JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JAIL APPEAL NO.217 OF 2024

HANEEF AHMED.

Versus

THE STATE.

Appellant by	**:**	**Ms. Hira Ashraf, Advocate.** **Faisal Bin Khursheed, Advocate.**
Respondent by	**:**	**Muhammad Wajid Munir, Deputy District Public Prosecutor.** **Muhammad Imran S.I, P.S. Khanna**
Date of hearing	**:**	**07.05.2025.**

SAMAN RAFAT IMTIAZ, J.

1. This Criminal Appeal has been filed by the Appellant [Haneef Ahmed s/o Rasheed Ahmed] against the Judgment dated 08.05.2024 ("**Impugned Judgment**") passed by the learned Judge Special Court, (CNSA), Islamabad, whereby the Appellant has been convicted under Section 9(1)(6)(c) of the Control of Narcotic Substances Act, 1997 (CNSA, 1997) in the case of FIR No.614/2023 dated 05-07-2023 registered at P.S. Khanna, Islamabad and sentenced to undergo ten (10) years rigorous imprisonment with fine of Rs.125,000/- (One hundred and twenty five thousand rupees) and in default whereof to undergo further three (03) months simple imprisonment.

2. The facts of the case, as per the FIR are that on 05-07-2023 the Complainant [Tanveer Hussain Kayani S.I, P.S. Khanna, Islamabad] along with other officials was on patrolling duty at Lehtrar Road near Sanam Square in a private vehicle when they received spy information that a person with huge quantity of narcotics was standing waiting for customer who could be apprehended successfully if raid is conducted in a timely manner. The Complainant along with the other police officials, acting on spy information, reached Burma Town Street near Chappar Hotel at about 06:50 p.m., where a

suspicious person after seeing the police party tried to escape but was apprehended with the help of accompanying officials. On interrogation, he disclosed his name and address as Haneef Ahmed son of Rasheed Ahmed, Caste Rajpot Bhatti, resident of Chak No. 28R Mirzapur, Tehsil Mian Channu, District Khanewal. Upon his personal search, as per procedure, Heroin Powder of light brown color wrapped in a blue colored shopper bag held by the Appellant in his left hand was recovered. On weighing with electric scale, the Heroin Powder was found to be 1025 grams. Out of the recovered Heroin Powder 1 gram was separated for chemical analysis. The Complainant prepared two parcels i.e. one sample parcel and other of remaining narcotics with seal of "MT" and took the same in possession vide the Recovery Memo.

3. After completion of investigation, challan was submitted against the Appellant. The charge was framed on 12-10-2023. The Appellant pleaded 'not guilty' and claimed trial. The prosecution examined five witnesses and exhibited certain documents and items before closing their evidence. The statement of the Appellant was recorded under Section 342, Cr.P.C. in which he denied all the allegations leveled against him.

4. The learned counsel for the Appellant pointed out that while the FIR as well as the memo of recovery described the Heroin Powder as 'light brown' the Forensic Report describes it as 'off-white' powder. Furthermore, she submitted that admittedly the samples were sent for forensic after a delay of five days as evident from the evidence of PW-4, whereas Rule 4(2) of CNS (Government Analysts) Rules, 2001 provides that Forensic must be conducted within 72 hours. She relied upon *Ahmed Ali and another vs. The State*, 2023 SCMR 781 to submit that where transmission is not made within 72 hours the prosecution fails to establish safe transmission. She submitted that even otherwise safe transmission is not established, as Moharrar Malkhana/PW-4 stated in his cross examination that he handed over the sample parcel to Tanveer Hussain Kayani S.I. for onward transmission and submission in NFSA whereas PW-05/I.O stated in his examination in chief that he collected the sample parcel from Moharrar Malkhana and handed it over to Tanveer Hussain Kayani S.I. She also pointed out that PW-2 stated in his examination in chief that the Moharrar Malkhana

handed over the parcel to him which bore stamp/seal of "MT" for transmission to NFSA, whereas the seal should be of "TH". Last but not least, she submitted that the blue coloured shopper bag from which the Heroin Powder was allegedly recovered was not exhibited separately, which according to the learned counsel for the Appellant is grounds for acquittal. She also relied upon *Asif Ali and another vs. The State through Prosecutor General Punjab,* 2024 SCMR 1408.

