

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.D-19 of 2023

Before:

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Rizwan Ahmed son of Muhammad Ramzan,
Through Mr. Ghulam Nabi Jarwar, Advocate.

The State: Mr. Shahriyar Shar, Special Prosecutor ANF.

Date of hearing: 29.04.2026

Date of decision: 20.05.2026

JUDGMENT

Syed Fiaz ul Hassan Shah, J: Through this appeal, the appellant has challenged the judgment dated 18.03.2024, passed by learned Additional Sessions Judge-IVth/Special Judge Control of Narcotics Substance Act/Model Criminal Trial Court-II, Hyderabad, in Special Case No.93 of 2023, Re: State vs. Rizwan Ahmed, bearing U/ss 9(1), (5) (C) CNS (Amendment) Act 2022 PS A.N.F Hyderabad, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer R.I for nine (09) years along with fine Rs.100,000/- (One hundred thousand). In case of default in payment of fine the accused shall undergo S.I for one month more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that complainant SI Munir Ahmed on 22.06.2023 was discharging his duties, meanwhile spy appeared at Police Station and shared information that one person namely Rizwan Ahmed Zangejo will bring contraband narcotic in between 2040 to 2100 hours from the road coming from Kotri to Giddu Chowk, near Shell Petrol Pump, Hyderabad for supply to his selected customer, and on prompt action, recovery may be assured. On receiving such information, in view of directions of high ups, a raiding party consisting upon informer, complainant, ASI Muhammad Siddique, PC Manzoor Hussain, PC

Zafarullah, PC Gul Sher, Sepoy Yasir Ali was constituted and they alongwith civil driver Imam Ali in Government Mobile vehicle duly equipped with weapons, vide daily diary entry No.13 at 2030 hours proceeded and arrived at pointed place at 2040 hours where spotted a person holding black colour shopper, who was signaled by informer to be wanted person, hence, he was arrested alongwith black colour shopper. The passerby were subjected to act as mashir but they refused and in such compelling circumstances, ASI Muhammad Siddique and PC Manzoor Hussain were named as mashirs. On query, said person disclosed his name as Rizwan Ahmed Zangejo S/o Muhammad Ramzan and on inquiry about contraband narcotic, said person after a tiny reluctance, admitted the custody of contraband narcotic in black colour shopper and handed over the same to complainant, which was checked and found containing one multi colour foil packet, which was checked by applying cut and found Opium in the shape of single slab, hence, same was weighed through electronic scale and found weighing 01-one kilogram, out of which, sample of 10 grams was separated and sealed for chemical examination by applying No.S-1 in Khakhi envelope and No.1 parcel was written on the envelope, whereas rest packet was also sealed by mentioning No.S-1 in white cloth bag alongwith black colour shopper by identifying as parcel No.2. On bodily search of accused, from his right side pocket, one keypad mobile phone alongwith SIM Card as well as Rs.1000/- were recovered. Thereafter, accused was arrested, and after taking over the possession of recovered property and accused, memorandum of arrest and recovery was prepared in presence of above mashirs, contents of which were read over to them, who after admitting the same, put their signatures thereon, where-after accused and case property were brought at Police Station where complainant registered present FIR.

3. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.2/A, to which in compliance of section 265-E Cr.P.C.

4. At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined P.W No.1 complainant/I.O SI Munir Ahmed at Ex.3, he produced attested copy of departure and arrival entries on one page at Ex.3/A, memo of arrest and recovery at Ex.3/B, FIR at Ex.3/C, attested copy of entry of Malkhana at Ex.3/D, attested copy of departure and arrival entries for submission of case property to Chemical Lab Karachi at Ex.3/E, letter to Chemical Examiner at Ex.3/F, Road Certificate at Ex.3/G, sample receipt at Ex.3/H, Chemical Examiner report at Ex.3/I, letters issued to DPO, DC Sujawal as well as to RD ANF at Ex.3/J to Ex.3/L respectively, PW-2 mashir PC Manzoor Hussain at Ex.4, PW-3 PC Mohsin Ali (messenger of sealed parcel) at Ex.5, and PW-4 ASI Iqbal Hussain (Incharge Malkhana) at Ex.6. Thereafter learned SPP for ANF closed the side in evidence of prosecution vide statement at Ex.7.

5. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.8 wherein he denied the allegations of the prosecution case and pleaded his innocence. However, the accused did neither examine himself on oath, nor desired to produce witness in his defense.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case; that the raiding officer / Investigation Officer PW-1 SI Munir Ahmed admitted in cross examination that the slab produced in the Court were divided into four pieces on de-sealing before the Court while the same was one slab as per the evidence, as per memorandum of recovery and the same sample of one slab was sent to the chemical examination, therefore, the oral testimony with regard to the cut in the main case property and taken out 10 grams sample sealed in parcel No.01 vide transparent plastic shopper sent to the chemical Lab for chemical was not the one which was produced before the trial Court; that no departure entries were discharged, that register-XIX was not produced in original and no permission obtained for photocopy as well as the photocopy was not found in accordance with police rules and as per prescribed proforma must be **eight columns**; that the alleged place of incident is commercial thickly populated area and police has not given any explanation for non-joining independent

witness; that PW-4 ASI Iqbal Hussain in his evidence deposed that on 21.06.2023 he was serving and on the same day he received two sealed parcel of the case property for depositing in the Malkhana under entry No.272 of Register No.19 when the FIR was registered on the subsequent date i.e. 22.6.2023 which negate the incident; that no private witnesses have been associated as Mashir in this case; therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the same hence, he prayed for that the impugned judgment may be set-aside and the appellant may be acquitted.

