

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi,*

**Criminal Jail Appeal No.703 of 2021.**

**Appellant:** Nek Rehman @ Zeeshan S/o. Abdul Rehman through Mr. Imtiaz Ali Channa, Advocate.

**Respondent:** The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.

**Date of hearing:** 14.11.2022.

**Date of Announcement:** 17.11.2022.

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Nek Rehman @ Zeeshan S/o. Abdul Rehman has preferred this jail appeal against the judgment dated 20.10.2021 passed by the Special Court-II (C.N.S.) Karachi in Special Case No.1541 of 2017 arising out of Crime No.117 of 2017 U/s. 6/9-C read with section 14/15 of the CNS Act, 1997 registered at P.S. Sahil, Karachi whereby the appellant Sher Zaman S/o. Meer Zaman was convicted u/s.265-H(2) Cr.P.C. for the offence under section 6/9 C read with sections 14/15 of the CNS Act, 1997 and sentenced to Life Imprisonment and fine of Rs.500,000/-. In the event of a failure to pay the fine he was ordered to undergo 05 years more imprisonment. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The facts of the prosecution case are that on 26.11.2017 at about 1830 hours at Khayaban-e-Shujat, Phase-VIII, DHA Karachi complainant SIP Agha Sarfraz of PS Sahil, Karachi along with other police officials arrested accused namely (i) Naik Rehman @ Zeeshan from a car bearing registration No. AXU-881 and recovered four packets of Charas weighing 04 Kgs from his possession and from search of the said car from the rear seat a bag of black color and a polythene bag were recovered. From a search of the black bag it was containing 14 packets of Charas weighing 14 Kgs. whereas from ploythene bag four packets of Charas weighing 4 Kgs were recovered making a total of 22 Kgs.

Charas recovered, whereas accused (ii) Muhammad Arif along with co-accused Rozi Khan managed to escape from the car and fled away. After observing required formalities at the spot the arrested accused brought at PS along with recovered contraband and car, thereafter FIR was lodged.

3. After completion of investigation I.O. submitted charge sheet against the arrested accused Nek Rehman and co-accused Muhammad Arif to which they plead not guilty and claimed trial.

4. The prosecution in order to prove its case examined 07 witnesses and exhibited various documents and other items. The appellant in his S.342 Cr.PC statement claimed false implication by the police. He, however, did not give evidence on oath or call any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as mentioned earlier in this judgment, hence, the appellant has filed this appeal against his conviction. His co-accused however Muhammed Arif was acquitted of the charge.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 20.10.2021 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 appellant has contended that he is innocent and has been falsely implicated in this case by the police in order to show their efficiency; that there are material contradictions in the prosecution evidence which renders the prosecution evidence unreliable; that the narcotic was foisted on him; that his role was the same as his acquitted co-accused and as such he was entitled to the same treatment; that the prosecution had failed to prove safe custody of the narcotic and for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Mureed Majeedano v. The State** (2022 P. Cr.LJ 961), **Qaiser Khan v. The state through Advocate-General Khyber Pakhunkhwa, Peshawar** (2021 SCMR 363), **Noman Khan v. The State** (2020 MLD 1113), **Rashid Zaman v. Afzal Awan, SHO Police Station Takht-e-Nasrati, District Karak and another** (2022 MLD 1227) and **Zahir Shah alias Shat v. The State through Advocate-General, Khyber Pakhtunkhwa** (2019 SCMR 2004).



8. On the other hand learned APG for the State has fully supported the impugned judgment and in particular has stressed that the appellant was caught red handed in a car with the narcotics which were recovered from his person and from the car; that there are no material contradictions in the prosecution case and that safe custody of the narcotics has been proven and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and the appeal should be dismissed. He has placed reliance on the cases of **Aijaz Ali Rajpar v. The State** (2021 SCMR 1773), **Shafa Ullah Khan v. The State and another** (2021 SCMR 2005), **Zafar v. The State** (2008) SCMR 1254) and **Kashif Amir v. The State** (PLD 2010 Supreme Court 1052).

