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PRESENTED ON
15-06-2021

[Signature]
Deputy Registrar (Adm.)

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**IN THE HON'BLE HIGH COURT OF SINDH
(AT KARACHI)**

337

Criminal Appeal # D- / 2021

**1. Muhammad Abbass s/o Ahmed Jan,
Muslim Adult, resident of---
Presently confined in,
Central Jail, Karachi. _____ Appellant**

=Versus=

The State _____ Respondent

**C rime # 956 of 2020.
U/S: 6, 9-C, 14/15 of C.N.S. A 1997.
Police Station Sachal, Karachi.**

**CRIMINAL APPEAL UNDER SECTION 48, OF THE
CONTROL OF NARCOTICS SUBSTANCES ACT 1997**

Being aggrieved and dissatisfied with the impugned judgment dated 27-05-2021 passed by the 1st Additional District & Sessions Judge, Malir, Karachi, in Session Case No.1977 of 2020, convicts the appellant for the offence punishable under section 14 of CNSA 1997, and sentencing him to suffer imprisonment for life and to make payment of Rs. 5,00,000/= as fine or R.I for four months more in case of default, therefore, appellant above named prefer this appeal on the following facts and grounds.

**Certified copy of Impugned
Judgment dated 27-05-2021 is**

Narcotics acquitted

No Safe Custody

Chemical report not put to accused in S.342

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

CRIMINAL APPEAL NO.356 OF 2021

Appellant: Muhammad Hassan s/o. Abdul Razzaq through Mr. Ahmed Ali, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

CRIMINAL APPEAL NO.337 OF 2021

Appellant: Muhammad Abbas s/o. Ahmed Jan through Mr. Baber Hamid, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Date of Hearing: 28.10.2022

Date of Announcement: 02.11.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants Muhammad Hassan and Muhammad Abbas were tried in the Model Criminal Trial Court/Additional Sessions Judge Malir, Karachi in Sessions Case No.1977/2020 under FIR No.956/2020 u/s. 6/9-C of CNS Act 1997, registered at PS Sachal, Karachi and vide judgment dated 27.05.2021 they were convicted and sentenced under section 6/9-C and section 14 of CNS Act, 1997 for life imprisonment and imposed fine of Rs.5,00,000/- and in case of default in payment of fine they shall undergo

S.I. for four months more. However, the appellants were granted benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 11.10.2020 at 1300 hours at main Super Highway Road, 4-C Bus Stop, Area Sachal, Karachi a police party headed by SIP Muhammad Akram of PS Sachal, stopped Bus bearing Registration No.LES-6300 which was driven by accused Muhammad Abbas son of Ahmed Jan and co-accused Muhammad Hassan son of Abdul Razzaq was passenger on the bus and during search of the Tool Box in the bus the police secured 18 packets containing Chars in total weighing 21 Kilo and 600 grams which was kept by Muhammad Hassan with their knowledge, in presence of mashirs, hence the instant FIR.

3. After usual investigation the charge was framed against the accused persons and they were sent-up to face the trial where they pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 03 witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against them. Neither of the appellants gave evidence on oath nor called any DW in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed these appeals against their convictions.

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

7. Learned counsel for the appellants contended that they were completely innocent and had been falsely implicated in the case by the police; that there were contradictions in the evidence of the prosecution witnesses and as such their evidence could not be safely relied upon; that the bus from where the narcotics were recovered was not produced at trial; that safe custody and safe transmission of the narcotic had not been proven; that the chemical report which

the prosecution had relied upon had not been put to the appellants at the time when they recorded their 342 Cr.PC statements and as such the chemical report could not be used against the appellants in order to convict them and as such for any or all of the above reasons the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions they placed reliance on the cases of **Haji Nawaz v The State** (2020 SCMR 687) and **Kamran Shah and others v The State and others** (2019 SCMR 1217).

8. Learned Additional Prosecutor General Sindh has fully supported the impugned judgment and has submitted that the appeals are without merit and should be dismissed.

9. We have heard the arguments of the learned counsel for the appellants and learned Additional Prosecutor General Sindh and have also gone through the entire evidence which has been read out by the learned counsel for the appellants and the impugned judgment with their able assistance.

