

[Balochistan]

Before Abdullah Baloch and Iqbal Ahmed Kasi, JJ

SHAUKAT ALI---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 25 of 2025, decided on 14th March, 2025.

(a) Control of Narcotic Substances Act (XXXV of 1997) [as amended by Control of Narcotic Substances (Amendment) Act (XX of 2022)]---

----S. 9(1), Sr. No. 3(a)---Possession and transportation of narcotic substances---Appreciation of evidence---Contradiction in the statements of witnesses---Prosecution case was that the accused was found in possession of 230-grams baked charas---Complainant, in his deposition stated that on 17.07.2023, the appellant was overpowered and his personal search was conducted by him, as a result whereof, 230-grams of baked charas was recovered from his possession and he separated 20-grams charas as representative sample and prepared the parcels---On the contrary, Investigating Officer deposed that he weighed the recovered charas, separated the representative samples and prepared the parcels---Such glaring contradiction in the evidence brought on record by the prosecution against the appellant was not trustworthy to inspire confidence, and it could not be relied upon and could not be made the basis for awarding a sentence---Appeal against conviction was allowed, in circumstances.

(b) Control of Narcotic Substances Act (XXXV of 1997) [as amended by Control of Narcotic Substances (Amendment) Act (XX of 2022)]---

----S. 9(1), Sr. No. 3(a)---Possession and transportation of narcotic substances---Appreciation of evidence---Safe transmission of the recovered substance doubtful---Prosecution case was that the accused was found in possession of 230-grams baked charas--As per prosecution version, after recovery of the alleged contraband material and separation, the representative samples were handed over to a Police Constable for its transmission to the Chemical Examiner, while his name was also appearing in the Forensic Science Laboratory Report, but neither the statement of said Police Constable was recorded under S.161, Cr.P.C nor he was produced before the Court as a witness, thus, inference could easily been drawn that the prosecution had failed to prove the element of safe transmission---As a result, the prosecution failed to prove that the sample parcels were handled carefully and sent securely---Said flaw on the side of the prosecution was enough to give the appellant the benefit of the doubt---Appeal against conviction was allowed, in circumstances.

Javed Iqbal v. The State 2023 SCMR 139; Qaiser Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar 2021 SCMR 363; The State through Regional Director ANF v. Imam Bakhsh and others 2018 SCMR 2039; Ikramullah and others v. The State 2015 SCMR 1002; Amjad Ali v. The State 2012 SCMR 577; Mst. Razia Sultana v. The State and another 2019 SCMR 1300 and Qaiser and others v. The State 2022 SCMR 1641 rel.

(c) Control of Narcotic Substances Act (XXXV of 1997) [as amended by Control of Narcotic Substances (Amendment) Act (XX of 2022)]---

----S. 9(1), Sr. No. 3(a)---Possession and transportation of narcotic substances---Appreciation of evidence---Non-exhibiting report of chemical examiner during trial---Effect---Prosecution case was that the accused was found in possession of 230-grams baked charas---Record reflected that though the report of the Chemical Examiner had been annexed with the record of the Trial Court, however, it was not exhibited during the course of trial---Document could only be exhibited when it was relevant and admissible

in evidence---Prior to exhibition of a document, question of its admissibility must be decided by the Trial Court---Law provided a procedure for exhibiting a document to be read in evidence, which had been blatantly overlooked in the instant case by the Trial Court---Undeniably, the report of Chemical Examiner could not be exhibited during the course of trial, therefore, the same could not be taken into consideration to maintain conviction of the appellant---Appeal against conviction was allowed, in circumstances.

(d) Criminal trial---

---Benefit of doubt---Principle---Single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and enough to extend the benefit of doubt in favour of the accused, not as a matter of grace or concession but as of right.

Najeeb-ur-Rehman for Appellant.

Ameer Hamza Mengal, Additional Prosecutor General for the State.

Date of hearing: 10th March, 2025.

