

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

MR. JUSTICE MUHAMMAD ALI MAZHAR

**CRIMINAL APPEAL NO. 208 OF 2022**

(On appeal against the judgment dated 28.01.2020  
passed by the High Court of Sindh, Bench at  
Sukkur in Criminal Jail Appeal No. D-172/2019)

Zain Ali

... Appellant

**VERSUS**

The State

... Respondent

For the Appellant: Mr. Muhammad Shabbir Rajput, ASC

For the State: Raja Inam, Special Prosecutor, ANF  
Mr. Ehtisham ul Haq, Special Prosecutor, ANF

Date of Hearing: 29.05.2023

**JUDGMENT**

**SAYYED MAZHAR ALI AKBAR NAQVI, J.-** Appellant was tried by the learned Additional Sessions Judge-III, Sukkur in terms of the case registered vide FIR No. 08 dated 25.03.2013 under Section 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station ANF, Sukkur, as contraband charas weighing 563 kilograms and opium weighing 1500 grams was recovered from the secret cavities of the vehicle, which the appellant was driving. The learned Trial Court vide its judgment dated 30.07.2019 convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced him to imprisonment for life. He was also directed to pay a fine of Rs.100,000/- or in default whereof to further undergo SI for one year. Benefit of Section 382-B Cr.P.C. was also extended to him. In appeal the learned High Court maintained the conviction and sentences recorded against the appellant by the learned Trial Court.

2. The prosecution story as given in the impugned judgment reads as under:-

"2. Succinctly, the prosecution case as depicted in the FIR is that on 25-03-2013 at about 7-30 am, at Old Toll Plaza situated at National Highway, Rohri, a team of ANF police headed by Inspector Tahir Ahmed secured 563 kilograms charas in shape of 563 foil packed packets, each containing two slabs and 1500 grams Opium in shape of three packets from the secret cavities of Vigo Hilux Toyota vehicle bearing No.CS-8258. During the personal search of the accused, a cash amount of Rs. 5300/-, one Watan card, some other cards, two mobile phones, 8 mobile sims, one wrist watch, one wallet of black colour were recovered from the possession of accused in presence of mashirs namely HC Ayaz Ahmed and PC Shoukat Ali. From further search of the vehicle, its registration book in the name Gazali Textile Mill. One Photostat copy of CNIC in the name Shahbaz Ghazi was also recovered in presence of mashirs namely HC Ayaz Ahmed and PC Shoukat Ali. Accused further disclosed that the alleged contraband material belongs to one Zubair Ahmed, who is resident of District Sanghar. Such mashirnama of arrest and recovery was prepared at the spot in the presence of mashirs. Thereafter the accused alongwith recovered case property and vehicle were brought to Police Station ANF Sukkur, where the instant case for an offence punishable u/s 9(c) of Control of Narcotic Substance Act, 1997, was registered against him on behalf of the State. On completion of the usual formalities, the ANF police submitted report u/s173 Cr.PC before the competent Court of law."

3. After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced two witnesses. When examined under Section 342 Cr.P.C., the appellant stated that he is innocent and has been falsely implicated in the case. However, he did not make his statement on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against him. He also did not produce any evidence in his defence.

4. Learned counsel for the appellant contended that the appellant has been falsely implicated in this case and the Police has planted a fake case upon him. Contends that the narcotic was allegedly recovered from the appellant in the broad daylight in a busy thoroughfare but none from the public was associated in the case to depose against him. Contends that the prosecution could not prove safe custody of the allegedly recovered narcotics and its safe transmission to the Police Station and then to the Laboratory for chemical analysis, therefore, the same cannot be used against the appellant to sustain his conviction. Lastly

contends that the reasons given by the learned High Court to sustain conviction of the appellant are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the appellant was caught red handed while transporting a huge quantity of narcotics, the Police officials had no enmity to falsely involve him in the present case and the safe custody of the narcotic and then its safe transmission to the Chemical Examiner has been proved to the hilt, therefore, he does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on record.

