

HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.71368-J/2023

Rana Farman

Versus

The State

JUDGMENT

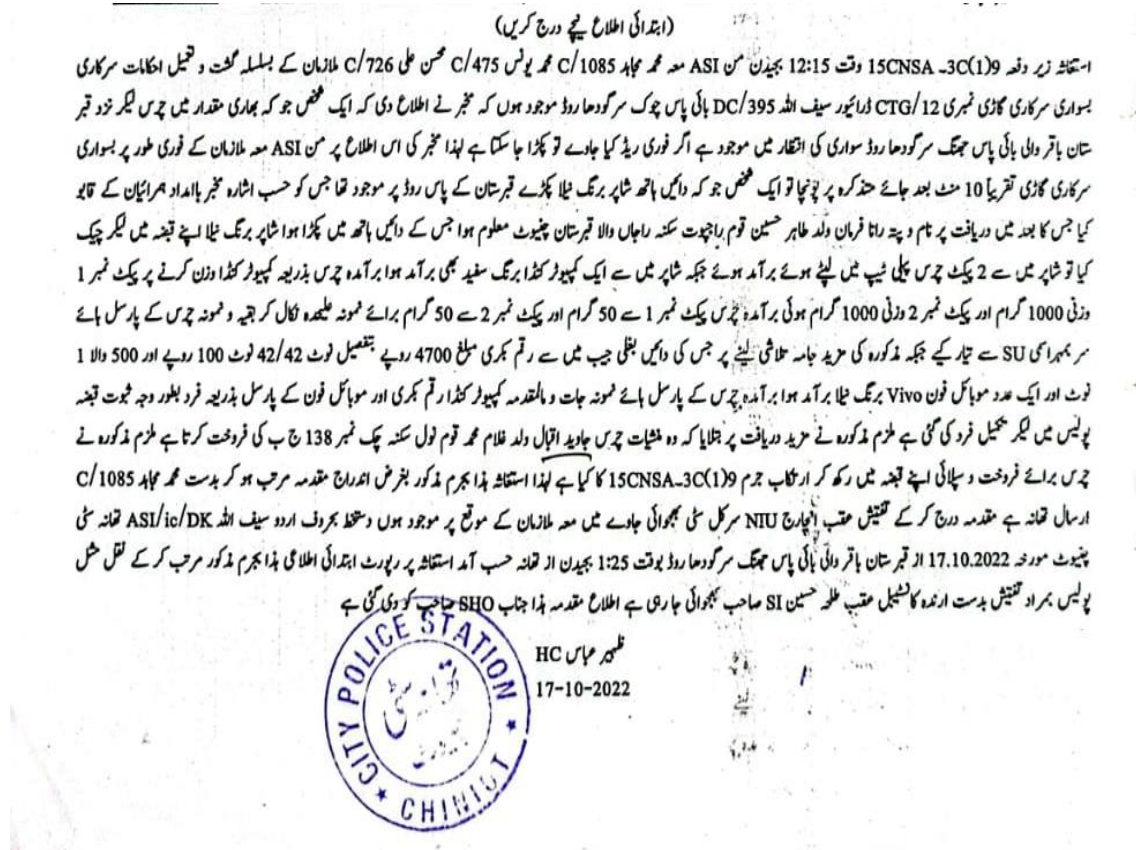
Date of hearing:	20.11.2025
Appellant by:	Malik Muhammad Sajjad Nawaz, Advocate.
State by:	Ms. Nuzhat Bashir, Deputy Prosecutor General.

Farooq Haider, J.:- This appeal has been filed against the judgment dated: 20.07.2023 passed by learned Additional Sessions Judge, Chiniot whereby in case arising out of F.I.R No.1150/2022 dated: 17.10.2022 registered under Sections: 9(1) 3(c) and 15 of the Control of Narcotic Substances Act, 1997 at Police Station: City Chiniot, District Chiniot, trial court has convicted and sentenced the appellant as under:-

under Section 9 (1) 3 (c) of Control of Narcotic Substances Act, 1997 (Amendment) Act, 2022
to Rigorous Imprisonment for 09-years with fine of Rs.80,000/- and in default thereof, to further undergo S.I for 04-months. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Briefly, as per case of prosecution narrated in the Crime Report (F.I.R./Ex.PB/1) got recorded by Saif Ullah, A.S.I. (complainant/PW-1), on 17.10.2022, on spy information appellant was apprehended by the complainant and other police officials; on his personal search, from a blue coloured shopper holding in his right hand, two packets of charas wrapped with yellow coloured tape along with computerized scale were recovered from his possession; each packet was found weighing 1000-grams; out of the recovered charas, samples were separated and secured while remaining case property of charas was also sealed into separate parcels; all parcels were prepared with the stamps “S.U.”; upon further search, amount of Rs.4700/- as sale proceed and mobile phone were also recovered from possession of the appellant and taken into

possession along with aforesaid parcels vide recovery memo Ex.PA; for ready reference, relevant portion of the Crime Report (F.I.R./Ex.PB/1) is hereby scanned below:-



