

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.24404/2019
(*Qaiser alias Aaun vs. The State & another*)

JUDGMENT

Date of hearing:	08.10.2024
Appellant by:	Mr. Muhammad Farhan Advocate with the appellant.
State by:	Mr. Haroon Rasheed, Deputy Prosecutor General.

ALI ZIA BAJWA, J.:- Qaiser alias Aaun son of Fateh Muhammad, caste Lali, resident of Rajoa, Police Station Rajoa, District Chiniot (hereinafter '*the appellant*') was implicated in case FIR No.276/2017, dated 27.07.2017, offence under Section 9(c) of the Control of Narcotic Substances Act, 1997 (hereinafter '*CNSA*'), registered with Police Station Rajoa, District Chiniot. He was tried by the Additional Sessions Judge notified as Judge Special Court, Chiniot under CNSA (hereinafter '*the trial court*') under the afore-mentioned offence. The trial court seized with the matter, vide judgment dated 09.04.2019 (hereinafter '*the impugned judgment*'), convicted and sentenced the appellant in the following terms:-

- Under Section 9(c) of the CNSA, 1997, sentenced to undergo rigorous imprisonment for four years and six months with fine of Rs.20,000/- and in case of default in payment thereof, to further undergo simple imprisonment for five months.
- Benefit of Section 382-B Cr.P.C. was also extended in favour of the appellant.

2. The prosecution story as portrayed in the FIR (Exh.PB/1) has been reproduced as under:-

[illegible]

3. After registration of the case, the Investigating Officer conducted the investigation and recorded the statements of the prosecution witnesses under Section 161 of The Code of Criminal Procedure, 1898 (*'hereinafter the Code'*). During the course of the investigation, having found the appellant involved in the crime in question, the Investigating Officer prepared the report under Section 173 of the Code while placing his name in column No.3 and submitted it before the trial court through the concerned prosecutor.

4. The appellant was formally indicted to which he pleaded not guilty and claimed trial. To substantiate its version, the prosecution produced as many as four (4) prosecution witnesses. After the completion of the prosecution evidence, the statement of the appellant, as envisaged under Section 342 of the Code, was recorded by the trial court. The appellant professed his innocence and pleaded false implication in the case. Upon completion of the trial, the trial court found the case against the appellant proven beyond a reasonable doubt, leading to his conviction and sentence as detailed above.

5. We have heard the arguments and perused the record.

6. The crux of the arguments presented by the learned counsel for the appellant revolves around a fundamental procedural flaw. He submits that during the appellant's examination under Section 342 of the Code, he was not confronted with the full extent of the incriminating evidence and

circumstances upon which his conviction was ultimately based. This omission, as counsel contends, constitutes a serious breach of the appellant's right to a fair trial, as it deprived him of the opportunity to effectively challenge or explain the incriminatory evidence used against him.

7. Before we delve into the merits of the contention of learned counsel regarding the appellant's examination under Section 342 of the Code, it is fitting first to examine the sphere of this legal provision. A clear understanding of the scope and purpose of Section 342 of the Code is essential to properly assess whether the mandatory procedural requirements have been adhered to and whether the appellant's rights have been duly safeguarded. It would be appropriate to reproduce Section 342 of the Code to facilitate a clearer and more comprehensive understanding: -

"342. Power to examine the accused: (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court may draw such inference from such refusal or answers as it thinks just.

(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into or trial for, any other offence which such answers may tend to show he has committed.

(4) Except as provided by sub-section (2) of section 340, no oath shall be administered to the accused."

The purpose of examining an accused under Section 342 of the Code is clearly articulated within the provision itself. It lays down the purpose as to "enable the accused to explain any circumstances appearing in the evidence against him." Section 342 of the Code directly correlates with the principle of *audi alteram partem*, one of the foundational principles of natural justice. The term "*audi alteram partem*" translates to "hear the other side" or "let no person be condemned unheard". This principle safeguards the fundamental right that no individual shall face punishment or adverse judgment without being afforded a fair opportunity to present his case and challenge the evidence laid against him. This examination serves as a crucial safeguard,

allowing the accused a direct opportunity to confront and clarify any incriminating material and circumstances that have emerged during the trial. It offers an accused a vital opportunity to present his defense, ensuring that no adverse conclusions are drawn without first considering his perspective. This reflects the very essence of justice and fairness, safeguarding the rights of the accused and upholding the integrity of the judicial process.

