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JUDGMENT SHEET  
**LAHORE HIGH COURT**  
**MULTAN BENCH, MULTAN**  
JUDICIAL DEPARTMENT

**Criminal Appeal No.531/2020**

**Awais Qarni                      vs.        The State and another**

**JUDGMENT**

<b>Date of hearing</b>	<b>7.10.2024</b>
<b>For the Appellant:</b>	Ch. Umar Hayat, Advocate, assisted by Mehr Iftikhar Ahmad, Advocate.
<b>For the State:</b>	Mr. Shahid Aleem, District Public Prosecutor.

**Tariq Saleem Sheikh, J.** – This appeal is directed against the judgment dated 12.11.2020 passed by the Additional Sessions Judge, Dera Ghazi Khan, in case FIR No.1/2020 dated 23.2.2020 registered at Police Station BMP Bawata, District Dera Ghazi Khan, for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 (the “CNSA”).

2.                      The brief facts of the case are that on 23.2.2020, Muhammad Iqbal/Naib Dafedar (the Complainant) (PW-1) was present at the Bawata Check Post, with other police officials. Around 2:00 p.m., he noticed Car No. 826-Sindh-ANW approaching from Balochistan. When signalled to stop, the vehicle accelerated, arousing suspicion. The police party managed to stop the car by placing a barrier in its path. Upon stopping, the driver exited from the vehicle and fled northwards. The Complainant and the other cops chased him, during which the suspect slipped and sprained his left foot. The Complainant apprehended the suspect, who identified himself as Awais Qarni (the Appellant). He brought the Appellant back to the Bawata Check Post. Car No. 826-Sindh-ANW smelt of *charas*. The Complainant searched it and recovered twenty packets of *charas* hidden in the front doors and five packets in the rear right door. Each packet weighed 800 grams, totalling 20 kilograms. The Complainant drafted the complaint Exh. PC and sent it to the Police Station BMP Bawata, District Dera Ghazi Khan, through

Amjad Ali/Sawar (PW-2). FIR No.1/2020 (Exh. PC/1) was registered in pursuance of the said complaint. A report under section 173 Cr.P.C. was submitted upon completion of the investigation. On 21.3.2020, the Additional Sessions Judge framed charge against the Appellant, to which he pleaded not guilty and claimed trial.

3. The prosecution produced four witnesses to prove the charge. Muhammad Iqbal/Naib Dafedar (PW-1) was the Complainant of the case and deposed about the recovery of *charas* and Car No. 826-Sindh-ANW from the Appellant. Amjad Ali/Sawar (PW-2) was a marginal witness of Recovery Memos Exh. PA and Exh. PB. Karim Nawaz/Jamedar (PW-3) provided the details of his investigation. Haji Muhammad/Moharrar (PW-4) registered FIR No.1/2020 (Exh. PC/1). He also testified about receiving the case property from the Investigating Officer and handing it over to the Complainant for delivery at the office of the Punjab Forensic Science Agency (PFSA). The prosecutor gave up PW Munir Ahmad/Sawar being unnecessary and closed the prosecution evidence after tendering the report of the PFSA Exh. PE - Exh. PE/1.

4. Upon the completion of the prosecution evidence, the Additional Sessions Judge recorded the Appellant's statement under section 342 Cr.P.C. The Appellant denied the allegations and professed innocence. When asked why he had been implicated in the case, he stated that he was a 24-year-old F.A. student and a Hafiz-e-Quran from a low-income family in Quetta. He decided to support his father financially by moving to Lahore, where he intended to work and contribute to the family's expenses while pursuing further studies. The Appellant maintained that on 21.02.2020, at about 9:00 a.m., during the first leg of his journey to Lahore, he boarded a car driven by Fazal Hussain to travel to D.G. Khan as a passenger, paying a fare of three thousand rupees. The Appellant alleged that *charas* was recovered from Fazal Hussain, but the police released him after accepting a bribe and falsely implicated him in the case. When he protested against his wrongful involvement, Muhammad Iqbal and Amjad Ali subjected him to physical violence, resulting in an injury to his left leg. The Appellant claimed he had no knowledge of any secret cavities in the vehicle or the

concealment of *charas* and asserted that no contraband was recovered from his possession.

