IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 33 OF 2024

(On appeal from the judgment of the High Court dated April 04, 2024, passed in Criminal Appeal No. 58 of 2024)

Syed Sajjad Hussain Shah s/o Syed Ismaeel Shah caste Gillani Syed, r/o Panjkot currently residing at Mohallah Ranjata, Tehsil & District Muzaffarabad, presently confined in Central Jail, Muzaffarabad.

…Appellant(s)

VERSUS

State through Advocate General of Azad Jammu and Kashmir.

…Respondent(s)

Appearances:

For the Appellant(s):	Mr. Fazal Mehmood Baig, Advocate.
For the State:	Sheikh Masood Iqbal, Advocate General.
Date of hearing:	08.04.2025

JUDGMENT:

***Raza Ali Khan, J*:-** The instant appeal, by leave of the Court, is directed against the judgment rendered by the High Court dated April 04, 2024, whereby the appeal preferred by the appellant was dismissed and the conviction and sentence awarded by the trial Court was maintained.

2. The prosecution's case, in succinct terms, is that the complainant, accompanied by other police personnel, was on routine patrol duty when, at approximately 09:00 P.M. on July 17, 2023, at the F.W.O. Cross, a motorcyclist approaching from Ambor attempted to evade the police barricade upon sighting the law enforcement officials; however, with the prompt assistance of his fellow officers, the complainant successfully intercepted and apprehended the said individual, who subsequently identified as Syed Sajjad Hussain Shah, son of Syed Ismaeel Shah, resident of Mohalla Ranjata, Muzaffarabad. Upon reasonable suspicion, a body search of the accused was conducted, resulting in the recovery of a white plastic shopping bag discreetly concealed in the folds of his trousers, containing a substance identified as Charas, wrapped in yellow scotch tape, with a gross weight of 1080 grams. In the presence of official witnesses,

i.e. Qazi Khaqan (Sub-Inspector) and Mujahid Hussain (DFC No. 351), 60 grams of the contraband was separated and sealed in a separate parcel fo forensic chemical analysis, while the remaining 1020 grams were sealed in another parcel marked as No.2. Following the standard investigative procedure, a formal report under Section 173 of the Code of Criminal Procedure, 1898 (Cr.PC), was presented in the Court of competent jurisdiction. Upon taking cognizance, the Court proceeded with trial, during which the accused, upon his examination under Section 265-D Cr.P.C., unequivocally denied the allegations and opted to contest the charge. The prosecution, having been directed to substantiate its case, produced the testimonies of seven witnesses in support of its version. Thereafter, the accused was examined under Section 342 Cr.P.C., wherein he again denied the prosecution's narrative; nonetheless, he opted to make a statement under oath on Section 340(2) Cr.P.C. on December 20, 2023, and further produced Tanveer Hussain and Zohaib Gillani as defence witnesses. Upon conclusion of the evidentiary phase and evaluation of the entire record, the trial Court, vide its verdict, convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, adapted in AJ&K as Control of Narcotic Substances (Adaptation) Act, 2001 (CNSA 1997) sentencing him to six years' simple imprisonment along with a fine of Rs.40,000/ with the stipulation that in default of payment, he shall undergo an additional term of five months' incarceration. Aggrieved by the said conviction and sentence, the appellant preferred an appeal before the High Court, however, vide impugned judgment dated April 04, 2024, the appeal was

dismissed and the judgment of the trial Court was maintained, thereby affirming the appellant's conviction and sentence.

3. Mr. Fazal Mehmood Baig, the learned counsel representing the convict-appellant, forcefully contended that both the Courts below failed to appreciate the cardinal principle of criminal jurisprudence that the prosecution failed to discharge its burden of establishing the charge beyond the shadow of reasonable doubt. He argued that the ocular testimony of the prosecution witnesses is marred by material discrepancies and glaring contradictions, which are manifestly evident from the record. Elaborating further, learned counsel submitted that the place of occurrence, as described in the First Information Report, was the F.W.O. Turn near Police Station Civil Secretariat, whereas during the course of trial, prosecution witnesses deposed inconsistently, asserting that the accused was apprehended in the vicinity of the Board of Revenue Building, thus rendering the prosecution's case inherently doubtful due to lack of consensus among its own witnesses vis-à-vis the place of arrest. Furthermore, he vehemently argued that the report of the Forensic Science Laboratory fails to substantiate the prosecution's version, particularly in view of a glaring incongruity regarding the manner and condition in which the seized contraband was transmitted. He contended that while the recovered 60 grams of narcotic substance allegedly recovered was said to have been sealed in a white cloth at the time of recovery, the parcel received by the FSL was enclosed in a *khaki* envelope further contained within a polyethylene bag, thereby creating a serious dent in the chain of custody and raising