8. Under Section 342 of the Code, there are two distinct forms of examination. The first may occur at any stage during the inquiry or trial and is discretionary in nature. To allow the accused to explain any incriminating circumstances arising from the evidence, the court may, at any stage of an inquiry or trial and without prior notice, pose questions it deems necessary. It is particular and optional, giving the court the flexibility to engage with the accused when specific issues arise, and clarification is required. In contrast, the second form of examination is conducted after the prosecution witnesses have been examined but before the accused is called upon to present his defense. This examination is general and mandatory, requiring the trial court to give the accused a formal opportunity to explain the entirety of the incriminating evidence presented against him. It ensures that the accused is fully aware of the case he must meet and provides a critical opportunity for him to offer any explanations or rebuttals before the defense is presented. Section 342 of the Code safeguards the rights of the accused and upholds the integrity of justice, ensuring that it is administered through a fair trial, as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Recording the statement of the accused under this provision is far from a mere formality. It is a critical safeguard ensuring that no conviction is handed down without the accused being fully aware of, and responding to, every aspect of the evidence against him. Section 342 of the Code imposes a solemn and unyielding duty upon the trial court, in the course of a trial, to pose direct and precise questions to the accused, ensuring he is given every opportunity to explain all circumstances arising from the evidence against

him. It follows as an unassailable principle that every material circumstance presented in the prosecution evidence must be put to the accused with clarity, precision, and distinctly. The inability to do so undermines the core principles of judicial fairness and integrity. Such a lapse is not merely a procedural defect, rather, it is a fatal flaw that leaves the prosecution's case hollow, with no outcome but the acquittal of the accused. Injustice cannot stand where due process has been so egregiously overlooked. The law is now firmly settled that if a piece of incriminating evidence or a circumstance is not brought to the attention of the accused during his examination under Section 342 of the Code, such evidence or circumstance cannot be relied upon to secure his conviction. It's a core principle of criminal jurisprudence that no one should be condemned based on evidence he has not had the chance to confront or challenge. To act otherwise would be turning a fair trial into a hollow process.¹

10. To thoroughly evaluate the argument advanced by the learned counsel for the appellant, we have undertaken a careful and meticulous perusal of the entire body of evidence available on the record. Upon such scrutiny, it becomes evident that the prosecution's narrative regarding the recovery of the narcotic substance, the separation of the sample parcel, its deposit with the station clerk, and its subsequent transmission to the Punjab Forensic Science Agency (PFSA), has been both comprehensively and convincingly substantiated. However, close and careful scrutiny of the appellant's statement recorded under Section 342 of the Code reveals that the appellant was not confronted with the fact that a sample had been separated from the bulk quantity of narcotic recovered, sealed into a parcel, nor with the fact that it was sent to the police station for storage in the storeroom. Furthermore, the appellant was not confronted with the vital details concerning the exact date on which the parcel was dispatched to the forensic

¹ Haji Nawaz vs. The STATE – 2020 SCMR 687, Dr. WAQAR HAMEED vs. The STATE and another – 2020 SCMR 321, MUHAMMAD SADDIQUE vs. The STATE – 2018 SCMR 71, IMTIAZ alias TAJ vs. The STATE and others – 2018 SCMR 344 and QADDAN and others vs. The STATE – 2017 SCMR 148.

lab, nor was he put the identity of the witness who carried and deposited the parcel there.

Thus, the appellant was not duly confronted with the chain of safe custody. In our criminal jurisprudence governing narcotic cases, maintaining an unbroken chain of safe custody is the backbone of proving a case against the accused. Without this chain intact, the case risks falling apart at the seams, as the integrity of the evidence stands in question. If the accused has not been duly confronted with the chain of safe custody while examining him under Section 342 of the Code, the same cannot be wielded to secure his conviction.

11. We are unequivocally convinced that it was the prosecution's duty to establish an unbroken chain of custody with clear and compelling evidence, leaving no room for doubt, and equally crucial was the obligation of the trial court to confront the appellant with the same during his examination under Section 342 of the Code. The trial court's handling of this crucial step leaves much to be desired. To say the least, it was perfunctory, cursory, superficial, and fell woefully short of the requisite standard as mandated by Section 342 of the Code. Without confronting the appellant with this crucial piece of incriminating evidence, i.e. the chain of safe custody, the foundation of the case collapses, leaving no choice but to acquit him.

12. In light of the foregoing discussion, the appellant is hereby **acquitted** of the charge. Allowing the instant appeal, his conviction and sentence are set aside. The appellant has appeared before the Court in compliance with the bailable arrest warrant issued on 15.05.2023, which is ordered to be withdrawn. The surety of the appellant is hereby discharged from liability.

(FAROOQ HAIDER)
JUDGE

(ALI ZIA BAJWA)
JUDGE

Approved for Reporting

JUDGE

JUDGE

The judgment was pronounced & dictated on 08.10.2024
and after completion it was signed on **11.11.2024**.

Riaz