5. On the other hand, the learned Special Prosecutor CNSA submitted that in the cross examination of PW-5 he has explained that the sample parcel was submitted to NFSA on the 5th day of the occurrence and voluntarily stated that there were two days official holidays of Saturday and Sunday i.e. 8th and 9th July, 2023 in between, therefore, there was no delay according to him and even otherwise such delay is inconsequential as Rule 4(2) of CNS (Gov. Analysts) Rules, 2001 is merely directory and not mandatory.

6. In rebuttal, the learned counsel for Appellant submitted that the alleged occurrence took place on 5-7-2023 which was Tuesday and the official holidays of Saturday and Sunday were beyond 72 hours period.

7. We have heard the learned counsel for Appellant as well as the learned Special Prosecutor, CNSA, and have also perused the record.

Ocular evidence

8. PW-1 [Muhammad Irshad]; PW-2 Tanveer Hussain Kiyani/Complainant]; and PW-3 [Abdul Basit] testified that on 05-07-2023 the police party present at Lehtrar Road near Sanam Square for the purpose of patrolling received spy information about a person in possession of huge quantity of narcotics waiting for customers and that they apprehended the Appellant from Burma Town Street near Chappar Hotel at around 6:50 p.m. while acting on such spy information and recovered 1025 grams of heroin from a blue coloured shopper bag held by the Appellant in his left hand. PW-2 [Tanveer Hussain Kiyani/Complainant]; PW-4 *Moharrar Malkhana* [Muhammad Saeed]; and PW-5 [Zahid Hussain/IO] also testified regarding safe custody and safe transmission of the recovered narcotics and sample to the *Malkhana* and of the sample parcel from the *Malkhana* to the

National Forensic Science Agency ("NFSA"). The prosecution witnesses fully corroborated each other.

Alleged discrepancy in ocular evidence

9. There is no material discrepancy between the evidence of the PW-3, PW-4 and PW-5 as alleged by the learned counsel for the Appellant. The *Moharrar Malkhana*/PW-4 stated in his cross examination that he handed over the sample parcel to Tanveer Hussain Kayani S.I./PW-2 for onward transmission to NFSA on the direction of I.O. Zahid Hussain Shah S.I./PW-5. Similarly, Tanveer Hussain Kayani S.I/PW-2 also stated that the Moharrar Malkhana/PW-4 handed over the sample parcel to him for onward transmission to NFSA on the direction of I.O. Zahid Hussain Shah S.I./PW-5. I.O. Zahid Hussain Shah S.I./PW-5 stated that he collected the sample parcel from the Moharrar Malkhana/PW-4 and handed it over to Tanveer Hussain Kayani S.I./PW-2. Minor variation in witness testimony, which is natural, does not make recovery doubtful or vitiate the trial[1].

10. Similarly, the objection regarding the seal is immaterial given that PW-3 admitted that he stamped the parcels with the seal of "MT" and PW-4 testified that he received parcels bearing the stamp of "MT" and PW-5 also confirms receipt of case property sealed with stamp "MT" notwithstanding that "MT" are not PW-3's initials.

11. All PWs were subjected to cross-examination but they remained consistent in all material aspects like date, time, place, manner and quantity of recovery of narcotics from the Appellant[2] and nothing came to light to suggest that the Appellant was falsely implicated in the case.

12. Police officials are as good as private witnesses as the provision of Section 103, Cr.P.C. is not applicable to cases under CNSA, 1997 by virtue of Section 25 thereof and their testimony cannot be discarded merely for the reason that they are police officials unless accused persons prove their mala fide or ill-will toward the accused[3]. The Appellant in the instant case has not even alleged any enmity

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[1] *Akbar Vs. The State*, 2017 YLR Note 277; *Wisal Miuhammad Vs. The State*, 2006 YLR 2504

[2] *Qasam Khan Vs. The State*, 2024 YLR 1882; *Rafaqat Ali Vs. The State*, 2016 YLR 2173; *Allah Ditta Vs. The State*, 2018 YLRN 9