5. The Appellant neither got his statement recorded on oath under section 340(2) Cr.P.C. nor examined any witness in his defence. However, he tendered documentary evidence, which included a Hifz-e-Quran certificate, matriculation certificate, birth certificate, provisional character certificate, and the result card of English Language Course (Exh. DB & Exh. DB/1, Exh. DC, Exh. DD, Exh. DE and Exh. DF).

6. On the conclusion of the trial, vide judgment dated 12.11.2020, the Additional Sessions Judge convicted the Appellant under section 9(c) of the CNSA and sentenced him to life imprisonment with a fine of Rs.100,000/- and, in default thereof, to suffer simple imprisonment for further one year. The benefit of section 382-B Cr.P.C. was extended to him. Hence, this appeal.

7. The Appellant's counsel contended that the prosecution could not prove the charge against the Appellant beyond reasonable doubt. The PWs were inconsistent and contradicted each other on material particulars. He further contended that safe custody of the case property and secure transmission of the sample parcels to the PFSA were not proved. Hence, the Government Analyst's report Exh. PE - Exh. PE/1 could not be relied upon. The learned counsel argued that the conviction recorded against the Appellant was not sustainable and liable to be set aside.

8. The District Public Prosecutor vehemently opposed this appeal. He contended that the prosecution had proved its case to the hilt. He argued that Muhammad Iqbal/Naib Dafedar (PW-1) and Amjad Ali/Sawar (PW-2) supported the prosecution case, in whose presence 25 packets of *charas* were recovered from the Appellant. The positive report of the PFSA Exh. PE - Exh. PE/1 reinforced their testimony. He maintained that the prosecution evidence was trustworthy. There were no material contradictions that could benefit the Appellant. He prayed for the dismissal of this appeal.

9. Arguments heard. Record perused.

10. The prosecution's case is that on 23.2.2020, the Appellant was arrested at Bawata Check Post, District Dera Ghazi Khan, with twenty-five packets of *charas*, each weighing 800 grams (total: 20 kgs.). The prosecution produced Complainant Muhammad Iqbal/Naib Dafedar (PW-1) and Amjad Ali/Sawar (PW-2) to prove that recovery.

11. Complainant Muhammad Iqbal/Naib Dafedar (PW-1) testified that on 23.2.2020, he recovered twenty-five packets of *charas* from the cavities of the doors of Car No. 826-Sindh-ANW. He weighed each packet, separated 40 grams from every packet, and prepared twenty-five sealed sample parcels for chemical analysis. He further stated that he sealed the remaining *charas* in twenty-five separate sealed parcels (P-2/1-25), affixed his stamp bearing the acronym "M.I." on all the parcels in the presence of Amjad Ali/Sawar (PW-2), and Munir Ahmad/Sawar (not produced), and secured them vide Recovery Memo Exh. PA. He also took the car (P-1) into his possession through Recovery Memo Exh. PB. Then, he drafted the complaint Exh. PC and sent it to the police station through Amjad Ali/Sawar (PW-2) for the registration of FIR No. 1/2020 Exh. PC/1.

12. Amjad Ali/Sawar BMP (PW-2) recorded his examination-in-chief on the same lines as Muhammad Iqbal (PW-1).

13. Karim Nawaz/Jamedar (PW-3) deposed that the investigation of the case was entrusted to him on the same day the contraband was recovered, i.e., 23.02.2020. He visited the recovery site, arrested the Appellant, interrogated him, and recorded the statements of the prosecution witnesses under section 161 Cr.P.C. Based on their indications, he also prepared the rough site plan (Exh. PD).

14. During his cross-examination, the Investigating Officer, Karim Nawaz (PW-3), testified that when he arrived at the recovery site at 3:15 p.m., the *charas* was already sealed, and the FIR number had been written on the parcels. This is unusual, as the responsibility for conducting all proceedings after the registration of the FIR rests with the Investigating Officer. Recognizing the damaging implications of his statement for the prosecution, PW-3 immediately attempted to retract it.

However, a careful analysis of the prosecution's evidence, as detailed in the following paragraphs, compels us to reject his retraction.