a presumption of tampering or substitution. It was, therefore, submitted that this discrepancy strikes at the root of the prosecution's case and the benefit of such doubt, however marginal, must inure to the benefit of the accused. In support of his submissions, learned counsel placed reliance upon the precedents reported as *2021 P.Cr.L.J. 1294* and *2012 YLR 126*, and accordingly prayed for acceptance of appeal.

4. Contrarily, Sheikh Masood Iqbal, the learned Advocate General, vehemently opposed the submissions advanced on behalf of the convict-appellant and contended that the judgments rendered by both the Courts below are the result of a meticulous appraisal of the entire evidentiary record and are in consonance with the settled principles of law as well as the factual matrix of the case. He submitted that the convict-appellant stands charged with an offence of grave societal impact, one which poses a direct threat to the fabric of the younger generation and the moral health of society at large, and therefore does not warrant any indulgence or misplaced leniency. The learned Advocate General further argued that the prosecution successfully discharged its burden by adducing cogent, confidence-inspiring, and unimpeached evidence, leading to the conviction of the appellant after due process. He further maintained that both the trial Court and the High Court, while convicting the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, had already exercised judicial leniency by taking into account the mitigating circumstances attendant to the case and imposed a sentence of six years' simple imprisonment along with a fine of Rs.40,000/-, which

reflects a balanced exercise of judicial discretion and does not call for interference.

5. We have given our anxious thought to the respective submissions advanced by learned counsel for the parties and have carefully perused the record available on the file. A holistic appraisal of the material placed before us reveals that the convict-appellant was apprehended during a routine night patrol by the police, during which a substantial quantity of contraband substance, *Charas* weighing 1080 grams, was allegedly recovered from his possession, concealed within a plastic bag hiding in the folds of his trousers. Pursuant to the recovery, an FIR was promptly registered and the matter was duly investigated, culminating in the submission of a report under Section 173 Cr.PC, before the competent Court of jurisdiction. The prosecution, in order to substantiate the charge, examined a total of seven witnesses including Qazi Khaqan (SI), who not only acted as an eyewitness but also effected the recovery of the contraband substance, the motorcycle, and took part in the investigation; Mumtaz Ahmed (SI), who corroborated the registration and arrangement of the FIR; Mujahid Hussain (DFC), who is also cited as an eyewitness and was actively involved in the recovery process; Muhammad Amir Khan (SG), who was present at the scene and witnessed the occurrence; Waqar Ahmed (SG), who was responsible for transmitting parcel No.1 to Forensic Science Laboratory, for chemical analysis; Manzoor Ahmed (Moharrar), who received the *Marasla* and took parcels from Qazi Khaqan (SI) and Mujahid Hussain (DFC), subsequently making the appropriate entries in the relevant register; and lastly, Raja

Zahid Umer Khan (Inspector/SHO), who is the complainant of the case.

6. Prosecution Witness No.1, Qazi Khaqan Ahmed, in his examination-in-chief, deposed that on June 04, 2023, at approximately 09:00 P.M., while on routine patrol at the FWO Turn, he along with other police officials intercepted the convict-appellant and, upon conducting a search, effected recovery of *Charas* weighing 1080 grams from his possession. He further stated that at the spot, two separate parcels were prepared in accordance with procedure, and a recovery memo was duly drawn. During trial, Parcel No.2 was exhibited and duly identified by P.W-1, who also affirmed the endorsement of his signature thereon. The testimony of P.W-1 was corroborated in material particulars by P.W-3, Mujahid Hussain, who also participated in the recovery proceedings and narrated an identical account of the events. Furthermore, Waqar Ahmed, the police official tasked with the transmission of the seized sample for forensic analysis, also appeared as a prosecution witness and testified that he carried Parcel No.1, containing 60 grams of contraband, *Charas*, to the National Institute of Health, Islamabad, for chemical examination. During cross-examination, he stated that the said parcel was received from the concerned Police Station on June 07, 2023, and was submitted at the FSL on the same day. Likewise, the complainant of the case, P.W-7, reiterated the narrative set forth in the FIR, affirming that the accused was apprehended at the F.W.O Turn and 1080 grams of *Charas* was recovered from his personal possession.