[3] *Shahzad alias Kalay Khan Vs. The State*, 2020 YLR 1719

of the police officials against him let alone prove it. The reason for the registration of the case and deposition of the PWs against the Appellant given by him in his statement under Section 342, Cr.P.C. is to show their efficiency to the high ups, however, the Appellant failed to show any pressure on the police or any other cause to show that they were under any compulsion to show such efficiency that too by false implication against someone with whom they have no enmity. In similar circumstances the Lahore High Court in *Muhammad Tanveer Vs. The State*, 2008 MLD 602 repelled such argument by observing that it was not shown as to why the police would make fake recovery just to show efficiency by planting a huge quantity of 1050 grams of heroin, the value of which runs into lacs of rupees when the police could show it by planting lesser quantity of heroin or some other narcotic substance of cheaper value.

Forensic Report

13. The recovered substance was produced as Ex. P1 and the forensic report dated 15-8-2023 produced as Ex-PE confirms that the substance was indeed heroin powder[4].

Variation in color of recovered substance as per FIR and Forensic Report

14. We do not consider the alleged variation between the FIR and the Forensic Report in respect of the colour of the recovered substance to be of any consequence. The FIR has been registered in Urdu which describes the recovered substance as *"ہلکا براؤن"*. The Recovery Memo has also been recorded in Urdu which too describes the recovered substance as *"ہلکا براؤن"*. The Forensic Report which is in English describes the substance as 'off-white' in color. The learned counsel for the Appellant was asked to translate off-white in Urdu but she could not come up with an exact equivalent. On the other hand, the color 'off-white' is defined in the Concise Oxford English Dictionary, Eleventh Edition as a white color with a grey or yellowish tinge. In our opinion, the aforementioned Urdu word used in the FIR to describe the colour of the recovered substance can, for lack of a better alternative in the Urdu language, serve to loosely describe the colour 'off-white' as well. Therefore, this cannot be concluded as a material

[4] *Muhammad Khan Vs. The State*, 2008 SCMR 1616

contradiction especially considering that safe transmission is otherwise established and no question regarding this aspect was put to the PWs in cross-examination.

Delay in transmitting recovered substance for forensic analysis

15. As far as the requirement under Rule 4(2) of CNS (Government Analysts) Rules, 2001 is concerned the Superior Courts have generally considered that sending a narcotic substance for forensic beyond a period of 72 hours does not vitiate the trial as the direction contained in the said rule is directory and not mandatory in nature[5]. In fact the Supreme Court has held in *Zain Ali vs. The State*, 2023 SCMR 1669 that the CNS Rules, 2001 do not place any bar on the Investigating Officer to send the samples within a specified period of time and that the rules are *stricto sensu* directory and not mandatory as it does not spell out as to whether in case of lapse it would automatically become instrumental in discarding the whole prosecution case and finally that the rules cannot control the substantive provisions of the parent act and cannot in any manner frustrate the salient features of the prosecution case.

16. Even the case relied upon by the Appellant i.e. *Ahmed Ali (Supra)* does not hold otherwise. Though it emphasizes that the analyses of the narcotics substance should not be delayed in reference to the fact that Courts refuse to extend remand beyond 15 days in the absence of a chemical report however acquittal in such case has not been granted on account of delay in sending the narcotics substances for chemical testing.

17. In the instant case, the alleged recovery was admittedly made at 6:50 pm on 5-07-2023, which was a Wednesday (not Tuesday as argued by the learned counsel for the Appellant). Thus 72 hours expired at 6:50 pm on 8-07-2023 which was a public holiday on account of being Saturday. The samples were sent for forensic on the following Monday which was the first working day after the two public holidays and as such there was no delay.

Blue-colored shopper bag

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[5] *Kashmaloo vs. Kabil Khan*, 2024 P.Cr.L.J 174, *Najeebullah vs. State*, 2022 YLR 1222, *Ella-ud-Din vs. State*, 2017 YLR 113.