10. In narcotic cases, one of the most crucial aspects is that the prosecution must prove safe custody of the narcotic from the time of its recovery until the time when it is sent for chemical examination. If they fail to do so then there is a possibility that the narcotic substance had been tampered with before it was received at the chemical laboratory for its examination. In such like cases where unbroken chain of custody cannot be proved by the prosecution then the chemical report is of no value. It is noted that this is the view taken by the Supreme Court regardless of the amount of the recovery whether small or huge as the principle remains the same. In this case the appellants were arrested by the police on 11.10.2020 and the recovery of narcotics was made from the bus in which one appellant was allegedly the driver and the other appellant was allegedly a passenger where from a huge amount of narcotics was recovered from a secret cavity in the bus. Those narcotics initially remained with PW 3 Muhammed Akram who according to the prosecution evidence handed them over to the SIO presumably PW 2 Amir Memon on the same day where they were allegedly kept in the Malkana. In this respect the prosecution relied on entry No.47 however entry No.47 does not support the prosecution case in this regard. Furthermore, the malkhana in charge was not examined by the prosecution to prove the safe custody of the narcotic and as such it is unclear where the narcotic was kept before it was taken for chemical examination on 12.10.2020 and thus based on the particular facts and circumstances of this case

we find that the prosecution has not been able to prove safe custody of the narcotic from the time when it was recovered from the appellants till the time when the same was sent for chemical examination and as such the chemical report is of no value to the prosecution in proving the recovered narcotic.

11. With regard to the importance of the prosecution proving safe custody of the narcotic from the time of its recovery to the time it was sent for chemical analysis the same was stressed/emphasized by the Supreme Court in the case of *Qaisar Khan V State* (2021 SCMR 363) which held as under;

"3. We have heard the learned counsel for the petitioner as well as the learned Additional Advocate General, KPK and perused the available record alongwith the impugned judgment with their assistance and observed that in this case the prosecution has failed to establish the safe custody and safe transmission of sample parcels to the concerned laboratory. This court had laid down in many judgments that the representative samples of the alleged drug must be kept in safe custody and undergo safe transmission from the stage of recovery till its submission to the office of the Government analyst. Non establishing the said facts would cost doubt and would impair and vitiate the conclusiveness and reliability of the report of the Government analyst. Thus rendering it incapable of sustaining conviction.

4. In the present case no police official was produced before the Trial Court to report about safe custody of samples if entrusted to him for being kept in the Malkhana in safe custody. Even the police official whose belt number (FC 4225) has been mentioned by the Government analyst in his report, was not produced by the prosecution to depose regarding the safe deposit of the said sample parcels in the concerned laboratory. The record reveals that the recovery was allegedly effected on 19.08.2011 whereas, according to the report of chemical examiner, the sample parcels were received in the said office on 26.08.2011. Nobody from the prosecution side was produced to claim that during this period the said sample parcels remained intact in his possession or under his control in the Malkhana in safe custody. Even the prosecution is silent as to where remained these sample parcels from 19.08.2011 to 26.08.2011. In absence of establishing the safe custody and safe transmission, the element of tampering cannot be excluded in this case. The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substance (Government Analysts) Rule 2001 (Rules 2001), rest upon the report of the analyst. It is prosecution's bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the representative samples, makes the report of chemical examiner worthless and un-reliable for justifying conviction of the accused. Such lapse on the part of prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner. Reliance can be made upon the judgments rendered by the three members

benches of this court i.e. *Ikramullah v. the State* (2015 SCMR 1002), *the State v. Imran Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. the state* (2019 SCMR 608), *Kamran Shah vs. The State* (2019 SCMR 1217), *Mst. Razia Sultana v. the State* (2019 SCMR 1300), *Faizan Ali v. the State* (2019 SCMR 1649), *Zahir Shah alias Shat v. State thr. AG KPK* (2019 SCMR 2004), *Haji Nawaz v. the State* (2020 SCMR 687), *Qaiser Khan v. the State* (2021 SCMR 363), *Mst. Sakina Ramzan v. the State* (2021 SCMR 451), *Zubair Khan v. the State* (2021 SCMR 492) and *Gulzar v. the State* (2021 SCMR 380)."

12. Even otherwise the chemical report even if safe custody and safe transmission of the narcotic had been proven is of no evidentiary value as it was not put to the appellants during the recording of their S.342 Cr.PC statements and as such cannot be used to convict them. In this regard reliance is placed on the case of *Haji Nawaz* (Supra) where it was held as under in material part at para 3;

".....The prosecution had maintained that samples had been secured from each and every packet of the recovered substance which samples had subsequently been tested positive by the Chemical Examiner but we note that at the time of recording the appellant's statement under Section 342, Cr.P.C. the report of the Forensic Science Laboratory had not been put to him at all. The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under Section 342, Cr.P.C then the same cannot be considered against him for the purpose of recording his conviction....."

13. Thus for the reasons mentioned above we find that the prosecution has not proved its case beyond a reasonable doubt against the appellants and hence by being extended the benefit of the doubt the appellants are hereby acquitted of the charge. The appellants shall be released forthwith unless they are wanted in any other custody case.

14. The appeals stand disposed of in the above terms.