15. During his cross-examination, PW-1 Muhammad Iqbal conceded that the handwriting of the complaint, recovery memos, site plan, the statements recorded under section 161 Cr.P.C., and the application for judicial remand, and the report under section 173 Cr.P.C. was the same. Furthermore, during his cross-examination, PW-2 Amjad Ali stated that the documents were prepared by Moharrar Muhammad Haji (PW-4). The relevant excerpt is reproduced below:

“Two recovery memos were prepared by the Investigating Officer. One of which is the complaint Exh. PC, and the other was the recovery memo. We did not make signatures on the parcels. Iqbal affixed the seal/stamp upon the parcels. I do not remember that Karim Nawaz made his signatures upon the complaint Exh. PC. I do not remember whether Karim Nawaz made his signatures on the recovery memos or not. The writings (*Likh Parh*) of this case were made by Moharrar Muhammad Haji in his own handwriting. After completing all proceedings of this case, Muhammad Haji obtained the signatures from all the officials present there, including me, Karim Nawaz, Muhammad Iqbal, Amjad Ali and Munir Ahmad.”

(Emphasis added)

16. Admittedly, Muhammad Haji (PW-4) was not accompanying the police party when the Appellant was apprehended. Therefore, it is obvious that he did not complete the documentation at the recovery site but elsewhere. We have also noted that PW-3 Karim Nawaz attempted to attribute some of the documentation tasks to himself, but his testimony is inconsistent with that of the other witnesses.

17. The above circumstances undermine the credibility of the alleged recovery of the contraband, making the prosecution's case extremely doubtful.

18. In narcotics cases, the prosecution must corroborate the recovery witnesses' evidence with a positive forensic report from the government analyst, prepared in accordance with legal standards. It is also essential to ensure and demonstrate the safe custody of the case property and the secure transmission of sample parcels to the laboratory for chemical analysis. Any break in the chain of custody of sample parcels renders the forensic report inconsequential and wrings the

prosecution's case.<sup>1</sup> According to the Appellant's counsel, safe custody of the case property, including the sample parcels, was breached in the instant case.

19. During cross-examination, PWs Muhammad Iqbal and Karim Nawaz acknowledged that Rohi TV and the 24 News channel reported the recovery effected in this case. The defence counsel took advantage of this admission and confronted them with a photograph, which the Additional Sessions Judge marked as Exh. DA. While seeing the said photograph Exh. DA, PW Muhammad Iqbal stated:

“While seeing Exh. DA, which is a photograph, the witness stated that he is present in photograph. Volunteered that the photographs might have been prepared fictitiously. It is incorrect to suggest that the volunteer portion of my statement is based on *mala fide* and I am suppressing the truth from the Court. It is correct that in Exh. DA, I, Munir Ahmad, Karim Nawaz, and Amjad are present, and accused Awais Qarni is also present in said Exh. DA. The Exh. DA appears to be made inside the police station Bawata. *Charas* is also lying in open condition on a table in Exh. DA wrapping in a plastic shopper. The said shopper was white and green in colour and had a monogram upon the same. *Charas* in Exh. DA is present in the shopper packets. I do not remember that media briefing of this case was made just before the production of the accused before the Court of learned Area Magistrate.”

On the other hand, PW Karim Nawaz stated:

“The information about the instant case was broadcast on Rohi TV and Channel 24-News. The witness by seeing a photograph Exh. DA stated that the media briefing about the case was made within the premises of the police station. I am present in the Exh. DA and along with me, Iqbal and Amjad are also present. The *charas* is present in open condition on a table in Exh. DA. The *charas* is present in open condition on a table in Exh. DA. The monograms on the packets are visible in Exh. DA. The *charas* is present in sealed white and green shoppers in Exh. DA. The media briefing was conducted before the production of accused Awais Qarni before the court of learned Area Magistrate. The accused was produced before the court of the learned Area Magistrate on 24.2.2020.”

20. The precise date and time of the news coverage or media briefing have not been recorded. However, PW-3 Karim Nawaz stated during his cross-examination that it was “conducted before the production of accused Awais Qarni before the court of the ... Area Magistrate on 24.2.2020” (the day following the alleged recovery).

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<sup>1</sup> *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), *Qaiser Khan v. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar* (2021 SCMR 363), *Ishaq v. The State* (2022 SCMR 1422); *Javed Iqbal v. The State* (2023 SCMR 139); *Ahmed Ali and another v. The State and another* (2023 SCMR 781).

