referring to two, may individually be minor; cumulatively they call for independent assurance. The legislature supplied that assurance through mandatory video recording, which the police omitted.

17. The photograph at Exh.03/B does not bridge the evidentiary gaps. At most, it depicts the appellant in police custody with the patrolling team and a shopper; it does not prove what the

shopper contained before police intervention, the process of weighing, or the condition and identity of the substance when first sealed. Likewise, the Chemical Examiner's certificate proves that the particular parcel received on 31.07.2025 contained 1100 grams of hard charas. It cannot, without a reliable connecting chain, prove that the tested substance was the very same article allegedly recovered from the appellant on 29.07.2025. The corpus of the offence and its continuity must be established by evidence, not supplied through assumption.

18. The defence allegation of implication at the behest of a political rival was not independently proved, although PW-1 admitted the electoral contest relied upon by the appellant. That weakness does not cure deficiencies in the prosecution case. The appellant's clean antecedents were in fact admitted by PW-3 and PW-5. More importantly, his bare denial under section 342, Cr.P.C. could not relieve the prosecution of proving the foundational facts. The trial Court declared the recovery witnesses' evidence virtually unchallenged despite the material admissions elicited in cross-examination, accepted the Register No.19 entry while overlooking the malkhana in-charge's contrary admission, and held that there was no provision requiring video recording without considering section 17(2) of the governing Act. The deposition forms themselves carried the obsolete caption of the CNS Act, 1997, though the charge and conviction were under the Act of 2024. While that captioning error is not by itself fatal, it underscores that the safeguards of the new enactment were not judicially examined.

19. The cumulative position is thus that the alleged warrantless recovery was led by an ASI without proof of the statutory rank or authorisation; no video was made despite section 17(2); the malkhana in-charge admitted receiving unsealed case property; the prosecution failed to explain the later appearance of three seals; the custody of the seal was not proved; two material members of the recovery process were withheld; and no independent person was associated despite the admitted availability of shops,

cabins and recently checked vehicles. These defects concern legality of the seizure, authenticity of the recovery and identity and continuity of the alleged contraband. They are not harmless irregularities. In **Ameer Zeb v. The State (PLD 2012 SC 380)**, the Honourable Supreme Court emphasised that severe punishment requires correspondingly strict proof. **Tariq Pervez v. The State (1995 SCMR 1345)**, **Muhammad Akram v. The State (2009 SCMR 230)** and **Muhammad Mansha v. The State (2018 SCMR 772)** settle that even one circumstance creating reasonable doubt entitles an accused to acquittal as a matter of right and not of grace. Here there is not merely one doubtful circumstance but a cluster of mutually reinforcing defects. The prosecution consequently failed to prove the charge against the appellant beyond reasonable doubt, and the conviction cannot safely be maintained.

20. For the foregoing reasons, Criminal Appeal No. D-30 of 2025 was allowed vide our short order dated 03.09.2026, whereby the impugned judgment dated 04.12.2025 passed by the learned Additional Sessions Judge/Special Judge, Control of Narcotic Substances, Kashmore, in Special Sessions Case No.25 of 2025 was set aside and the appellant Ali Murad alias Washo son of Hussain Mazari was acquitted of the charge by extending to him the benefit of doubt. He was ordered to be released forthwith by the jail authorities, if not required to be detained in any other custody case.

Above are the reasons for the short order dated 03.09.2026.

JUDGE

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