JUDGMENT

IQBAL AHMED KASI, J.--- Through the instant appeal under Section 48 of the Control of Narcotic Substances, Act, 1997 ('the Act of 1997'), appellant Shoukat Ali son of Bachal Khan, has called in question the validity of the judgment dated 08th January, 2025 ("the impugned judgment") passed by the Additional Sessions Judge/Special Judge CNS Awaran ("the trial Court"), whereby, he was convicted under Section 9 (1) (3) (a) of the Control of Narcotic Substances Act, 1997 Amended (Act No.XX of 2022) and sentenced to suffer S.I. for 10 (ten) months, and to pay a fine of Rs.5,000/- (rupees five thousand only), in default whereof, to further undergo S.I. for 30 (thirty) days, with benefit of Section 382-B Cr.P.C.

2. The facts of the case arising out of the instant appeal are that the appellant/accused was arrested in connection with FIR No.09/2023, dated 17.07.2023, lodged at Police Station, Mashkay, under Sections 9(1) 3a of the Control of Narcotic Substances Act, 1997 Amended (Act No.XX of 2022), wherein, complainant, SI, Ghulam, alleged that on the fateful day, he along with other Police officials were on routine patrolling, at about 04:50 p.m. they received spy information that a person, namely, Shoukat Ali (accused) is selling narcotics at Gajjar Bazar near Abdool Hotel. Upon this information, they reached at the pointation of secret informer and saw that a persons was sitting there; when he saw the Police party, tried to run away, but was overpowered. Upon his personal search 230 grams of baked charas from his right side pocket of his wearing shirt, wrapped in a white color plastic/shopper was recovered, hence the FIR was loded.

3. After completion of the usual investigation, challan was submitted before the trial Court and as per procedure, the copies under the provision of Section 265-C Cr.P.C. were provided to the appellant/accused.

4. A formal charge was framed and read over on 28.08.2023 to the appellant/accused, who did not plead guilty and claimed trial.

5. The prosecution was asked to substantiate its case through evidence. In support of its version, the prosecution produced the following witnesses:-

PW-1, SI, Ghulam Muhammad, the complainant of the case, who produced his written report as Ex.P/1-A.

PW-2, Ghulam Sarwar, Constable, the recovery witness, produced recovery memo of 230 grams baked charas as Ex.P/2-A, parcel No. as Article P2/1, Sample seal parcel as Art.P2/2 and recovered 230 grams charas as Art.P2/3.

PW-3, Kifayatullah, Head Constable, is the witness of safe custody.

PW-4, ASI, Muhammad Rahim, is the Investigating Officer, who produced FIR, site map and challan as Ex.P/4-A to Ex.P/4-C.

6. On closure of prosecution side, the statement of appellant/accused was recorded under Section 342 Cr.P.C., wherein, he once again denied the allegations of the prosecution levelled against him and pleaded his innocence. However, the appellant/accused neither recorded his statement under Section 340(2) Cr.P.C. nor led any witness in his defence.

7. After hearing arguments from both sides, the learned trial Court, vide impugned judgment, convicted and sentenced the appellant/accused in a manner mentioned in para supra, hence this appeal.

8. Learned counsel for the appellant inter alia contended that the judgment impugned is based on misreading and misappreciation of evidence available on record; that the prosecution has failed to prove the charge against the appellant beyond shadow of reasonable doubt; that the reasoning offered by the trial Court in the judgment impugned are perverse and contrary to record; that the trial Court has failed to apply its judicious mind, while passing conviction and sentence to the appellant through the impugned judgment, which is not maintainable and liable to be set aside.

9. On the contrary learned State Counsel, while opposing the contentions of the learned counsel for the appellant argued that the appellant was arrested with contraband material, which was proved to be a charas after chemical analysis by the expert; that the prosecution has no ill-will to falsely implicate the appellant with the commission of the alleged offence; that the trial Court has rightly found the appellant guilty of the charge on the basis of evidence and material available on record; that there is no contradictions in the statements of prosecution witnesses and they succeeded to establish the chain in the case in hand, thus, the conviction and sentence awarded to the appellant through impugned judgment, needs no interference by this Court.