21. Based on the testimonies of PWs Muhammad Iqbal and Karim Nawaz, the defence challenges the integrity of the safe custody of the case property, including the sample parcels, and the validity of forensic report Exh. PE - Exh. PE/1. However, before assessing the strength of this argument, it is essential to consider whether the trial court rightly marked the said photograph as Exh. DA, introduced during the cross-examination by the defence, and whether the statements made by PWs Muhammad Iqbal and Karim Nawaz regarding the photograph are admissible.

22. The admissibility of photographs as evidence depends on two key factors: relevance and authenticity. Relevance refers to the logical connection between the evidence and the facts at issue in the case. For evidence to be deemed relevant, it should help to prove or disprove the matter in dispute or form a necessary link in the chain of reasoning. On the other hand, authentication is the process of convincing a court that a “thing” (which may be a document) matches the claims made about it.<sup>2</sup> In other words, authenticity involves demonstrating that the evidence is genuine and represents what it purports to be. The party presenting the evidence must prove that it has not been altered or tampered with. Authentication can be established through various means, including circumstantial proof. In *United States v. Taylor*, 530 F.2d 639 (5th Cir. 1976), it was held that a photograph may have probative value that is independent of amplification by other testimony. In *United States v. Stearns*, 550 F.2d 1167 (9th Cir. 1977), it was held that photographs may be admitted into evidence based on circumstantial evidence when direct testimony about their creation is unavailable, provided that the circumstantial evidence, including the photograph’s content and related context, sufficiently establishes its authenticity. In *The Queen v Aidan Quinn*, [2011] NICA 19, the Northern Ireland Court of Appeal held that authenticity can also be established by admission.

23. Authentication and relevance are intertwined.<sup>3</sup> A document that cannot be authenticated lacks relevance (unless adduced as bogus).<sup>4</sup>

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<sup>2</sup> *ASIC v. Rich* [2005] NSWSC 417 at [118]. cf. *Irving v. Penguin Books Ltd* [2000] Q.B. 115.

<sup>3</sup> *Phipson on Evidence*, (Sweet & Maxwell, Edn. 2002), p.1546.

<sup>4</sup> *ibid.*

24. In the United States, the admissibility of photographs as evidence is governed by the Federal Rules of Evidence. Under Rule 901, photographs must be authenticated by a witness who can testify that it is a fair and accurate representation of what it purports to depict. The photographer's testimony is not required as long as someone with firsthand knowledge can verify its authenticity. Rule 403 allows courts to exclude photographs if their probative value is substantially outweighed by the risk of unfair prejudice, confusion, or misleading the jury.<sup>5</sup>

25. In the United Kingdom, the legal approach to photographic evidence has evolved from common law principles. Historically, at common law, it was believed that only the person who took the photograph could authenticate it. Some authorities required the production of the negatives as part of this verification process. However, in ***R v. The United Kingdom Electronic Telegraph Company (Limited)***, (1862) 3 F&F 73; 176 ER 33, a photograph was admitted to show the nature of the surface of a highway in respect of an allegation of an obstruction. In ***R v. Tolson***, (1864) 4 F&F 103, a case of bigamy, a photograph was produced, which was admitted to be a photograph of the first husband, and a witness was allowed to testify that he had seen the man in the photograph alive after the date of the allegedly bigamous marriage.<sup>6</sup> In ***Hindson v. Ashby***, [1896] 2 Ch 1, 21 AC), Smith LJ remarked (at p.21): "If photographs were anything more than pictures representing a particular place at a particular time, I should have thought that these last photographs should not have been looked at; but as photographs, unless verified upon oath, are not of themselves evidence, we looked at them as mere pictures." On p.27, he said: "I cannot tell by looking at the photographs whether this be so or not; and even if I could, as I have before said, photographs *per se* and unverified are no evidence at all." In ***The United States Shipping Board v. The Ship St. Albans***, [1931] AC 632, it was held that a photographic picture cannot be relied

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<sup>5</sup> Also see: *Old Chief v. United States*, 519 U.S. 172 (1997).

