

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.330 of 2025

Present:

Justice Zafar Ahmed Rajput, CJ
Justice Jan Ali Junejo

Appellant : Ayoub Khan s/o Mir Alam Khan, through
Mr. Waqas Ali Chaudhary, Advocate

Respondent : The State, through Mr. Abrar Ali Khichi,
Additional Prosecutor General, Sindh
(Addl. PG)

Date of Hearing : 10.08.2026

Date of Judgment : 10.08.2026

JUDGMENT

Jan Ali Junejo, J.- The instant Crl. Appeal has been filed under section 48 of the Control of Narcotic Substances Act, 1997 ("**Act of 1997**") by Appellant, Ayoub Khan, calling into question the legality, correctness, and propriety of the judgment, dated 10.04.2025, ("**impugned judgment**") passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Malir, Karachi ("**Trial Court**") in Sessions Case No. 1942 of 2024, arising out of FIR No.224 of 2024, registered at Police Station Memon Goth, Malir, Karachi, whereby the Appellant was convicted under Section 9(1)(3)(c) of the Control of Narcotic Substances (Amendment) Act, 2022 and sentenced to undergo R.I. for a period of fourteen (14) years with a fine of Rs.400,000/- and/or in default thereof, to further undergo S.I. for six (06) months. The Appellant was also convicted under Section 9(1)(6)(c) of the Act and sentenced to undergo rigorous imprisonment for a period of fourteen (14) years with a fine of Rs.500,000/- and/or in default thereof, to further undergo S.I. for six (06) months. Both the sentences were ordered to run concurrently. Benefit of Section 382-B, CrPC was, however, extended to the Appellant.

2. Briefly stated, the prosecution's case is that, on 26.06.2024 at 1315 hours, a police party of Police Station Memon Goth, Malir, Karachi, headed by

the complainant SIP Rafiq Ahmed, acting on a tip-off, intercepted the Appellant at Ramzan Chowrangi. Due to non-cooperation from the public, the complainant associated police officials as mashirs to witness the search and recovered from the possession of the Appellant a black plastic bag, containing seven pieces of charas wrapped in white plastic and two white plastic packets, containing heroin powder; two mobile phones and cash amounting to Rs.400/-. The recovered narcotics were weighed at the spot, whereby charas was found to be 1100 grams and heroin 1800 grams. Consequently, the FIR was registered.

3. The investigation was carried out by SIP Maqbool Chandio, who, after completing all codal formalities, including dispatching the alleged contraband to the Chemical Examiner, submitted the challan against the Appellant.

4. The Trial Court framed the charge against the Appellant, to which he pleaded not guilty and claimed trial. At the trial, the prosecution to substantiate its case, examined four witnesses. **PW-1**, Rafiq Ahmed (*Complainant*) examined at Ex.3; who deposed that, on 26.06.2024, while posted as SIP at Police Station Memon Goth, he received spy information that a person was engaged in selling charas at Ramzan Chowrangi. Acting upon such information, he along with his subordinate staff proceeded to the pointed place and apprehended the Appellant and secured one black-colored plastic shopper, which contained seven pieces of charas and two white packets containing heroin powder. The recovered narcotics were weighed on a digital scale, whereby charas was found to be **1100 grams** and heroin **1800 grams**. He further stated that the mashirnama of arrest and recovery was prepared at the spot; the Appellant was arrested; the FIR was lodged; the case property was deposited in the malkhana and the investigation was handed over to the Investigating Officer. He produced Departure Entry, Memo of Arrest and Recovery, FIR, Arrival Entry and Memo of Inspection as Ex. 3/A to Ex. 3/E. During his course of evidence, the case property was produced in sealed condition and was opened in Court. **PW-2**, HC Akhtar Ali (*Mashir*) examined at Ex. 4. He corroborated the evidence of the complainant and attested that SIP Rafiq Ahmed prepared the mashirnama of

arrest and recovery in his presence. **PW-3**, SIP Maqbool Ahmed (*Investigating Officer*) examined at Ex. 5: He deposed that on 26.06.2024, he was posted as SIP at PS Memon Goth and on that day, he received the investigation of the present case along with custody of the Appellant and case property. During the course of investigation, he visited the place of incident, obtained photographs of the site, and recorded statements of witnesses under Section 161, CrPC. He further deposed that on 28.06.2024, he transported the case property to the chemical laboratory vide entry No. 14 and obtained receipt thereof. He produced relevant documents including entry No. 26, sketch of place of incident, chemical examiner's letter, arrival entry and other documents as Ex. 5/A to Ex. 5/K. **PW-4**, ASI Mir Hassan (*Malkhana Incharge*) examined at Ex. 7. He deposed that on 26.06.2024, he was posted as Incharge Malkhana at PS Memon Goth. On that day, complainant SIP Rafiq Ahmed handed over the case property pertaining to Crime No. 224/2024 to him, which he deposited in the Malkhana and made entry in the Malkhana register vide entry No. 119 of 2024. He further deposed that on the next day; he handed over the case property to the Investigating Officer SIP Maqbool Chandio for chemical analysis. He produced the said entry as Ex.7/A.

5. The Trial Court recorded the Appellant's statement under Section 342, CrPC, wherein he denied the allegations, professed his innocence, and asserted that he had been falsely implicated by the police officials. He, however, did not opt to record his statement on oath under Section 340(2), CrPC nor did he examine any witness in his defence.

6. After hearing the learned Counsel for the parties, the Trial Court convicted the Appellant, vide the impugned judgment, and sentenced him as mentioned above.