18. The learned counsel for the Appellant relied upon *Ahmad Ali (Supra)* to argue that a reasonable doubt is created in the case due to the prosecution's failure to separately exhibit the blue colored shopper bag from which the alleged narcotic was recovered. We, however, do not agree with the learned counsel for the Appellant that an inference can be drawn from the judgment rendered by the Supreme Court in *Ahmad Ali (Supra)* that failure to *separately* exhibit the blue colored shopper bag from which the substance in question was recovered creates reasonable doubt in the instant case.

19. The point at issue in *Ahmad Ali (Supra)* was the effect of the prosecution's failure to produce case property i.e. (a) the recovered *charas* and (b) the vehicle from the secret cavities of which the narcotic was recovered. In light thereof the Supreme Court considered why and under which provisions of law the case property is liable to be produced at trial.

20. To this end the Supreme Court examined Rule 22.16 of the Police Rules, 1934 which deals with seizure of case property by the police and Rule 22.18 which discusses custody of property and various other rules which provide a mechanism for safe custody and safe transmission of case property to the concerned laboratory and then to the trial court. The judgment also adverted to Section 516-A, Cr.P.C. which deals with orders pending trial in certain cases for custody and disposal of property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence to highlight that samples of property which are found fit for safe custody and production before the Court are to be produced before the trial court and shall be deemed to be the whole of the property if remaining portion is destroyed under a certificate to be issued by the court that the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance. More importantly, for purposes of our discussion, the Supreme Court adverted to the Lahore High Court Rules and Orders (Civil and Criminal) ("**High Court Rules and Orders**") and particularly Part-B of Chapter 24 of Volume 3 which deals with the trial of the Sessions cases to hold that clothes, weapons, money, ornaments, food and every other article that forms part of circumstantial evidence has to be produced in court and their connection with the case and identity should be proved by witnesses.

21. Based on, *inter alia*, the aforementioned provisions of law the Supreme Court held that when the best evidence i.e. the case property/narcotics, vehicles, etc. is withheld by the prosecution without plausible explanation an adverse inference or assumption can be drawn against the prosecution under Article 129-G of the Qanun-e-Shahdat Order, 1984 that no such material/narcotics is in existence. Therefore it was held that where the narcotics and the vehicle *which form the case property* are not produced in evidence a reasonable doubt is introduced the benefit of which must go to the accused.

22. There is no gainsaying that where the accused is alleged to be in possession of a narcotic drug or psychotropic or controlled substance the commission of such offence cannot be proved without producing the alleged substance in Court as recovery in narcotic cases is not merely a corroboratory piece of evidence rather itself constitutes the charge and entails punishment[6].

23. Similarly, Courts have consistently held that non-production of the vehicle from which the narcotics are allegedly recovered is fatal for the prosecution case[7]. The Supreme Court in *Ahmad Ali (Supra)* identified Rule 14-F contained in Part B of Chapter 24 of Volume-3 of the High Court Rules and Orders as the provision of law under which the case property such as the vehicle from which the narcotics are recovered is liable to be produced at trial.

24. Relying upon *Ahmad Ali (Supra)* another Division Bench of this Court comprising one of us (Mohsin Akhtar Kayani J.) has already held in an unreported judgment dated 3-4-2024 passed in *Awais Khan Vs. The State*, Criminal Appeal No. 345 of 2023 that the principle behind producing the vehicle from which narcotics are recovered is equally applicable where narcotics were carried by the accused persons in a shoulder or shopping bag.

25. Therefore, let us consider Rule 14-F which is reproduced herein below:

> *"14F Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses."*

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[6] *Muhammad Akhtar Vs. The State*, 2022 PCr.LJ 1233; *Muhammad Nawaz Vs. The State*, 2019 MLD 1574

[7] *Asad Vs. The State*, 2021 YLR 254; *Usman Shah Vs. The State*, 2022 YLR 821; *Ghulam Nabi Shah Vs. The State*, 2020 YLR 2127; *Nasir Iqbal Vs. The State*, 2020 PCr.LJ 1410; *Abdullah Shah Vs. The State*, 2008 PCr.LJ 1633

Rule F *ibid* can be divided into the following three components:

(a) Clothes, weapons, money, ornaments, food and *every article which* forms a part of circumstantial evidence should be produced in court,

(b) The connection of such article(s) with the case and

(c) Their identity should be proved by witnesses. [Emphasis added].