After investigation, challan report was sent to the Court against the appellant; charge was framed against him, to which he pleaded not guilty; prosecution produced its evidence; trial court recorded statement of the appellant under Section: 342 Cr.P.C. wherein he refuted allegations leveled against him; appellant did not record his statement under Section: 340(2) Cr.P.C. to disprove the allegations levelled against him and also did not produce any evidence in his defence; then trial court after hearing learned counsel for the parties, passed the impugned judgment, whereby the appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the appellant has contended that safe custody of the case property has not been proved; therefore, conviction recorded and sentence awarded through impugned judgment are liable to be set-aside; finally requested for acceptance of instant appeal.

4. Conversely, learned Deputy Prosecutor General has supported the impugned judgment and requested for dismissal of instant appeal.

5. After hearing learned counsel for the appellant, learned Deputy Prosecutor General and going through the record with their able assistance, it has been noticed that Saif Ullah, ASI (complainant of the case) while appearing as PW-1 during trial of the case stated that on **18.10.2022**, Moharrar handed over to him seven sealed parcels including two parcels of samples in this case for onward transmission to Punjab Forensic Science Agency, Lahore whereas remaining five parcels for transmission to Malkhana Saddar, Chiniot, he deposited aforementioned two parcels of samples at the office of Punjab Forensic Science Agency, Lahore on **20.10.2022**; in this regard, relevant portion of his statement is reproduced as under: -

*“On **18.10.2022**, Moharrar handed over to me seven sealed parcels i.e. two said to contain sample of chars for onward transmission to PFSA Lahore and two said to contain remaining chars, one said to contain electric weighing scale, one said to contain sale proceed Rs.4700/- and one said to contain mobile phone for onwards transmission to Malkhana Saddar Chiniot. On 19.10.2022, I deposited five sealed parcels i.e. two said to contain remaining chars, one said to contain electric weighing scale, one said to contain sale proceed Rs.4700/- and one said to contain mobile phone to Ghulam Abbas ASI incharge Malkhana Saddar Chiniot. On **20.10.2022**, I deposited two sealed sample parcels of chars at PFSA, Lahore. Investigation officer recorded my statement u/s 161 Cr.P.C. in this regard on 20.10.2022.”*

(emphasis added)

Any plausible, convincing, valid and cogent reason for keeping both parcels of samples in this case with him from 18.10.2022 till 20.10.2022 and not depositing the same on 18.10.2022 or 19.10.2022 in the office of Punjab Forensic Science Agency, Lahore is not discernible from the record. It is also relevant to mention here that if for any reason whatsoever, said parcels of samples could not be deposited on 18.10.2022 or 19.10.2022, then it was mandatory for Saif Ullah, ASI (PW-1) to return the same to the Moharrar of the Police Station on 18.10.2022 or on 19.10.2022 for keeping the same in safe custody and then to re-collect said parcels of samples from Moharrar on the day of their deposit in the office of Punjab Forensic Science Agency i.e. 20.10.2022 but any such exercise has not been done by him as very fairly conceded by learned Deputy Prosecutor General after going through entire record.

Aforementioned state of affairs straightaway leads to the conclusion that chain of safe custody of both parcels of samples has been compromised and not established/proved in this case.

It has also been noticed that while examining the appellant as accused under Section: 342 Cr.P.C. during trial of the case, it was not put to him that who handed over case property at the place of recovery to whom for taking the same to the Police Station, who brought case property from place of recovery at the Police Station and handed over to whom for keeping the same in safe custody and who brought case property in safe custody at the Police Station, therefore, chain of **“safe custody”** of the **“parcels of remaining case property”** as well as of the **“parcels of the samples”** has not been put to the appellant under Section: 342 Cr.P.C. hence same cannot be used against him. For recording conviction and awarding sentence in a criminal case, it is mandatory to put entire incriminating material to the accused under Section: 342 Cr.P.C. in order to have his explanation/reply in said regard otherwise it would amount to *“audi alteram partem”* and in this regard, case of **“AMEER ZEB versus THE STATE”** (PLD 2012 Supreme Court 380) can be safely referred and its relevant portion from Paragraph No.6 available at Page No.398, is hereby reproduced for ready reference:-

“It is trite that a piece of evidence not put to the accused person at the time of recording of his statement under section 342, Cr.P.C. cannot be used against him by the prosecution.”