7. As per the prosecution story, on a spy information, a team of ANF officials established a picket on 25.03.2013 at Old Toll Plaza, National Highway, Rohri and at about 07:30 am they intercepted a Vigo Hilux Toyota vehicle bearing registration No. CS-8258, which was being driven by the appellant Zain Ali. From the secret cavities of the vehicle, 563 kilograms of charas in shape of 563 foil packed packets, each containing two slabs and 1500 grams opium in the shape of three packets were recovered. The whole recovered opium was sealed in one parcel whereas 40/40 kilograms of charas was separated and sealed in separate parcels. At the same time, 43 kilogram and 40 kilogram charas was separated and sealed in two parcels for the purpose of chemical examination. To prove the recovery, the prosecution mainly relied upon the statements of Inspector Tahir Ahmed, complainant (PW-1) and Aijaz Ali Shah, PC (PW-2). Both these witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the appellant to falsely implicate him in the present case. Even otherwise a huge quantity of 563 kilograms of contraband charas and 1500 grams of opium in no circumstances can be planted by the Investigating Officer of his own. As already stated above,

the whole case hinges upon the statement of the official witnesses and no independent witness was associated while conducting the search of the vehicle. However, it is well settled that testimonies of the police personnel are required to be treated in the same manner as the testimony of any other witness and there is no principle of law that without corroborating by the independent witnesses, their testimonies cannot be relied upon. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. The presumption that a person acts honestly applies, as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. We have minutely scrutinized the statements of the above witnesses and found them to be consistent, cogent and reliable and there is hardly any discrepancy regarding the recovery of narcotics from the vehicle, which was being driven by the appellant. Moreover, learned counsel for the appellant could not elicit any material contradiction in their statements so as to discredit their testimony. The prosecution has successfully established its case by further proving that the contraband so recovered from the possession of the appellant was weighed, packed and then sent for chemical examination, which on examination was found to be charas. The learned counsel for the appellant had argued that there are major contradictions in the statements of prosecution witnesses, which shatter not only their credibility but the very veracity of their statements. However, we could not find that there is any contradiction, which will impeach or affect the credibility of the prosecution witnesses. It is also settled that minor contradictions, inconsistencies, embellishments or improvements on trivial matters, which do not affect the core of the prosecution case, should not be made a ground, on which the evidence can be rejected in its entirety. The Court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Mere marginal variations in the statement of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by

the witness earlier. While appreciating the evidence of a witness, the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the discrepancies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. However, as stated above, the prosecution witnesses of recovery remained firm on each and every material particular of the prosecution story and their testimony could not be shaken.

8. During the course of arguments, learned counsel for the appellant had argued that one Suleman Haider, Constable, who deposited the sample parcels in the office of Chemical Examiner was not produced in evidence, therefore, the safe custody of the allegedly recovered narcotic and its safe transmission is not established. However, this argument is of no help to the appellant. A bare perusal of the record shows that a huge quantity of 563 kilograms charas and 1500 grams opium was recovered from the appellant on 25.03.2013. The Investigating Officer separated 83 kilograms of charas in two separate parcels of 43/40 kilogram and sealed the same. The whole recovered 1500 grams opium was also separated and sealed in a parcel. All the three sealed sample parcels were sent to the office of Chemical Examiner on the very next day i.e. 26.03.2013. The report of the Chemical Examiner testifies this fact that the three sealed parcels were received on the said date, which were found to be charas and opium. It also came in evidence that the whole recovered narcotics, except the parcels which were sent to the Chemical Examiner, was produced in Court in sealed parcels during trial as a case property. Although, Tahir Ahmed, Inspector/I.O. was cross-examined by the defence at length but no question was put to him, which could suggest that either the whole recovered narcotics was not produced in Court or the same was not sealed in separate parcels as stated by him. Similarly, no question was put to him, which could suggest that the recovered narcotics was planted on the

appellant. In this view of the matter, it can safely be said that the safe chain of custody of the recovered narcotics was not compromised at all. Even otherwise, in Liaquat Ali Vs. The State (2022 SCMR 1097), this Court candidly held that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples within a certain/specified period of time. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell as to whether in case of any lapse, it would automatically become instrumental to discard the whole prosecution case. The Rules cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997 and cannot in any manner frustrate the salient features of the prosecution case, which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. Even otherwise, in terms of Section 29 of the Control of Narcotic Substances Act, 1997, manner and standard of proof in cases registered under the Act is slightly different as in terms of the said Act the accused is presumed to have committed the offence unless the contrary is proved.

9. The menace of drugs has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Courts of the country address a problem of such serious dimensions. Studies based on conferences and seminars have very often shown that the menace is deep rooted. This menace is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in anti-state/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-

necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned High Court. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the appellant has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

10. For what has been discussed above, this appeal having no merit is accordingly dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the  
Announced on **24.07.2023**  
Approved For Reporting  
**Khurram**