<sup>6</sup> Willes J commented in his summing up to the members of the jury: "The photograph was admissible because it is only a visible representation of the image or impression made upon the minds of the witnesses by the sight of the person or the object it represents; and, therefore, is, in reality, only another species of the evidence which persons give of identity when they speak merely from memory." The jury subsequently entered a verdict of not guilty.



upon as proof in itself of the dimensions of the depicted objects and cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established. This case illustrated the limitations of photographs as standalone evidence. In *The Statute of Liberty Owners of Motorship Sapporo Maru v. Owners of Steam Tanker Statute of Liberty*, [1968] 2 All ER 195, [1968] 1 WLR 739, a civil action concerning a collision between two ships, Sir Jocelyn Simon P., rejecting a submission that a cinematograph film of radar echos recorded by a shore radar station, was inadmissible because produced mechanically without human intervention, said: “If tape-recordings are admissible, it seems that a photograph of radar reception is equally admissible – or indeed, any type of photograph. It would be an absurd distinction that a photograph should be admissible if the camera were operated manually by a photographer, but not if operated by a trip or clock mechanism.” In *R v Dodson; R v Williams*, [79 Cr App R 220, [1984] 1 WLR 971, the Court of Appeal entertained no doubt that photographs taken by security cameras installed at a building society office at which an armed robbery was attempted, were admissible in evidence, being relevant to the issue of both whether an offence was committed and, if so, who committed it. As to the latter issue, the jury was entitled to compare the photographic images with the accused sitting in the dock, and that the jury can do this will not prevent the calling of a witness who was not present at the scene of the crime, but who knows the person shown in the photograph, video or film, to give evidence as to his identity.

26. In *R v. Murphy*, [1990] N.I. 19, the Northern Ireland Court of Appeal ruled that a photograph may be authenticated by someone other than the photographer who is able to identify the photograph by its subject matter. In this case, the Court dealt with the admissibility of visual evidence, including video footage and, by extension, similar types of evidence, such as photographs. In this case, one of the core issues was whether the video evidence, consisting of heli-tele footage and a European cameraman’s film, could be admitted without the original film or the cameraman’s testimony. The Court ruled that such evidence could

be admitted, emphasizing the need for the evidence to be reliable and authentic, even if the person who captured the images was not available to testify. This ruling established a precedent that video and photographic evidence can be admissible under certain conditions, even if the source is not available, as long as the court is satisfied with the reliability and authenticity of the evidence.

27. The United States and the United Kingdom both recognize the importance of adapting the above principles to new forms of digital evidence. The same requirements of relevance, authenticity, and avoidance of undue prejudice apply to them, with additional precautions to guard against manipulation. If there are challenges to the authenticity of digital evidence, expert testimony or forensic analysis may be required to prove that the image has not been altered or tampered with. Courts remain focused on ensuring that the chain of custody is maintained to demonstrate the photograph's integrity from its creation to its presentation in court.

28. In Pakistan, the Qanun-e-Shahadat 1984 (QSO) is the primary law on evidence, which mirrors many of the principles found in common law jurisdictions. According to Article (2)(1)(b) of the QSO, "document" means any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used, or which may be used, to record that matter. The illustrations in Article 2(1)(b) explain that words printed, lithographed, or photographed are considered as documents. Thus, a photograph falls within the aforesaid definition of "document".<sup>7</sup> Photographs are treated as documentary evidence under Article 2(c). Article 78 requires that documentary evidence, including photographs, be authenticated.

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<sup>7</sup> Article 2(1)(b) of Qanun-e-Shahadat 1984 defines "document" in almost the same words as section 29 PPC though it gives its own Illustrations. Section 3(16) of the General Clauses Act, 1897 states:

(16) "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter.

Section 2(m) of the Electronic Transactions Ordinance, 2002, defines "electronic document" as follows:

"electronic document" includes documents, records, information, communications or transactions in electronic form.

The definitions given in section 3(16) of the General Clauses Act, 1897 and section 2(m) of the Electronic Transactions Ordinance, 2002, are inclusive.

29. Article 72 of the QSO stipulates that the contents of documents may be proved by primary or secondary evidence. Article 73 explains that primary evidence means the document itself produced for the court's inspection. Explanation 2 to Article 73 reads: "Where a number of documents are all made by one uniform process as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest, but where they are all copies of a common original, they are not primary evidence of the contents of the original." Article 74 explains "secondary evidence". Article 75 mandates that documents must be proved by primary evidence, while Article 76 outlines the situations in which court may allow secondary evidence relating to a document. Article 78 of the QSO requires that documentary evidence, including photographs, be authenticated.

