

CERTIFICATE OF THE COURT IN RESPECT TO

CR. JAIL APPEAL No. 244 Of 2014.

SINDH HIGH COURTComposition of Bench.Single/D.B.MR. JUSTICE K. K. AGHA  
MR. JUSTICE ABDUL MOBEEN LATIF

Dates of hearing: 17-03-2020

Decided on 30.03.2020

(a) Judgment approved for reporting.

Yes✓  
No

Kfj

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.

① 1/10

✓ IN THE HON'BLE HIGH COURT OF SINDH,  
AT KARACHI

SPL. CrL. Jail appeal No. 284/2011

SARFRAZ AHMED S/O NAZEER AHMED  
Muslim adult and presently confined in  
Central Prison Karachi - - - Appellant  
v/s

The State - - - Respondent

SPL Case No. 284/2011

FIR No. 146/2011

U/s. 9/c, CNS Act. (1997)

P.S. Airport Karachi

CRIMINAL JAIL APPEAL U/s. 420 Cr. P.C. OF  
s/w. SECTION 48 CNS. ACT. (1997)

Respected Honourable Sir,

On being aggrieved and partially dissatisfied with  
the judgement dated on 5th July 2014 passed by the  
Special Judge CNS. Court No. 1st Karachi spl. case  
No. 284/2011, which is the appellant was convicted  
of U/s. 9/c, CNS Act 1997 awarded of sentenced him  
to imprisonment for life, and to pay of fine of Rs.  
300,000/- (Three lac Rupies) in default of payment  
of fine to further undergo for simple of  
imprisonment for 1 year and 6 months -



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

**Criminal Jail Appeal No.244 of 2014**

**Present:**

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Abdul Mubeen Lakho.

Appellant Sarfaraz Ahmed s/o. Nazeer Ahmed through  
Mr. Muhammad Iqbal Chaudhry, Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy  
Prosecutor General.

Date of Hearing: 17.03.2020.

Date of Announcement: 30.03.2020.

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

**Mohammad Karim Khan Agha, J.-** Appellant Sarfaraz Ahmed s/o. Nazeer Ahmed has preferred this Criminal Jail Appeal against the impugned judgment dated 05.07.2014 passed by the learned Special Court-I (C.N.S.) Karachi in Special Case No. 285 of 2014, F.I.R. No.146 of 2011 under Section 9(c), C.N.S. Act, 1997, registered at PS Airport Karachi whereby the appellant has been convicted under section 265-II(2) Cr.PC for the commission of offence punishable u/s.9(c) Control of Narcotic Substances Act, 1997 and sentenced to undergo Imprisonment for life and to pay a fine of Rs.3,00,000/- (Rupees Three hundred thousand only). In case of default in payment of fine he was ordered to further undergo Simple Imprisonment for one year and six months more. The benefit of section 382-B Cr.P.C. has also been extended to the appellant for the period which he has already undergone as under trial prisoner in this case.

2. The brief facts of the case as per FIR are that on 12.05.2011 at 2015 hours, Inspector Abdul Ghaffar Korai, SHO, PS Airport on behalf of the State lodged his report stating therein that he along with ASI Abdul Ghaffar, HC-4343 Muneer Ahmed, HC-10711 Allauddin, PC-16273 Ameer Muhammad Khan, PC-15928, Javed Fazil on mobile-III, and called government Car patrolling-I, on which SIP Qamaruddin, PC-5760, Abdul Ghaffar, Driver/PC-15661 Nazaar Khattak were busy in detection of crime and patrolling in the area. During patrolling on receipt of spy information

