

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. Jail Appeal No. 388  
of 2016

SINDH HIGH COURT

Composition of Bench.

Single/D.B. ✓

Honorable Mr. Justice KARIM KHAN AGHA  
Honorable Mr. Justice SALEEM JESSAR

Dates of hearing: 24-02-2020

Decided on 09-03-2020

(a) Judgment approved for  
reporting.

Yes ✓  
~~No~~

Kfj2

CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

244

FDP

1

**IN THE HONOURABLE HIGH COURT OF SINDH AT  
KARACHI**

Cr. Appeal No. *D 388* /2016

1. Khan Badshah S/o Zer Badshah

2. Shad Gul S/o Ustaad Gul

Muslims, Adults, R/o Karachi, *Abdullah b/o Shad Gul S/o Ustaad Gul*  
Presently Confined in Central Prison,  
Karachi -----APPELLANTS / ACCUSED

PRESENTED

05-11-2016

*[Signature]*

3459

**VERSUS**

The State -----RESPONDENT

FIR No. 10/2015

U/s 6/9-C, 14, 15 of Narcotics  
Act, 1997.

P.S. ANF Clifton Karachi

**APPEAL UNDER SECTION 410 OF THE CRIMINAL  
PROCEDURE CODE**

Being aggrieved and dissatisfied with the impugned Judgment dated 06-10-2016, passed by the learned II<sup>ND</sup> Special Court CNS Karachi, whereby the learned trial court convicted the appellant<sup>s</sup>/accused above U/s 265-H(2) in Special Case No.94/2015, for the offence punishable under section 6-9-C CNS Act, Read with section 14/15 of the CNS Act 1997, and sentenced him to suffer imprisonment for life and to pay fine of Rs.300,000/- each. In case of default, they will be suffer further simple imprisonment for one year 6 months and benefit of Section 382-B Cr.P.C. is also avoided to accused persons. Therefore the appellant<sup>s</sup>/ accused abovenamed prefers this appeal with the prayer that this Hon'ble Court may be pleased to set-aside the order/ judgment dated 06-10-2016, passed by the IIND Special Judge CNS, Karachi, in Special Case No.94/2015, and call R&Ps of the case and release/ acquit or bail out them from the case on the following facts and grounds:-

Certified Copy of the Judgment dated 06-10-2016 is enclosed herewith and marked as annexure 'A'.

Contd/2



**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Jail Appeal No.388 of 2016.

**Present:**

Mr. Justice Mohammad Karim Khan Agha  
Mr. Muhammad Saleem Jessar.

Appellants: 1. Khan Badash S/o. Zer Badshah  
2. Shad Gul S/o. Ustad Gul through M/s.  
Muhammad Akbar Khan and Noreen Naz,  
Advocates.

For State: Mr. Habib Ahmed, Special Prosecutor ANF.

Date of hearing: 24.02.2020.  
Date of announcement: 09.03.2020.

**J U D G M E N T**

**Mohammad Karim Khan Agha, J.-** Appellants Khan Badshah son of Zar Badshah and Shad Gul son of Ustad Gul have preferred this Criminal Appeal against the impugned judgment dated 06.10.2016 passed by the learned Special Court-II (C.N.S.) Karachi in Special Case No.94 of 2015, F.I.R. No.10 of 2015 U/s 6/9-C, r/w section 14/15 of the C.N.S. Act, 1997, registered at P.S. ANF Clifton, Karachi whereby the appellants have been convicted for offence section 9-C CNS Act, 1997 and sentenced to Life Imprisonment and fine of Rs.300,000/- (Rupees three hundred thousand only) each. In case of default in payment of fine they were ordered to suffer further Simple Imprisonment for one year and six months each. Benefit of section 382-B Cr.P.C. has also been extended to the appellants.

2. The brief facts of the case are that an FIR was lodged against the accused persons by the complainant Inspector Mohammad Muzammil on 06.02.2015 at about 1830 hours and he alleged therein that he received information through the high ups as the spy informed that narcotic dealer namely Naeem Khan, r/o. Bunair had handed over the narcotic contraband stuff to his agents namely Khan Badshah and Shad Gul for its delivery to his customer namely Aziz, r/o. Gulistan-e-Johar and Tariq Zaman, r/o. Gulshan-e-Iqbal, Karachi and it was further informed that Khan Badshah and Shad Gul would pass the National Highway near Gul Ahmed Mills in between 1500 to 1600 hours along with huge contraband narcotic stuff in vehicle Toyota Probox bearing registration No.1213, therefore, a raiding party was constituted comprising SI Attaullah Jadoon, SI