30. Given the above, if the photograph presented in court is an original print or created through a uniform process (e.g., digital copies from a camera), it qualifies as primary evidence and can be directly admitted. Each print or copy of the photograph created through the same photographic process can be considered primary evidence of its contents. The court can lawfully rely on it as primary evidence of the scene depicted in the image, even if multiple copies exist. However, if the photograph is a copy of an original, it cannot be considered primary evidence of the original. In such instances, the original should be produced, or secondary evidence must be justified under Article 76.

31. As in the U.S. and U.K., a photograph can be authenticated by a witness familiar with the scene or object depicted in it. The photographer's testimony is not always necessary.

32. Article 164 of the QSO provides that the court may allow the production of any evidence that becomes available through modern devices or techniques. Digital photographs and electronic evidence are admissible under this provision if their authenticity is established through witness testimony or expert evidence.

33. In the present case, the defence claimed that Rohi TV and the 24-News channel reported the incident and screened a photograph of the police officials with the recovered contraband. In this situation, the

newsreel would be the primary evidence. The photograph produced in the court was not. It was neither the original nor authenticated as secondary evidence under Article 76 of the QSO. A photograph from a media report is inadmissible without proof of its source or creation. The trial court erred in treating it as admissible evidence and marking it as Exh. DA, overlooking its status as secondary evidence requiring authentication. Illustration (a) to Article 74 states that a photograph of an original is admissible only if the original is proven.<sup>8</sup>

34. In conclusion, since the photograph Exh. DA was neither authenticated nor substantiated through secondary evidence, it is deemed inadmissible and is, therefore, de-exhibited.

35. Now, we turn to the second part of the question: whether the statements of PWs Muhammad Iqbal and Karim Nawaz regarding the photograph Exh. DA are admissible. This question must be resolved in light of the principles set out in the QSO.

36. A photograph (or any document) in possession of the cross-examiner may be either admissible or inadmissible. If admissible, it can be introduced into evidence in its own right. Its evidentiary value stems from compliance with the principles of admissibility under the QSO. Articles 70, 71, 139, 140, and 151(3) collectively govern the evidentiary treatment of such material. Articles 70 and 71 permit a witness to testify about matters within their knowledge or perception. If the witness identifies the scene depicted in the photograph and their testimony aligns with their observations, their statements are admissible as direct evidence. Article 139 further allows the defence counsel to use the photograph to challenge the credibility of witnesses by comparing their statements during cross-examination with the scene shown in the photograph. If admitted, the photograph serves as substantive evidence, and Article 140 becomes relevant if it is used to refresh the witnesses' memory. Article 151(3) further allows scrutiny of the witnesses' credibility if inconsistencies or contradictions arise concerning the photograph. In short, when the photograph is authenticated and meets

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<sup>8</sup> Illustration (a) to Article 74 of the QSO reads:

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

the admissibility requirements, subsequent statements of the witnesses, reflecting their personal knowledge, are valid and admissible.

37. Conversely, a different analysis applies if the photograph is inadmissible because it fails to qualify as primary evidence or lacks proper authentication as secondary evidence. Article 70 of the QSO mandates that all facts, except the contents of documents, may be proved by oral evidence, while Article 71 requires that oral evidence must be direct. This restricts a witness to testifying only about facts they have directly perceived. Observations made after being shown an inadmissible photograph do not meet this standard. In such a scenario, the application of Article 139 is limited, as a party cannot contradict a witness using inadmissible material. Similarly, Article 140 becomes irrelevant because an inadmissible photograph cannot serve to refresh memory. While Article 151(3) allows for impeaching the credibility of a witness, the defence cannot rely on inadmissible evidence for this purpose. Accordingly, the court must disregard the photograph and any derivative testimony based on it because admitting such statements would violate the principles of evidentiary integrity.