given by the special informer they reached at White Body Hangar road, Terminal No.1, Airport Karachi, where on the pointation of special informer, he stopped charade red colour car bearing registration No.G-6363 and apprehended the accused present in the car. He inquired name etc; from the accused on which he disclosed his name to be Sarfraz Ahmed s/o Nazeer Ahmed. Then due to none availability of private witnesses he cited SIP Qamarddin and ASI Abdul Ghaffar as mashirs, and then took the search of the car, and secured orange color shoppers lying on back seat of the car. He checked said shoppers and from two shoppers he secured six packets from each shopper, and from remaining one shopper he secured five packets, of yellow and red colour on which Nestle Nedo Fortified was written, and total seventeen packets were recovered by him. He then opened the packets one by one and found that heroin powder was packed in each packet viz: one Kilogram each and total seventeen Kilogram heroin powder was recovered. The accused committed the offence punishable under Section 6/9 (c) Control of Narcotic Substances Act, 1997 therefore accused was arrested on the spot at 1905 hours. He separated five packets of heroin powder weighing five Kilograms and sealed the same as sample for chemical examination. He also sealed the remaining twelve packets of heroin powder weighing 12 Kilograms separately. He took the personal search of the accused and secured one mobile phone China of black colour, from front pocket of his shirt, and one purse in which original CNIC bearing No.42501-1571227-5 of the accused, his PIA Service card No.PC-59939, one Airport entry card of accused bearing No.01481, and cash of Rs.1525/- from back side pocket of his pants. They then brought the accused along with secured property at PS where he lodged his report against the accused.

3. After registration of case the investigation of this case was entrusted to SIP Mumtaz Hussain who started investigation, and visited the place of incident on the pointation of complainant and prepared such memo. He then recorded 161 Cr.PC statements of PWs. On 13.5.2012, he after obtaining permission sent the sealed parcels to the chemical examiner for examination and report. He wrote letter for calling data information of accused Sarfraz, Akbar and Masoom which was received by him. He obtained synopsis view of accused Sarfraz Ahmed of PIA department, verification of CNIC of Sarfraz, obtained record of accused



Muhammad Akbar and Masoom Ali from ASF. He raided on the house of Muhammad Akbar and Masoom Ali, but could not succeed to arrest them. He received chemical report, and letter from Afzal LIMOUSIME SERVICES CAR AND VAN RANTAL SERVICE dated 24-5-2014, in which it stated that the accused Masoom Ali was absent on 12.05.2011, and accused Muhammad Akbar remained absent on 13.5.2011. He also obtained computerized data from the Excise Office in respect of the recovered car. Then after completion of usual investigation he submitted challan in the court, while showing accused Sarfraz Ahmed in custody and accused Muhammad Akbar and Masoom Ali as absconders.

4. After completing the usual investigation charge was framed against the appellant to which he plead not guilty and claimed to be tried.

5. 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 statement under section 342 Cr.P.C. of the accused was recorded in which he denied the allegations leveled against him and claimed false implication. However, he did not opt to examine himself on oath or call any witnesses in support of his defense case.

6. Learned Special Court-I (C.N.S.) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 05.07.2014, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. 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.

8. Learned counsel for the appellant has contended that the appellant was falsely implicated in this case, that the person who transcribed the FIR did not give evidence, that it is completely unnatural for a person carrying narcotics to keep it on the back seat of his car, that the narcotic was not sealed on the spot and that there was no evidence of safe custody, that the

car did not appear in the sketch which the IO produced, that there had been a violation of S.103 Cr.PC and that for any of the above reasons the appellant should be acquitted of the charge by extending to him the benefit of the doubt. In support of his contentions he has placed reliance on **Qaddan and others V The State** (2017 SCMR 148), **Ikramullah and others V The State** (2015 SCMR 1002) and **Mst. Irshad Begum alias Shadan V The State** (2016 P Cr. L J 407).

9. On the other hand learned DPG has fully supported the impugned judgment and has contended that the appellant was arrested on the spot where the recovery was made from him whilst he was driving his own car, that Section 29 CNSA will be applicable, that there was no delay in sending the chemical report for analysis which report was positive and was kept in safe custody and thus the prosecution has proved its case beyond a reasonable doubt and as such the appeal should be dismissed. In support of his contentions he placed reliance on **Arshad Hussain V The State** (2011 SCMR 1400), **Mehboob-ur-Rehman V The State** (2010 MLD 481), **State through Regional Director ANF Peshawar V Sohail Khan** (2019 SCMR 1288), **Muhammad Kamran V The State** (2019 SCMR 1314) and **Hussain Shah and others V The State** (PLD 2020 SC 132).