7. A meticulous examination of the testimonies of the prosecution witnesses unequivocally reveals that all material witnesses remained consistent and unanimous in their depositions to the extent that the convict-appellant was apprehended from F.W.O Turn and from his exclusive possession, *Charas* weighing 1080 grams was recovered, out of which 60 grams was separated for chemical analysis, while the remaining 1020 grams was sealed into Parcel No.2. It is pertinent to note that no contradiction or inconsistency was elicited during cross-examination of the witnesses either with regard to the ***locus in quo*** *(Place of occurrence)* or the quantity of the contraband recovered. It is also relevant to address the contention raised by the learned counsel for the convict-appellant regarding an alleged discrepancy between the place of occurrence as mentioned in the FIR and as deposed by the prosecution witnesses during trial proceedings. The argument advanced was that while the FIR records the place of apprehension as "F.W.O Turn," the prosecution witnesses, in their statements before the Court, stated that the apprehension took place near the "Revenue Complex," thereby suggesting a contradiction sufficient to cast doubt upon the prosecution's case. However, such contention is wholly misconceived and appears to be a futile attempt to mislead the Court. It is imperative to clarify that the so-called divergence is purely superficial and does not carry any substantive weight, as both "F.W.O Turn" and the "Revenue Complex" are situated in close proximity, virtually at the same location, and are commonly understood and referred to interchangeably within the local parlance. The minor variation in nomenclature cannot, by any stretch of

legal reasoning, be construed as a contradiction of material consequence so as to discredit the otherwise consistent and corroborated account of the prosecution witnesses. In such a factual paradigm, where the ocular and documentary evidence collectively point towards the unequivocal recovery of narcotic substance from the possession of the appellant, the prosecution's narrative remains unimpeached and suffers from no material infirmity that could merit the benefit of doubt.

8. The convict-appellant, in his defence, also opted to record his statement on oath under Section 340(2) Cr.PC and also adduced defence evidence; however, the same fell short of displacing the prosecution’s case or creating any dent in the consistent chain of events established through unimpeachable evidence. It is by now trite law that once the prosecution successfully discharges its initial burden of proving the recovery of narcotic substance beyond reasonable doubt, the burden of proof shifts to the accused under Section 29 of the Control of Narcotic Substances Act, 1997, to account for the possession of the contraband. In the instant case, the convict-appellant has palpably failed to discharge such burden or to create any plausible doubt regarding his innocence. A notable and deliberate deviation introduced by the legislature in the Control of Narcotic Substances Act, 1997 (CNSA), lies in the unique treatment of the burden of proof—one that sharply contrasts with the conventional doctrine of criminal law. In the general criminal justice system, it is a well-established principle that the burden to prove an accused’s guilt rests entirely on the prosecution and must be discharged beyond reasonable doubt. However, the CNSA carves out a significant exception

to this rule, recognizing the gravity and societal impact of drug-related offences and, therefore, adopting a more stringent statutory framework.

9. In particular, Section 29 of the Act introduces a presumption of guilt in favour of the prosecution upon proof of possession of a narcotic substance. This provision empowers the court to presume that the accused has committed an offence under the Act unless and until he proves otherwise. In practical terms, once the prosecution is able to establish that the accused was found in possession of an illicit drug, it is no longer required to prove the mental element or intent behind the offence. The legal responsibility then shifts to the accused to explain the circumstances of such possession or to establish that it occurred without his knowledge, consent, or involvement. What makes this provision especially significant is the calibrated balance it strikes—it does not relieve the prosecution of its foundational responsibility. The prosecution must first prove, through credible and admissible evidence, that the narcotic substance was in fact recovered from the exclusive possession or control of the accused. Only upon crossing this evidentiary threshold does the statutory presumption under Section 29 come into play, placing a legal burden on the accused to rebut the presumption of guilt.