Mashooq Abbasi, SI Nawab Alam, HC Shamraiz Khan, PC Tanveer Younus, PC Meraj Soloangi, PC Zafar, PC Mohammad Ahmed and other ten more ANF staff left the PS along with the spy informer in two official vehicles along with arms and ammunitions according to the Entry No.9 at 1400 hours and reached at Manzil Petrol Pump, National Highway, near Gul Ahmed Mills at about 1445 hours and started surveillance and at about 1530 hours a Toyota Probox car bearing registration No.KPK-1213 was seen and the said car was stopped with a great strategy and apprehended the driver and the person who was sitting on the front seat and the passerby were asked to act as the mashir of arrest and recovery but they excused due to fear of the narcotic peddlers, therefore, PC Meraj Solangi and PC Mohammad Ahmed were nominated as witnesses and asked the names of the accused persons. The driver disclosed his name as Khan Badshah son of Zar Badshah, resident of Abdullah Goth, Shah Latif Town, Malir, Karachi and the other person disclosed his name as Shad Gul son of Ustad Gul, resident of Abdullah Goth near MM Cosmetic, Shah Latif Town, Malir, Karachi. A nylon sack was lying between the legs of Shad Gul in the front seat. The accused persons disclosed that it contained heroin and upon opening the sack seventeen packets wrapped in yellow solution tape were recovered and upon cutting each packet, heroin powder was recovered in a transparent polythene bag and all the seventeen packets were weighed through digital scale at the spot and every packet was found weighing 1500 grams except one packet which was weighed one Kg with the total weight of the narcotic contraband stuff amounting to 25 Kgs. He had collected seventeen samples consisting 10 grams from each packet for the purpose of chemical analysis and sealed it after putting it into the transparent separate polythene bags and cover of brown envelopes and put the mark 1 to 17 on all the packets of the case property for the identification and also put the identification mark on the packets of samples. He had sealed all the heroin in the same sack and upon personal search of accused Khan Badshah one original CNIC, one original driving license, some visiting cards, some slips, Rs.500/- Pak Rupees, one cell phone Samsung with sims were recovered from right side pocket of his shirt while from search of Shad Gul from right side pocket of his shirt one original CNIC, one driving license original cash Rs.400/-, one cell phone Nokia with sim card and some visiting cards were recovered. Upon search of the vehicle from the Dash Board 04 copies relating to the vehicle were recovered. The complainant prepared the memo of arrest and recovery at the spot and the contents of it was read over to the witnesses who had put their respective signatures, the witnesses also put their respective signatures on the



case properties as well. Thereafter case properties and the accused persons were taken to PS ANF Clifton, Karachi where FIR was lodged against the accused persons and investigation was started by Inspector Muhammad Muzammil Ahmed.

3. After completing the investigation charge was framed against the appellants to which the accused persons pleaded not guilty and claimed to be tried.

4. The prosecution to prove the charge examined 03 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statements under section 342 Cr.P.C. of the accused were recorded in which they denied the allegations leveled against them by the prosecution witnesses and claimed false implication and made the following claims under oath. Accused Shad Gul called one DW in support of his defense case.

5. Learned Special Court-II (C.N.S.) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 06.10.2016, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants has contended that the accused are completely innocent and have been falsely implicated in this case, that there was a delay in sending the chemical report, the narcotic recovered was of a slightly different color from that in the chemical report and most importantly the chemical examiner did not have the required qualifications to conduct the chemical analysis and as such the chemical report could not be relied upon and as such the appellants should both be acquitted of the charge. In support of his contentions he placed reliance on the case of **Khair-ul-Bashar v. The State** (2019 SCMR 930), **Israr v. The State** (2011 P. Cr.LJ 1203), **Awal Raef v. The State** (2014 P. Cr.LJ 1075), **Collector of Customs (Preventive), Government of Pakistan, Custom House, Karachi v. Sajjad Muhammad Jaffer and 2 others** (2009 P. Cr.LJ



232), **Aman-ul-Haq v. The State** (2015 MLD 518), **Abdul Qadir v. The State** (2015 P. Cr.LJ 235), **Muhammad Imran v. The State** (2011 SCMR 1954), **Ameer Zeb v. The State** (PLD 2012 Supreme Court 380), **Taimoor Khan and another v. The State and another** (2016 SCMR 621) and **Ikramullah and others v. The State** (2015 SCMR 1002).