10. We have heard the learned counsel for the parties and have gone through the available record with their able assistance. It is discernible from the record that on the report of PW-1, the instant FIR was lodged and the appellant/accused was arrested with the allegation of recovery of 230 grams of baked charas from his possession. To substantiate the accusation against the appellant, the prosecution produced four witnesses. It appears from the testimony of prosecution witnesses that the prosecution allegation with regard to recovery of the contraband material from the possession of the appellant/accused is doubtful, as the PW-1, Ghulam Muhammad, SI, in his deposition before the Court stated that on 17.07.2023, the appellant/accused was overpowered and his personal search was conducted by him, as a result whereof, 230 grams of baked charas was recovered from his possession and he separated 20 grams charas as representative sample and prepared the parcels No.1 and No.2, whereas, on the contrary, the PW-4, deposed that he weighed the recovered charas, separated the representative samples and prepared the parcels. Such glaring contradiction in the evidence of two prosecution witnesses prove that the evidence brought on record by the prosecution against the appellant is not trustworthy and inspires confidence, and it cannot be relied upon and cannot be made the basis for awarding a sentence. Not only this, but it also proves that the entire case is cooked up at the police station and proves the case of prosecution as doubtful. Perusal of the above-referenced evidence shows that both the witnesses are not on the same or on one line with each other on material point with regard to the alleged recovery, which creates doubt regarding the authenticity of the prosecution evidence.

11. Moreover, as per prosecution's version, after recovery of the alleged contraband material and separation, the representative samples were handed over to one Sarfaraz Ahmed, C-56 for its transmission to the chemical examiner, while his name is also appearing in the FSL report, but neither the statement of said Sarfaraz Ahmed was recorded under Section 161, Cr.P.C. nor he was produced before the Court as a witnesses, thus, inference could easily been drawn that the prosecution has failed to prove the element of safe transmission. It is the prosecution's responsibility to establish each and every step, starting with the stage of recovery and continuing through the creation of sample packets, safekeeping of sample parcels, and secure transportation of sample parcels to the relevant laboratory. The prosecution must prove this linkage, and if any links are absent in similar acts, the accused must have received the benefit of the doubt. As a result, the prosecution failed to prove that the sample parcels were handled carefully and sent securely. This flaw on the side of the prosecution is enough to give the appellant the benefit of the doubt. We have

been guided by the case of "Javed Iqbal v. The State, 2023 SCMR 139, the relevant portion of the judgment is reproduced as under:-

"We have heard the learned counsel for the appellant, learned Additional A.G. KP, perused the record and observed that in this case, the recovery was effected on 18.12.2013 and the sample parcels were received in the office of chemical examiner on 20.12.2013 by one FC No.1007 but the said constable was never produced before the Court. Even the Moharrar of the Malkhana was also not produced even to say that he kept the sample parcels in the Malkhana in safe custody from 18.12.2013 to 20.12.2013. It is also shrouded in mystery as to where and in whose custody the sample parcel remained. So the safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend benefit of doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused."

12. A similar law point has been discussed and observed by the Hon'ble Supreme Court of Pakistan in the cases of "Qaisar Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar" 2021 SCMR 363, "The State through Regional Director ANF v. Imam Bakhsh and others" 2018 SCMR-2039, "Ikramullah and others v. The State" 2015 SCMR-1002 and "Amjad Ali v. The State" 2012 SCMR 577. In the cases cited above, the Honourable Supreme Court of Pakistan determined that in a case containing the defect mentioned above on the part of the prosecution, it cannot be said with any degree of certainty that the prosecution has established its case against the accused beyond a reasonable doubt.