10. This legislative approach has been consistently upheld by the superior judiciary, which has clarified that the presumption is neither automatic nor absolute. Courts have reiterated that mere allegation or flawed recovery would not suffice to shift the burden; the prosecution must first establish a clear and lawful recovery, properly documented

and corroborated by independent evidence. Once that is done, the accused cannot remain silent or evasive—he must offer a convincing explanation, supported by some evidence, to break the chain of presumption.

11. Having come across the conclusion that the prosecution has successfully discharged the burden of proof and established the guilt of the convict-appellant beyond reasonable doubt, thereby justifying his conviction by both the trial Court and the High Court, we are now inclined to examine the proportionality of the sentence imposed, particularly in light of the mitigating circumstances canvassed by learned counsel for the appellant. The foremost argument advanced relates to the adherence, or alleged lack thereof, to the statutory and procedural safeguards governing the collection, custody, and transmission of contraband samples for chemical analysis. The learned counsel submitted that any deviation from the prescribed protocol materially affects the evidentiary worth of the Forensic Science Laboratory (FSL) report and may create sufficient doubt to warrant acquittal or mitigation in sentence. It is a settled canon of criminal jurisprudence, particularly under the scheme of the Control of Narcotic Substances Act, 1997, (CNSA) that the prosecution carries a stringent and non-derogable obligation to establish, with unimpeachable clarity, each constituent limb of the "chain of custody", commencing from the seizure of the narcotic substance, followed by the separation of representative samples, their proper storage and secure handling, culminating in their safe and timely transmission to the chemical examiner. The integrity of this chain is sacrosanct,

for the FSL report forms a critical plank of the prosecution's case and, by its very nature, enjoys substantial evidentiary weight. However, that evidentiary value is inextricably linked with the demonstration that the sample tested was the same that was seized, without any possibility of tampering, substitution or contamination. In the case at hand, the safe transmission of the contraband sample for forensic analysis is proved from the record. The transmission was entrusted to Waqar Ahmed (P.W-5), a police official who also appeared before the Court and stated that: -

> *"مظہر مقدمہ علت نمبر 101/2022 بجرائم CNSA-9(c)32 کا پارسل سر بمہر تیار کردہ بغرض کیمیکل تجزیہ قرار مکتوب SSP صاحب مظفرآباد پارسل نمبر 1 چرس گردہ وزنی 60 گرام قرار راہداری نمبر 73/2023 کو محرر تھانہ سے مورخہ 07.06.2023 کو وصول کرتے ہوئے NIH اسلام آباد بغض تجزیہ جمع کروایا گیا۔ مکتوب ازاں SSP مشمولہ مسل دیکھ لیا ہے جو شامل عدالتی مسل ہے وہی ہے جو مظہر کے نام جاری ہوا تھا۔"*

During his cross-examination, Waqar Ahmed (P.W-5) testified that he received Parcel No.1 from the Police Station on June 07, 2023, and submitted it to the Forensic Science Laboratory on the same day, further asserting that the parcel remained intact throughout the process. Manzoor Ahmed (P.W-6), who served as the Moharrar at the Police Station Civil Secretariat, corroborated this, stating that the parcel was submitted to him by the complainant on June 04, 2023, and was then sent through Waqar Ahmed for chemical analysis. This consistent testimony from the witnesses establishes, with sufficient clarity, that the chain of custody and the safe transmission of the contraband was unbroken, which in turn strengthens the reliability of the prosecution's case. However, the learned counsel for the convict-appellant has highlighted a minor discrepancy in the packaging of the

sample. He claimed that the recovered contraband was initially wrapped in white cloth weighing 60 gm, whereas the FSL report indicated that the parcel received by the laboratory was wrapped in a *khaki* envelope and packed in a polythene bag. While this inconsistency, in isolation, does not suffice to dismantle the entire prosecution case, it does raise a point that must be considered in the context of sentencing. The discrepancy, though minor, could be seen as a mitigating factor, as it may indicate a lapse in strictly adhering to the prescribed protocols. The trial Court and the High Court, while both affirming the conviction, did not appear to have fully addressed this factor in their judgments, despite its potential relevance to the sentence. Given the minor nature of the discrepancy and the otherwise unbroken chain of custody, it would have been prudent to award the convict-appellant the benefit of this mitigating factor, potentially leading to a reduction in the sentence imposed.