Circumstantial evidence

26. 'Circumstantial evidence' as described in *Syed Khalid Mehmood Vs. The State,* 1994 P.Cr.LJ 757 is evidence from which disputed facts may be inferred as a natural or probable conclusion. It was explained by Robert L. Donigan, Edward C. Fisher, Robert H. Reeder and Richard N. Willams in *The Evidence Handbook* that circumstantial evidence is proof of facts from which the existence of other facts may logically be inferred. It was further explained that the essence of circumstantial evidence is a logical inference from facts or circumstances established by direct[8] or real[9] evidence, or both, from which the main fact in issue may be deduced through the exercise of reason and the common experiences of mankind[10]. In *Bichitrananda Nath Vs. State of Orissa*, 2022 Latest Caselaw 6213 Ori, the High Court of Orissa observed that the term 'circumstantial evidence' is defined by Richard Glover and Peter Murphy in *Murphy on Evidence* (Thirteen Edition) as evidence from which the desired conclusion may be drawn which requires the tribunal of fact not only to accept the evidence presented but then to draw an inference from it. The judgment further observed that term 'circumstantial evidence' in India was used by Sir James Stephen for the first time stating that these facts depend on other facts and exists if it is proved that the other fact existed. This means that the inference is drawn according to the reasonable prudent man based upon pre-existing fact that has already been proved.

27. The Supreme Court of India in *Anant Chintaman Lagu v. State of Bombay,* AIR 1960 SC 500 defined circumstantial evidence to mean a combination of facts creating a network from which there is no escape for the accused because the facts taken as a whole do not admit of any inference but of his guilt. As

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[8] *People v. Christiansen*, 118 Ill.App.2d 51; *State v. Baker*, 249 Or. 440
[9] *Gass v. United State*, 416 F.2d 767
[10] *People v. Robinson*, 14 Ill.2d 325; In re Dilios' Will, 156 Me. 508; *Webb v. State*, 140 Tenn. 205

expressed by the Tennessee Court of Criminal Appeals in the case of *Hick v. State,* 490 S.W.2d 174, 178 in circumstantial evidence cases single facts, of themselves, may each account for little weight but when all the facts and circumstances are put together they may unerringly point the finger of guilt to the defendant beyond a reasonable doubt. Similarly, *Bichitrananda Nath (Supra)* further explained that circumstantial evidence does not establish complete guilt until every evidence is negating the innocence of the accused. The whole chain of fact and circumstance of the case should be so complete that from the same the existence of principal fact can legitimately by inferred or presumed and no suspicion or conjecture comes in the minds of the Court regarding the guilt of the accused when he can be convicted on the basis of circumstantial evidence. In a case of circumstantial evidence all the pieces comprising the circumstantial evidence must constitute a chain without any missing link with the combined effect that the guilt is established beyond a shadow of doubt[11].

28. One of the links to join in the chain of circumstantial evidence could be incriminating articles that are used for or in the commission of the offence[12] including the receptacle used to contain the substance in a narcotics case. Thus a vehicle from which narcotics are recovered may form a piece of circumstantial evidence from which guilt of the accused may be inferred.

Connection of the article forming part of the circumstantial evidence with the case.

29. The connection of the article (example, vehicle or receptacle) being produced as part of circumstantial evidence must be proved with the accused by witnesses[13]. John Henry Wigmore in *Anglo-American System of Evidence in Trials at Common Law* (Third Edition) Volume 1 quotes Peterson, J in *Smith & Ogden's Trial*, Lloyd's Rep. 82 that evidence which is offered to the court must be pertinent to the issue or in some proper manner connected with it for it would be an endless task and create inextricable confusion if parties were to give in evidence whatever wild imagination might suggest and the law would become labyrinth and a bottom less pit.