7. Learned counsel for the Appellant vehemently contended that the impugned judgment is the result of gross non-reading and misreading of the material available on record. He argued that the prosecution case suffers from

material contradictions and inherent inconsistencies, which render it unreliable and unworthy of reliance. It was further contended that the prosecution failed to establish the existence of any spy information, and even the alleged place of arrest and recovery remains doubtful, as the statements of prosecution witnesses materially differ on these vital aspects. Learned Counsel further submitted that the alleged search and seizure were conducted in violation of mandatory legal provisions, and the prosecution has also failed to establish the safe custody and safe transmission of the alleged narcotics to the office of the Chemical Examiner. On these premises, learned counsel prayed that the appeal be allowed, the impugned judgment be set aside, and the Appellant be acquitted of the charge.

8. Conversely, learned Addl, PG supported the impugned judgment and contended that the prosecution has successfully established the recovery of a substantial quantity of charas and heroin from the possession of the Appellant, which by itself is sufficient to sustain the conviction. He submitted that the alleged contradictions pointed out by the defence are minor in nature and do not go to the root of the case. According to him, police officials are competent witnesses, and their testimony cannot be discarded merely on the ground of their official status, particularly when no mala fide has been alleged against them. He further maintained that the chain of custody of the recovered narcotics was duly established and the report of the Chemical Examiner fully corroborates the prosecution case. He argued that the Trial Court has rightly appreciated the evidence available on record.

9. We have considered the arguments advanced by the learned counsel for the Appellant as well as learned Addl. PG and carefully scanned the material available on the record.

10. It is borne out from the record that 1100 grams charas and 1800 grams heroin powder were recovered from exclusive possession of the appellant, and the same were taken into possession through recovery memo and sealed into

parcel on the spot. While going through the prosecution evidence, especially the deposition of P.W-1, SIP Rafiq Ahmed, the complainant and the seizing officer, P.W-2, HC Akhtar Ali, the marginal witness of the recovery memo and a member of the police party; in whose presence the alleged charas and heroine were recovered from the possession of the Appellant, PW-3, SIP Maqbool Ahmed, the Investigating Officer, who conducted the investigation and deposited the sealed parcel with the Chemical Examiner and obtained (Ex.05/H & Ex. 05/I) and PW-4, ASI Mir Hassan, Incharge Malkhana, who received the parcels of case property and kept the same in the Malkhana of the police station after registering the same in the Register vide No.119/2024, it transpires that all the above witnesses are consistent on all material aspects. No distinct discrepancy was noticed to spoil the credibility of their testimony, and they were subjected to cross-examination by the learned counsel of the Appellant, but their testimony did not shatter. From the evidence, the mode and manner of arrest of the Appellant leading to the recovery of the narcotic have been proved. The prosecution evidence is unanimous with regard to the arrest of the Appellant, the place of the occurrence, the quantity of the recovered charas and heroine, and to that extent, the evidence of the prosecution is also inspiring confidence.

11. Adverting to the contention of the learned counsel for the Appellant that no private person was joined in the recovery proceedings except police officials, which is a violation of section 103, CrPC, there appears to be no force in the contention of the learned counsel as the application of section 103, CrPC has been excluded by section 25 of the Act of 1997 in narcotics cases. In the case of *Zafar v. The State* (2008 SCMR 1254), the Apex Court has held that “*the police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are the police employees*”.

12. Moreover, the reluctance of the general public to become a witness in such like cases was a judicially recognized fact, and there was no option left but

to consider the statement of an official witness as no legal bar had been imposed in that regard. In the instant case, no proof of enmity with the complainant and the prosecution witnesses has been brought on record, thus, in the absence thereof, the competence of the prosecution witnesses, being officials, was rightly believed. Moreover, the PWs were not at all questioned about any previous ill-will or enmity with the Appellant, whereby he could have been falsely nabbed and charged with the possession of 1100 grams charas and 1800 grams heroin powder.

13. The recovery of alleged contraband was affected from the Appellant on 26.06.2024, and the samples of the same were received by the Chemical Examiner on 28.06.2024 within the prescribed period. There is nothing on record to establish that the parcel was ever tampered with, rather, the evidence led by the prosecution established that when the parcel was received by the said agency, it remained intact. Even SIP, Maqbool Ahmed (PW-3) himself, deposited the parcels with the Chemical Examiner, and the name of PW-3 also appears in his reports.

14. The reports of Chemical Examiner (*Ex.05/H & Ex.05/I*) provides that after conducting a chemical test with a complete protocol (*description thereof are available in said reports*), the same has been found charas and heroine.

15. After having analyzed the prosecution evidence, we are of the candid view that the prosecution has ably discharged the initial onus of proof. Once the prosecution leads ample evidence and discharges the initial onus of proof, then it is the accused who has to diminish the presumption of guilt against him, as being a special law, section 29 of the Act of 1997, gives rise to a presumption of guilt against the accused. In view of the recovery of a huge quantity, we can safely observe that there is no possibility of false implication of the Appellant in the offence entailing stringent punishment, especially in the absence of any proven enmity. We have noticed that in rebuttal to overwhelming prosecution evidence, the Appellant has failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses.

16. For the foregoing facts and reasons, we are of the considered view that the prosecution has successfully established the guilt of the Appellant, therefore, he was rightly convicted by the Trial Court, and the sentence awarded to him is duly commensurate with his alleged act. Resultantly this appeal fails and is hereby dismissed by maintaining the conviction and sentence awarded to the Appellant by the Trial Court.

JUDGE

CHIEF JUSTICE