8. On the other hand learned Special Prosecutor ANF has fully supported the impugned judgment and has contended that the narcotics were recovered in the possession of the accused on the spot and had not been foisted and that the chemical examiner was duly qualified to carry out the chemical test which was positive and that there was no undue delay in sending the narcotic for chemical testing and as such the appeal should be dismissed. In support of his contentions he placed reliance on **Muhammad Kamran v. The State** (2019 SCMR 1314) and **State through Regional Director ANF Peshawar v. Sohail Khan** (2019 SCMR 1288).

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellants, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. After our reassessment of the evidence we are of the view that the prosecution has proved its case beyond a reasonable doubt against the appellants for the following reasons:-

(a) That the arrest and recovery was made on the spot and the appellant was caught red handed with the narcotics by the police whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any of the police PW's and as such the police had no reason to falsely implicate the appellant in a false case. Thus we believe the police evidence which is corroborative in all material respects. Reliance in this respect is placed on the unreported recent supreme court case of **Mustaq Ahmed V The State** dated 09-01-2020

8

in Criminal Petition No.370 of 2019 where it was held in material part as under at para 3;

*"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring and as such can be relied upon without a demur."*

(b) That the spy information about the type of car and its registration number and its route fully corroborates the prosecution case since this is the car which the appellants were arrested in proceeding along the informed route and the narcotics discovered which was recovered along with its key.

(c) The FIR was also registered with promptitude giving no time for concoction and the S.161 statements were recorded promptly which were not significantly improved upon by any PW at the time of giving evidence.

(d) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).

(e) **Most significantly** the narcotics were recovered from the front seat of the car where one co-accused was sitting whilst the other co-accused was driving the vehicle and as such there is no question that the accused had actual knowledge of the narcotics which were being transported. The car was recovered along with its key and the narcotics. In this



respect in the similar case of **Nadir Khan V State** (1998 SCMR 1899) it was held as under,

*"We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving licenses also. As being person incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents. The probabilities or the presumptions are all dependents on the circumstances of each case and in the present case the circumstances fully establish their knowledge and awareness of the contents and their explanation showing the ignorance actually strengthens that conclusion rather than weakening it".*

(f) That it would be extremely difficult to foist such a large amount of heroin being in total 25 KG's as mentioned in **Mustaq Ahmed's case** (Supra).

(g) That one of the main arguments raised by the appellants was that the chemical examiner was not qualified to carry out the chemical examination of the recovered heroin and as such the chemical report cannot be safely relied upon. In this regard he relied on a Constitutional petition whereby the chemical examiner (PW 3 Dr.Fazle Ellahi Memon's) Notification as Director Laboratories/Chemical Examiner was struck down by this court. However this petition concerned a service dispute between two parties and had nothing to do with the qualifications and expertise of the chemical examiner to carry out the chemical examination. Through his evidence the chemical examiner PW 3 Dr.Fazle Ellahi Memon has explained that he is more than qualified to carry out the chemical test and that all necessary protocols were complied with and that the chemical report was positive.

(h) That the recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken for chemical analysis and no suggestion of tampering with the same has even been made. It is true that there was a 2 to 3 days delay in sending the recovered narcotics for



chemical analysis however this has been explained in the evidence as these were weekend (Saturday and Sunday) days. Even otherwise the rules when the chemical must be sent are directory and not mandatory.

(i) The slight colour differentiation in the narcotic is of no relevance at this stage as this was not raised before the trial court. In this respect reliance is placed on **Muhammed Kamran's case** (Supra)

(j) That although no independent mashir was associated with the arrest and recovery of the appellants it has come in evidence that no private person was prepared to become an independent mashir at the time of arrest and recovery despite being asked. Even otherwise S.103 Cr.P.C is excluded for offenses falling under the Control of Narcotic Substances Act 1997 by virtue of S.25 of that Act. In this respect reliance is placed on the case of **Muhammad Hanif V The State** (2003 SCMR 1237)

(k) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which we disbelieve. This is because the appellants simply raised the defense of false implication however they admitted that the police/ ANF had no enmity with them. One DW who was the son of one of the accused stated that his father had been picked up by law enforcement agencies however his complaint to the police has no evidence that it was received and thus in our view this is a cooked up defense by the accused in order to save their skins. The entire case of the prosecution as seen from its evidence tends to ring true from the time of the receipt of the spy information to the time when the accused were stopped by the police in the car with the registration number provided by the spy informer to the recovery of the narcotics from the car up to receipt of the positive chemical report.



11. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellants and the impugned judgment is upheld and the appeal is dismissed.

12. The appeal is disposed of in the above terms.