38. In **R v. Treacy** [1944] 2 All ER 229, the accused was charged with murder. During the trial, the prosecution introduced a statement made by the accused while he was in ill health, explaining why he had left the locality where the killing occurred and expressing fear that his past deeds, including the alleged murder, would be exposed. The prosecution also cross-examined the accused about two forged documents found in his possession, which were neither exhibited nor proved and whose existence was unknown to the defence. It was suggested that these documents were used to deceive the victim, although there was no evidence that the victim had seen them. Additionally, the prosecution contrasted the accused's answers in court with an earlier inadmissible statement he had made. On appeal, it was held that the forged documents were irrelevant and should not have been put to the accused. Moreover, it was deemed improper and prejudicial to cross-examine upon the contents of an inadmissible document.

39. In **R v. Gillespie** (1967) 51 Cr App R 172, the accused were convicted of dishonesty in accounting to their employers for sums of

money less than those recorded in documents prepared by sales staff. The conviction was quashed on the ground that the prosecution, during cross-examination, had asked the accused to read aloud from documents prepared by a member of the sales staff who had not been called to testify. The court ruled that this amounted to an attempt by the prosecution to make inadmissible hearsay evidence admissible by merely putting it to the accused.

40. The principle of law that emerges from the above discussion is that, under the QSO, the admissibility of the statement of a witness regarding a document depends on the admissibility of that document. In the present case, since the subject photograph is inadmissible, the statements made by PWs Muhammad Iqbal and Karim Nawaz concerning it are also inadmissible. These statements do not constitute direct evidence of the fact in issue; they are influenced by the photograph rather than the witnesses' own perception. The photograph's inadmissibility invalidates its use as a basis for questioning, rendering any testimony derived solely from it legally irrelevant. The principle of evidentiary integrity prohibits the court from relying on such derivative testimony.

41. We have already questioned the credibility of the recovery process and expressed doubt about the veracity of the prosecution's case. Consequently, even if the photograph Exh. DA (now de-exhibited) and the related portions of the cross-examination of PWs Muhammad Iqbal and Karim Nawaz are disregarded, it would not bolster the prosecution's case and support a finding of guilt against the Appellant. The positive PFSA report (Exh. PE - Exh. PE/1) is also of no avail to the prosecution.

42. It is a fundamental principle of law that the prosecution must establish its case beyond a reasonable doubt, and any doubt must benefit the accused.<sup>9</sup> This high standard upholds the presumption of innocence and guards against wrongful convictions. Indeed, it is better for the guilty to go free than for one innocent person to be unjustly

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<sup>9</sup> *Bashir Begum v. Safdar Ali and another* (2000 SCMR 1038); *Ghulam Qadir and others v. The State* (2008 SCMR 1221), *Maqsood Alam and another v. The State and others* (2024 SCMR 156); *Muhammad Ijaz alias Billa and another v. The State and others* (2024 SCMR 1507).

punished.<sup>10</sup> The Supreme Court of Pakistan has emphasized that, given the stringent punishments prescribed under the CNSA, courts must exercise extreme caution in such cases, ensuring they are fully convinced that the entire quantity allegedly seized from the accused is indeed a narcotic substance. The guiding principle for the safe administration of criminal justice is that the more severe the punishment, the higher the standard of proof required for conviction.<sup>11</sup> In the present case, the prosecution's evidence is insufficient to meet this standard.

43. The Appellant claimed that he was merely a passenger in the car and had no knowledge of the *charas* concealed in it. He further alleged that the actual driver, Fazal Hussain, was transporting the contraband whom the police released after receiving a bribe. While the Appellant did not produce independent evidence to substantiate this plea, his failure does not absolve the prosecution of its obligation to prove the charge independently. It is a cardinal principle of law that the prosecution must stand on its own legs and cannot rely on weaknesses in the defence case to secure a conviction. In this instance, the prosecution has failed to discharge its burden, so the benefit of the doubt must be extended to the accused.

44. In view of the above, we **accept** Crl. Appeal No.531/2020, set aside the conviction and sentence awarded to the Appellant and acquit him of the charge. He shall be released from jail forthwith if not required in some other case.

**(Muhammad Amjad Rafiq)**  
Judge

**(Tariq Saleem Sheikh)**  
Judge

*Naeem*

Approved for reporting

Judge

Judge

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<sup>10</sup> *Muhammad Akram v. The State* (2009 SCMR 230).

<sup>11</sup> *Ameer Zeb v. The State* (PLD 2012 SC 380); *Ahmed Ali and another v. The State* (2023 SCMR 781).