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

10. After our reassessment of the evidence we find 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. The complainant and the IO were also separate police officers so there was no conflict of interest.

(b) 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 case of **Mushtaq Ahmad v The State** (2020 SCMR 474) where it was held by the supreme court 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."*

(c) That the accused was the driver of the vehicle which was stopped and the narcotic was recovered from his person and in the rear of the car which was secured and sealed on the spot. The other passengers in the car made there escape good under cover of darkness and as such were not arrested on the spot. When the co-accused was arrested his identification could not be safely established and as such the appellant's case is on a different footing to his acquitted co-accused.

(d) Sufficient evidence has been brought on record by the prosecution to show that the vehicle which the accused was driving at the time of his arrest and recovery was a rental vehicle which was linked to the appellant.

(e) That there are no **major** contradictions in the evidence of the PW's and exhibits 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) That most of the relevant police entries have been exhibited including those relating to departure and safe custody of the narcotic.

(g) The narcotics were sealed at the time of recovery and kept in the malkhana for which the person who recovered the narcotic was examined, the person who deposited the narcotics in the malkhana has been examined, the head mohrar in whose custody the narcotics were placed has also been examined and the person who took the narcotic to the chemical examiner one day later has been examined and all the relevant malkhana entries have been exhibited and thus safe custody of the narcotic has been proven. There as no delay in sending the narcotics for chemical examination as they were sent the next day. Even no suggestion of tampering with the narcotics was made by the appellant during cross examination.

(h) The chemical report proved to be positive and all relevant protocols were followed.

(i) That is extremely difficult for such a large amount of narcotics to be foisted on the appellant which is not readily available with the police whist on patrol. In this respect reliance is placed on the cases of **Mustaq Ahmed's case** (Supra) and **The State V Abdali Shah** (2009 SCMR 291).

(j) Being the driver of the car which was associated with the appellant actual knowledge of the narcotics can be found especially as he had 4kg's around his waist at the time of his arrest whilst being the driver of the car with two bags of the narcotics being recovered from the back seat of the car which according to him belonged to his co-accused. In this respect reliance is placed on the case of **Nadir Khan V State** (1998 SCMR 1899) where 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 licences 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". (bold added)*

(k) 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 who was the driver of the vehicle has not been able to do so in this case as the evidence shows that **the narcotics were recovered from him on the spot whilst driving the car and as such he was caught red handed and arrested on the spot along with the narcotics which were recovered from him and were also recovered from the rear seat of the car which he was driving and connected with.** In this respect reliance is placed on the case of **Mehboob-Ur-Rehman V State** (2010 MLD 481) where 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".*

(l) That although no independent mashir was associated with the arrest and recovery of the appellant this is not surprising because the arrest and recovery was made in the early hours of the morning when people were not likely to be about and according to a PW 1 no one was prepared to act as an independent mashir. 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).

(m) That in dealing with narcotics cases the courts are supposed to adopt a dynamic approach and not acquit the accused on technicalities. In this respect reliance is placed on the case **Ghualm Qadir V The State** (PLD 2006 SC 61) which held as under at para 8 P.66.

*"We are not agreeable with the contention of the learned counsel because fact remains that "Poppy Flowers" were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned counsel, would not be sufficient to acquit him. In addition to it in such-like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305)". (bold added)*

(n) 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 in essence as per his S.342 statement was just a basic plea of false implication in that he had been picked up and illegally detained by the police 2 days before the incident who then falsely implicated him in this case. He did not give evidence on oath and did not call any DW in support of this defence case which he did not even put to any PW during cross examination. No body moved any application concerning his missing and illegal detention over this two day period and no enmity or ill will has been suggested to any police witness to suggest that they might have falsely implicated him in this case and thus we find the defence case to be an afterthought and disbelieve the same in the face of trustworthy, reliable and confidence inspiring prosecution evidence.

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

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