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[11] *Sh. Muhammad Amjad Vs. The State*, PLD 2003 SC 704; *Muhammad Hussain Vs. The State*, 2011 SCMR 1127
[12] *Naveed Asghar Vs. The State*, PLD 2021 SC 600; *Gul Mir Vs. The State*, 2021 YLR 2041
[13] *Bangal Khan Vs. The State*, 2024 PCr.L.J 1241; *Sarwar Shah Vs. The State*, 2023 YLR 1997; *Abdul Qadir Vs. The State*, 2015 PCr.L.J 235; *Taj Akbar Vs. The State*, 2011 PCr.L.J 90

30. The evidence sought to be produced must have some probative force to connect the accused with the commission of the offence[14]. Probative force is defined by Justice Holmes in *Words and Phrases* Volume 34 (Permanent Addition) as the tendency to make existence of any fact of consequence more or less probable than it would be without the evidence. For example, clothes worn by the accused during the commission of the offence do not necessarily have probative value in every case. But in *Muhammad Waseem Vs. The State*, Criminal Appeal No. 111 of 2024 where the accused was allegedly carrying narcotics in his *shalwar* pocket, another Division Bench of this Court comprising one of us (Mohsin Akhtar Kayani J.) held by way of an unreported judgment dated 22-7-2024 that the failure to produce the secret pocket of the *shalwar* as well as the shopper-wrapping was an infirmity in the prosecution case by holding that the failure to exhibit any type of container from which the narcotics were recovered nothing but a material omission.

Identity of the article forming part of the circumstantial evidence

31. Last but not least, the identity of the article sought to be produced as forming part of circumstantial evidence must be proved by witnesses. In *Naveed Asghar Vs. The State*, PLD 2021 SC 600 the recovery of the motorcycle was found completely deficient as an incriminatory piece of circumstantial evidence to connect the accused with the commission of the offence as no specification thereof i.e. its make, colour, power, or registration number was mentioned in the FIR nor was any chemical examination conducted to ascertain whether the blood stain on the seat cover was human blood and whether it matched with the blood of any of the deceased or accused person.

Failure to produce receptacle/packaging

32. Now that we understand why and under which provision of law a vehicle, and by analogy a receptacle or packaging, from which narcotics are recovered is to be produced let us consider whether the failure to produce the shopper bag colloquially referred to as 'shopper' from which the substance was allegedly recovered creates a reasonable doubt in respect of the prosecution case. It must be borne in mind that circumstantial evidence only lends credence to the other

[14] *Naveed Asghar Vs. The State*, PLD 2021 SC 600

pieces of evidence[15]. Such evidence is always taken in aid of direct evidence[16]. The recovery of incriminating articles provides corroboration to the ocular testimony[17] therefore both have to be considered simultaneously[18]. The requirement of corroboration depends on the facts and circumstances and the nature of each case; if the evidence does not suffer from any major or significant contradiction, corroboration is not insisted upon[19].

33. In the *State of U.P. Vs. Krishana Gopal*, AIR 1988 SC 2154, the Supreme Court of India explained that eye witness account requires careful, independent assessment and evaluation for its credibility. The judgment cautioned that the ocular account should not be adversely pre-judged by making any other evidence the sole test for the credibility of eye-witness account. Rather such evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit worthy; consistency with the undisputed facts; the performance of the witnesses in the witness box; their power of observation, etc. It is then that probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

34. The Baluchistan High Court in *Gul Mir Vs. State*, 2021 YLR 2041 observed that it is needless to mention that an ocular account not supported by independent evidence shall not be relied upon on the basis of recovery of incriminating articles and therefore the effect of absence of incriminating article can also be treated vice versa and in case the same was not recovered the same shall not outweigh the ocular account.

35. Indeed, this Court in *Muhammad Waseem (Supra)* held that not exhibiting appellant's *shalwar* from which the narcotics were allegedly recovered nor the shopper-wrapping over the drugs when viewed *along with* the other infirmities in the prosecution case can fall substantially short of the standard of proof requisite in criminal trials of offences with severe sentences. Similarly, the Supreme Court made note of various discrepancies and infirmities in the prosecution evidence in *Amjad Ali Vs. The State,* 2012 SCMR 577 including that admittedly

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[15] *Asmatullah Vs. The State*, 2023 YLR Note 8
[16] *Zafran Vs. The State*, 2024 YLR 2193
[17] *Imran Ashraf Vs. The State*, 2001 SCMR 424
[18] *Imran Ashraf Vs. The State*, 2001 SCMR 424
[19] *Raz Muhammad Vs. The State*, 2023 PCr.LJ Note 11

the case property i.e. the stepney of the car was never produced during trial to verify as to whether it could contain 20 kilograms of charas. The aforementioned elements of doubt cumulatively led the Supreme Court to hold that the prosecution failed to prove its case beyond reasonable doubt to sustain conviction.