13. In the case of "Mst. Razia Sultana v. The State and another, 2019 SCMR 1300), the Hon'ble Supreme Court observed following:-

"At the very outset, we have noticed that the sample of the narcotic drugs was dispatched to the Government Analyst for chemical examination on 27.2.2006 through one Imtiaz Hussain, an officer of ANF but the said officer was not produced to prove safe transmission of the drug from the Police to the chemical examiner. The chain of custody stands compromised as a result it would be unsafe to rely on the report of the chemical examiner. This Court has held time and again that in case the chain of custody is broken, the Report of the chemical examiner loses reliability making it unsafe to support conviction. Reliance is placed on State v. Imam Bakhsh 2018 SCMR 2039). 3. For the above reasons the prosecution has failed to establish the charge against the appellant beyond reasonable doubt, hence the conviction and sentence of the appellant is set aside and this appeal is allowed, setting the appellant at liberty unless required in any other case. 10. In another case of Zahir Shah alias Shat v. The State through Advocate General, Khyber Pakhtunkhwa (2019 SCMR 2004), Honourable Supreme Court has held as under:- 6 2. We have reappraised the evidence with the able assistance of learned counsel for the parties and have noticed at the very outset that the Police constable, bearing No.FC-688, who delivered the sealed parcel to the Forensic Science Laboratory, Peshawar on 27.2.2013 was not produced by the prosecution. This fact has been conceded by the learned law officer appearing on behalf of the respondents. This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspecting, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. Reliance is placed on State v. Imam Bakhsh (2018 SCMR 2039). 11. Recently the Honourable Supreme Court of Pakistan in the case of Qaiser and another v. The State (2022 SCMR 1641), has observed that "In absence of establishing the safe custody and safe transmission, the element of tempering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative

samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001, rests upon the report of the analyst. It is prosecution's bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the representative samples, makes the report of chemical examiner worthless and un-reliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner."

14. In a recent case, "Qaiser and others v. The State" 2022 SCMR 1641, the Hon'ble Supreme Court of Pakistan, in the paragraph No. 4 of the judgment said as under:-

"In absence of establishing the safe custody and safe transmission, the element of tempering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001 rests upon the report of the analyst. It is prosecution's bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the representative samples, makes the report of chemical examiner worthless and unreliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner."

15. All these facts and circumstances prove that the entire case was cooked up at the Police Station, and these facts establish the case of the prosecution as highly doubtful. As such, in the presence of these irregularities and recklessness, mere evidence of Police witnesses cannot be relied upon and cannot be made the basis for awarding a sentence.

16. Apart from above, perusal of the record available on the file further reflects that though the report of the chemical examiner has been annexed with the record of the trial Court, however, it was not exhibited during the course of trial.

17. A document can only be exhibited when it is relevant and admissible in evidence. Prior to exhibiting a document, question of its admissibility must be decided by the trial court. Exhibit is a noun, which is earmarked for a document to be produced in evidence and given nomenclature by using alphabets or numbers for identification. In Black's Law Dictionary Eighth Edition, term 'exhibit' has been defined as infra:-

"A document, record, or other tangible object formally introduced as evidence in court."

Similarly in Chambers English Dictionary, word 'exhibit' has been defined as under:-

"a document or object produced in court to be used as evidence."

The law provides a procedure for exhibiting a document to be read in evidence, which has been blatantly overlooked in the instant case by the learned trial Court. The learned trial Court is under the bounden duty to see that the law with regard to exhibiting a document in the Court has been followed in its true letter and spirit. Where a document consists of more than one page, every page should be labelled and duly signed by the learned trial Court as envisaged under the Rules. In the instant case, undeniably, the report of chemical examiner could not be exhibited during the course of trial, therefore, the same cannot be taken into consideration to maintain conviction of the appellant. In the aforementioned circumstances, when no report of chemical examiner could be exhibited during the course of trial to be read

in evidence, recovery of entire narcotic substance allegedly recovered from the appellant becomes inconsequential, thus, prosecution case falls to ground.

18. It is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and enough to extend the benefit of doubt in favour of the accused, not as a matter of grace or concession but as of right.

19. In the circumstances discussed above, this Court is fully convinced that the prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. Therefore, we in our short order dated 10.03.2025, allowed the instant appeal and as a consequence whereof the conviction and sentence recorded by the learned trial Court were set aside and while extending the benefit of doubt, the appellant was acquitted of the charge. He was is directed to be released forthwith if not required, to be detained, in any other criminal case.

These are the reasons of our short order dated 10.03.2025.

JK/51/Bal.

Appeal allowed.