7. On the other hand, learned Special Prosecutor ANF supported the impugned judgment stated that due to typographical error in the evidence of ASI Iqbal Hussain, inadvertently typed 21.6.2023 and this typographical error is rectified under Section 537 Cr.P.C.; that as far as, one slab of case property taken out as sample and when presented into four pieces, he states that the P.W-1 in his evidence voluntarily explained that the case property was broken without damaging any seal during handling of case property and final production before the trial Court therefore, the same have become into four pieces is not a valid arguments of the learned counsel or the appellant as the case property was the same. However, on a query of the Court, the learned Special Prosecutor has denied that entries was duly incorporated and produced before the trial Court.

8. We have heard the counsel for the parties and perused the record.

9. Foremost important point in the present appeal is that ANF Official PW-1 SI Munir Ahmed, Raiding officer was the author of the Memorandum of Recovery & Arrest Ex.3/B, and he had himself recorded that One kilogram Opium was recovered and out of such 1 KG Opium, he had taken out 10 grams Opium as a sample for Lab test (Chemical Analysis) and according to Ex.3/B, the said PW-1 sealed such 10 grams sample in transparent plastic shopper and Marked S-1. While the remaining Opium (990 grams) was packed in one white clothing, then handmade stitched it then sealed and Marked S-2.

Conversely, PW-1 SI Munir Ahmed during his oral testimony deposed that **“On checking such black shopping bag I recovered one multi colored foiling packet from it and when checked the said packet by cutting it from one side, the single slab of Opium came out from it and on checking the weight of the same through electronic scale, it came out as 1 KG. I thereafter separated the piece of about 10 grams Opium from the said packet and packed it in one transparent plastic small bag and named it as S-01 and packed it further in one Khaki Envelope and sealed it with one seal by mentioning thereupon as Parcel No.01.”** SI Munir Ahmed had not confirmed in his evidence that the remaining Opium after taking out the sample of 10 grams was sealed in white clothing and thus created material contradiction on two points i.e. one color (white clothing \ Black Shopper) and second nature of bag (Clothing \ plastic shopping bag).

10. Further, the PW-1 further given material contradiction when deposed: **“The rest of the packet had also been sealed along with the black shopping bag in one white clothing parcel and named it Parcel No.02.”** On the contrary when the remaining case property produced before the Trial Court it was Noted that: **“the parcel No.02, the white clothing parcel bearing one brown seal also de-sealed and found the parcel tied with white colored thread and on de-sealing the same one multi colored foiling pack in cut condition came out from it containing one slab in melted condition and broken into pieces”**. therefore, the PW-1, who was the raiding officer, author of Ex-3/B as well as Investigation officer of case, could not confirm that the remaining Opium weighed 990 grams was sealed in white clothing parcel with stiches rather he deposed material contradictory statement that the remaining 990 grams Opium was sealed in the black shopping bag.

11. Another infirmity found that no explanation has given by the Prosecution that until the examination of the sample (case property) it was not broken into 04 pieces as evident from the Ex.3/I Certificate of the Chemical analysis and it was clearly contained one slab in black brown color. Admittedly such sample case property was returned to the Malkhana at PS after chemical examination. However,

when it was produced before the trial Court it was found into four pieces and such fact has been admitted by the PW-1 Munir Ahmed in Cross-examination that ***“it is fact that neither the color of the Opium has been mentioned into the memo or FIR nor I have stated the same in my examination in chief. it is fact that the slab as produced into the court is divided into four pieces on de-sealed before the court. Voluntarily says that although the slab has been broken into four pieces whereas it still bears the marks of being single slab”***. Neither the color of Opium recovered from the crime scene was recorded in the memorandum of recovery Ex.3/B or in the FIR Ex.3/C nor the accurate sealing of case property in the White clothing was confirmed in the evidence to make the specific identification of the case property and to prove the case beyond any reasonable doubt. This was also glaring contradictory to the purported Register-XIX produced at Ex.3/D, which identified case property in a white clothing sealed.

12. In the present case, PW-1 Munir Ahmed SI, ANF, who acted as Raiding Officer, authored the Memorandum of Recovery Exh-3/B, conducted investigation, and performed multiple tasks, has given testimony materially contradictory with regard to the description, color, and pieces of the case property.

13. It is mandatory for the prosecution to satisfy two essential tests in relation to case property: firstly, recovery, seizure, and deposit in safe custody with flawless documentation reflecting accurate description and proper status; and secondly, safe transmission under proper documentation from safe custody to the Chemical Laboratory, and thereafter back to the police for production before the Court as admissible evidence. Any violation of these requirements warrants a negative inference, forming the basis for acquittal of the accused.

14. The prosecution carries a bounden duty to prove, through cogent and confidence-inspiring evidence, both the safe custody and safe transmission of the case property. Any break, omission, or failure in establishing this continuous chain of custody renders the evidentiary value of the recovered substance doubtful, and consequently, conviction and sentence under the relevant Act cannot be sustained.

15. Reliance is placed on *Qaiser and another v. The State* (2022 SCMR 1641), *Ikramullah v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), *Kamran Shah v. 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* (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).

16. In view of the facts and reasons discussed above, the impugned judgment could not be sustained, it is set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant is in custody, he would be released forthwith, if he is no more required in other case/crime.

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