36. In short, the effect of the failure to produce in evidence the receptacle or the packaging from which the narcotics are recovered may vary from case to case.

Separate Exhibit

37. Coming back to the case at hand, it must be borne in mind that the Appellant has not denied that the blue coloured shopper bag was produced in evidence. The objection raised on behalf of the Appellant is that the blue colored shopper bag was not exhibited separately. *Ahmad Ali (Supra)* does not advance the case of the Appellant as it involved a vehicle whereas the instant case involves the packing material without which the alleged substance which was in powder form could not have been exhibited separately unless the evidence shows that it was taken out of its original container and transferred to another container.

38. Indeed the International Association of Chiefs of Police in its Training Key on *Handling and Processing Narcotics Evidence* available at https://www.theiacp.org/sites recommends that the evidence should be left in its original container and marked and sealed for transportation to the police property and evidence room. In the event that the evidence must be removed from its original container the container should be included with the evidence and if that is not possible it should be photographed and the photograph included in the evidence.

39. Examination of the record shows that the Memo of Recovery produced as Ex-PA categorically notes that during the personal search of the Appellant as per procedure heroin powder wrapped in a blue coloured shopper bag held by the Appellant in his left hand was recovered *out of which* 1 gram heroin was taken for the purpose of chemical analysis. Tanveer Hussain Kayani S.I/PW-2 testified that 1 gram heroin was separated by him *from* the heroin recovered from the blue coloured shopper bag which the Appellant was holding in his left hand and two

sealed parcels were prepared (one sample and another of remaining narcotic/heroin Ex-P1). The foregoing facts were confirmed by PWs No. 1 and 3 in their respective examination-in-chief. PW 1 and 2 submitted on cross-examination that the sample was separated *from* the recovered narcotics with spoon which was in the investigation kit. PW-4 [Muhammad Saeed] confirmed that he received two sealed parcels which were placed in safe custody of the *Malkhana* and that they remained intact during his custody. No question was raised in cross-examination as to whether the recovered substance was taken out of its original container or that the blue coloured shopper bag was not produced in evidence as part of Ex.P1.

40. Therefore, the evidence does not indicate that the recovered substance was taken out of its original container except for the representative sample to be sent for chemical examination. In fact, the recovered substance was sealed in the blue colored shopper bag and marked Ex-P1 *after* taking out the sample from it which was sealed in a separate parcel.

41. The standard for the prosecution to meet in criminal cases is to prove the charge beyond reasonable doubt. In the case of *Gurbachan Singh Vs. Satpal Sindh*, AIR 1990 SC 209 the Supreme Court of India explained that the doubt must be of a reasonable man (which for the sake of gender neutrality we will read as reasonable person). In other words the standard adopted must be the standard adopted by a prudent man (read person) that may vary from case to case and circumstances to circumstances, however, the Court cautioned that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions thereby making the justice system sterile. The Supreme Court of India further explained that reasonable doubt is simply that degree of doubt which would permit a reasonable and just man (read person) to come to a conclusion. Reasonableness of doubt must be commensurate with the nature of the offence to be investigated.

42. Under the circumstances in our opinion no reasonable prudent person can doubt that the prosecution failed to prove the charge of possession of narcotics against the Appellant merely because of the failure to separately exhibit the receptacle or packaging i.e. the blue colored shopper bag from which the narcotics were recovered.

43. In view of the foregoing the Appellant has failed to make out a case warranting interference in the judgment as such the instant appeal is **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on the 30th of June, 2025.

JUDGE **JUDGE**

JUNAID

Approved for Reporting
Blue Slip added.