12. The next argument advanced by the learned counsel for the convict-appellant pertains to alleged material contradictions in the statements of the prosecution witnesses. He specifically referred to certain portions of the testimonies, contending that these inconsistencies are detrimental to the prosecution's case and should lead to the acquittal of the accused-appellant. However, this argument has been consistently addressed by this Court in numerous rulings, affirming the principle that minor contradictions or discrepancies in the testimony of witnesses, particularly when the core of the prosecution’s case remains intact and the genesis of the incident is established beyond doubt, do not necessarily vitiate the entire prosecution’s case. It is

well-settled that human testimony is not expected to be devoid of variance, as individuals may recall and express facts differently, even when describing the same event. The law recognizes that such discrepancies are natural and, in the absence of material contradictions that undermine the prosecution's version of events, they cannot be treated as sufficient grounds for acquittal. In this regard, we find ample support in the ruling of this Court in *Khursheed Hussain Shah v. The State*[1], where it was held as under: -

> *"13. So far as the other contention of the learned counsel for the convict-appellant that there is material contradiction in the statement of prosecution witnesses regarding the arrest of the accused and color of the contraband, which has neither been considered by the trial Court nor by the High Court, is concerned. This argument of the learned Advocate appears to have no force. As there is overwhelming evidence on record to show that the incident had taken place and when once the genesis of the occurrence is proved, it is now well settled that contradictions which are minor in nature would not be sufficient to dispel the entire prosecution case. It is true that there are minor contradictions in the statement of the witnesses but it cannot be held fatal for the prosecution; moreover, parrot like statements are also disfavored by the Courts. It is worth adding that the incident is reported to have occurred on 03.03.2018, and the witnesses' recorded statements in the Court after 7/8 months, therefore, minor contradictions are pretty much natural to be crept in the statements. The discrepancies in the evidence of the witnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. The learned counsel for the convict-appellant has endeavored hard to highlight certain discrepancies among testimony of the witnesses, but in our considered opinion, same are absolutely, minor in nature and do not discredit the cumulative evidence. The minor discrepancies on trivial*

---

[1] (2022 SCR 334)

> *matters not touching the core of the matter cannot bring discredit to the story of the prosecution; giving undue importance to them would amount to adopting a hyper-technical approach. The Court while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies do not shake the basic version of the prosecution case and same are to be ignored"*

13. The learned counsel for the convict-appellant relied upon the cases reported as 20*21 P.CR.L.J. 1294* and *2012 YLR 126* in support of his contentions. However, after a careful perusal of both judgments, we find them to be distinguishable from the facts of the present case. In the cited cases, the circumstances and facts differ materially from the instant matter, particularly with regard to the credibility of the prosecution's evidence, the chain of custody, and the specific legal principles at play. In light of these distinctions, we are unable to draw any direct parallels with the facts before us, and therefore, the principles established in those cases do not apply to the case at hand. Consequently, the reliance on these authorities by the learned counsel for the convict-appellant does not assist in undermining the prosecution's case or the conviction in this matter.

14. In light of the above detailed discussion, we are of the considered view that the learned trial Court, as well as the High Court, rightly convicted the convict-appellant. However, after taking into account the mitigating factor present in this case, particularly the minor discrepancy in the packaging of the contraband, we find it just and appropriate to modify the sentence. Accordingly, the judgments of both the Courts below are modified, and the convict-appellant is

hereby sentenced to 5 years of simple imprisonment along with a fine of Rs. 40,000/- under section 9(c) of the Control of Narcotic Substances Act, 1997 (CNSA). In the event of default in payment of the fine, the convict shall undergo a further term of imprisonment for 5 months.

This appeal stands partially accepted in the manner indicated above.

JUDGE **JUDGE**

Muzaffarabad,
14.04.2025