10. 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 appellant, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

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

(a) The FIR was 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.

(b) The FIR is not a substantive piece of evidence so we do not consider it fatal to the prosecution case that the person who transcribed the FIR was not examined especially as it was exhibited in evidence. In this respect reliance is placed on **Muhammed Akram V**



State (2006 SCMR 1567)

(c) 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 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 **Mushtaq Ahmed V The State** dated 09-01-2020 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."*

(d) That the spy information about the car and its likely route which was pointed out by the spy informer fully corroborates the prosecution case since this is the car in which the appellant was stopped and arrested in whilst proceeding along the informed route and the narcotics discovered which was recovered along with the car.

(e) 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).

(f) **Most significantly** the narcotics were recovered from the car which was owned by the appellant and he was the only person in the car and as such there is no doubt that the accused had actual knowledge of the narcotics which were being transported. The car was recovered along with 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".*

In this regard reliance is also placed on **Hussain Shah and others V The State** (PLD 2020 SC 132) which is similar to the facts and circumstances of this case.

Furthermore, Under Section 29 CNSA 1997 once the recovery has been proven as in this case the onus shifts to the accused to show his innocence in that at least he had no knowledge of the narcotics. The appellant has not been able to do so in this case. In the case of **Mehboob-Ur-Rêhman V State** (2010 MLD 481) it was held as under in this respect at P485 Para 14

*"Under the provisions of section 29 of the C.N.S. Act once the recovery of contrabands was made from a private car which was by then in control of the two appellants, the burden to explain the possession whether actual or constructive was on the appellants to discharge but neither they have led any evidence in defence nor have appeared in disproof of the prosecution evidence under section 340(2), Cr.P.C. thus the charge laid upon them has remained un rebutted".*

(g) That it would be extremely difficult to foist such a large amount of heroin being in total 17 KG's as mentioned in **Mustaq Ahmed's case** (Supra) and **The State V Abdali Shah** (2009 SCMR 291).

(h) That there was no delay in sending the chemical report for analysis which turned out to be positive.

(i) 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. The narcotics were sealed/placed in a stitched cloth bag on the spot, remained sealed in the malkhana before being transported to the chemical examiner by PW 3 Mumtaz Hussain who was examined and the narcotics reached the chemical examiner in a sealed condition as per the chemical report. In this respect reliance is placed on the recent Supreme Court case of **Zahid and Riaz Ali V State** dated 03-03-2020 (unreported) in Jail Appeal No.172 of 2018. Although this case concerned rape since it concerned the safe custody of certain swabs being sent to the chemical examiner we consider its findings to be equally applicable to the safe custody of narcotics being sent to the chemical examiner which held as under at para 5 in material part;

*"The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals."*

(j) All relevant police entries were duly exhibited.

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

(l) 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 appellant has simply raised the bald allegation that he was falsely implicated in the case yet he has suggested no enmity with any PW who as such had no reason to falsely implicate him in the case, that he was a PIA employee with full access to the airport and as such his arrest near terminal one of the airport fits in with the prosecution case, the appellant made an extra judicial confession before the police (although inadmissible in evidence) that he was delivering the narcotics to Akbar and Masoom. The police followed up on this confession and obtained the CDR data of Akbar and Masoom and actually tried to arrest them in this case. If the appellant had been falsely implicated then the

police would not have followed up on his extrajudicial confession as to who he was delivering the drugs to both of whom were declared as absconders which in our view indicates that his defense of false implication cannot be believed especially as he was caught red handed with the narcotics alone in his own car near his place of work for which he has no explanation.

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

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