(emphasis added)

In this regard, guidance has also been sought from the case of **“ABDUL HAYEE and ABDULLAH alias GHAZALI and another”** (2025 SCMR 281) and relevant portion of the same from Paragraph No.14 is hereby reproduced as under:-

“14. Insofar as the recoveries of weapons of offence from the petitioners in another case bearing FIR No. 121 dated 26.05.2009 under Sections 324/353/186/148/149 P.P.C., read with Section 13 of the Arms Ordinance, 1965 and Section 7 of the Anti Terrorism Act, 1997, at Police Station Mochh, District Mianwali, which recoveries were also relied upon by the prosecution in the instant case and positive reports of Forensic Science Laboratory are concerned, we have noted that the said recoveries were not put to the petitioners in their statements recorded under Section 342 Cr.P.C., therefore, the above-mentioned pieces of prosecution evidence cannot be considered against the petitioners and the same have rightly been discarded

by the learned High Court in paragraph No. 15 of the impugned judgment. Reference in this context may also be made to the cases of, Fida Hussain Shah v. The State (2024 SCMR 1622), Haji Nawaz v. The State (2020 SCMR 687) and Mst. Anwar Begum v. Akhtar Hussain (2017 SCMR 1710).

Similarly, case of “**OBAIDULAH and 2 others versus The STATE and others**” (2025 SCMR 1558) can be advantageously referred on the subject. So, when chain of safe custody of parcels of samples as well as parcels of remaining case property has not been put to the appellant during his examination under Section: 342 Cr.P.C., then the same cannot be used against him and when it cannot be used against the appellant then it i.e. said safe custody would be deemed as not proved against the appellant. Now law is well settled on the point that unbroken chain of safe custody of “allegedly recovered case property and parcel of sample” is to be proved otherwise, conviction is not possible and it is rightly so because recovery of narcotics is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment. Guidance in this regard has been sought from the cases of “**The STATE through REGIONAL DIRECTOR ANF versus IMAM BAKHSH**” (2018 SCMR 2039), “**ABDUL GHANI and others versus The STATE and others**” (2019 SCMR 608), “**MUHAMMAD HAZIR versus The STATE**” (2023 SCMR 986), “**ASIF ALI and another versus The STATE through Prosecutor General Punjab**” (2024 SCMR 1408), “**SARFRAZ AHMED versus The STATE**” (2024 SCMR 1571) and “**MUHAMMAD IQBAL versus The STATE through P.G. Sindh**” (2025 SCMR 704). Since safe custody of the parcels of samples taken out of the recovered substance has not been proved in this case therefore report of Punjab Forensic Science Agency, Lahore (Ex.PD) is inconclusive and cannot be made basis for conviction. By now it is also well settled that if safe custody of allegedly recovered substance or parcel of sample/case property has not been proved then, there is no need to discuss other merits of the case and it straightaway leads to the acquittal of the accused; in this regard, guidance has been sought from the *supra* cases of “**ABDUL GHANI and others versus The STATE and others**” and “**The STATE through Regional Director ANF versus IMAM BAKHSH**”.

6. It is trite law that single dent in case of prosecution is sufficient for acquittal, in this regard, reliance can be placed upon the cases of **“MUHAMMAD MANSHA versus The STATE”** (2018 SCMR 772), **“ABDUL JABBAR and another versus The STATE”** (2019 SCMR 129), **“Mst. ASIA BIBI versus The STATE and others”** (PLD 2019 SC 64) and **“AMIR MUHAMMAD KHAN versus The STATE”** (2023 SCMR 566), **“MUHAMMAD NAWAZ and another versus The STATE and others”** (2024 SCMR 1731) and **“MUHAMMAD BILAL versus The STATE”** (2025 SCMR 1580).

7. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellant beyond shadow of doubt hence there is no need to discuss defence version.

8. In view of all above, instant appeal is **allowed/accepted**, conviction recorded and sentence awarded to the appellant through impugned judgment dated: 20.07.2023 passed in case arising out of F.I.R No.1150/2022 dated: 17.10.2022 registered under Sections: 9(1) 3(c) and 15 of the Control of Narcotic Substances Act, 1997 at Police Station: City Chiniot, District Chiniot, are hereby set aside; he is acquitted of the charge and will be released from jail forthwith if not required in any other case.

(Muhammad Tariq Nadeem)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING.

(Muhammad Tariq Nadeem)
Judge

(Farooq Haider)
Judge

This judgment has been dictated,
pronounced, prepared and signed
on 20.11.2025.

Asif