

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Shamsuddin Abbasi

Mr. Justice Miran Muhammad Shah

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Criminal Appeal No.554 of 2023

Appellants 1. Haider Khan son of Zahir Shah.
 2. Shah Hayat son of Haider Khan.
 3. Atta ur Rehman son of Syed Rehman.

Respondent The State.

Criminal Appeal No.555 of 2023

Appellants 1. Imran Khan son of Zahir Shah.
 2. Azharuddin son of Zahir Shah.

Respondent The State.

Criminal Appeal No.556 of 2023

Appellants 1. Aurangzeb son of Zahir Shah.
 2. Amir Khan son of Gul.

Respondent The State.

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Mr. Muhammad Farooq, Advocate for the Appellants in all appeals.
Mr. Habib Ahmed, Special Prosecutor ANF.

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Date of hearing 21.10.2026

Date of Judgment 26.10.2026

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J U D G M E N T

Shamsuddin Abbasi, J.- The instant three appeals arise out of FIR N.05 of 2019, FIR No.06 of 2019 and FIR No.07 of 2019 registered at Police Station ANF-I, Karachi, by Inspector Zahid Ali in respect of separate recoveries of narcotic substances on 11.01.2019. All three cases culminated in separate judgments of conviction and sentence each dated 04.10.2023, passed by the learned Special Court No. I (Control of Narcotic Substances), Karachi. As the appeals arise from a common sequence of events, successive recoveries made on the same day by the same raiding party and involve interconnected factual and legal questions, they are being heard and decided together through this common judgment.

2. The prosecution case as emerging from the respective FIRs is that on 11.01.2019 complainant Inspector Zahid Ali received secret information

through his high ups that narcotics smuggler, Jan Badshah son of Gulab Shah, resident of Peshawar, intended to transport a huge quantity of narcotic substances to Karachi through his associates, Haider Khan, Shah Hayat, Imran Khan, Aamir Ali, Aurangzeb, Azharuddin and Atta-ur-Rehman, using three trucks bearing Registration Nos.SPN-197, TLM-381 and TLN-750, which were expected to arrive in Karachi via Superhighway. Acting upon such information, a raiding party comprising SI Zahid Ali, PC Muhammad Shoaib, PC Umar Raza and other ANF personnel was constituted under the supervision of A.D. Ghulam Murtaza, duly equipped with official weapons, departed from P.S. in official vehicle at 1:00 pm vide Roznamcha entry No. 7 and proceeded towards the Superhighway near the Toll Plaza. Upon reaching the designated place, the raiding party established secret surveillance to intercept the suspected vehicles. The subsequent events as narrated in the respective FIRs are set out separately below.

FIR No. 05 of 2019: According to the prosecution at about 2:30 pm on 11.01.2019 truck bearing Registration No.SPN-197 was spotted approaching Karachi. On the pointation of the informer, the raiding party intercepted the truck, in the cabin of which three persons were found sitting. Upon inquiry, they disclosed their names as Haider Khan son of Zahir Shah, Shah Hayat son of Haider Khan and Atta-ur-Rehman son of Syed Rehman. When questioned about the narcotics, the driver Haider Khan disclosed that the contraband had been concealed in the tool box of truck and unlocked the tool box with a key and took out a tube containing 20 packets wrapped in transparent plastic and secured with yellow-coloured tape. Upon weighing each packet was found to contain one kilogram of heroin powder making a total quantity of 20 kilograms. From each packet 100 grams were drawn from and sealed separately for chemical analysis while the remaining narcotic substance was secured separately in a white nylon bag. The recovery and sampling proceedings were conducted in the presence of the same mashirs, namely PC Muhammad Shoaib and PC Umar Raza.

FIR No. 06 of 2019: It is alleged that at about 4:45 pm on 11.01.2019, the raiding party intercepted another truck bearing Registration No.TLM-381. Two persons were present in its cabin including the driver, who disclosed his name as Imran Khan while the other occupant introduced himself as Azharuddin. Upon inquiry driver Imran Khan disclosed that the contraband has been concealed in the tool box of truck, he unlocked the tool box and took out a tube containing 15 packets wrapped in transparent plastic and

secured with yellow-coloured tape. Each packet was found to contain one kilogram of heroin powder making a total quantity of 15 kilograms. 100 grams from each packet were drawn and sealed separately for chemical analysis while the remaining narcotic substance was secured separately. The recovery and sampling proceedings were conducted in the presence of the same mashirs, namely PC Muhammad Shoaib and PC Umar Raza.

FIR No. 07 of 2019: It has further been alleged that at about 6:30 pm on 11.01.2019 the raiding party intercepted a third truck bearing Registration No.TLN-750. Two persons were present in the cabin of the vehicle, who disclosed their names as Aurangzeb and Aamir Khan. Upon being questioned about the narcotic, driver Aurangzeb disclosed that the contraband has been concealed in the tool box of truck. Upon opening the tool box, a tube containing 12 packets of charas were recovered. Each packet was weighed and found to contain 1200 grams of charas making a total recovered quantity of 25,200 grams. 100 grams were drawn from each packet and sealed separately for chemical analysis while the remaining recovered charas was secured and sealed separately. The recovery and sampling proceedings were conducted in the presence of the same mashirs, namely PC Muhammad Shoaib and PC Umar Raza.

3. Upon conclusion of the proceedings at the place of recovery in each case, the accused persons along with the recovered narcotic substances, sealed sample parcels and the three trucks were brought at P.S. where three separate FIRs corresponding to the respective recoveries were registered against accused /appellants and upon completion of the investigation, they were sent up to face the trial before the Court of competent jurisdiction through three separate challans.

4. Upon indictment in each case, the accused/appellants pleaded not guilty to the charged offence and claimed trial. At trial, the prosecution has examined complainant Inspector Zahid Ali as PW.1 at Ex.3, PC Muhammad Shoaib as PW.2 at Ex.4, SI Zaid Ali as PW.3 at Ex.6 and PC Imam Bux as PW.4 at Ex.7 in each case. In their statements under Section 342, Cr.P.C. the accused/appellants have denied the allegations imputed upon them by the prosecution, professed their innocence and pleaded false implication in each case.

5. The learned counsel appearing on behalf of the appellants in each appeal has contended that the appellants are innocent and have been

falsely implicated with malafide intention and ulterior motives as otherwise they have nothing to do with the alleged offence and have been made victim of the circumstances. It is next submitted that the prosecution has failed to establish the charges against the appellants beyond reasonable doubt. It is also submitted that the alleged recoveries were witnessed exclusively by officials of the ANF without association of any independent person and that the prosecution has failed to furnish satisfactory corroboration of the alleged effected recoveries. He has questioned the credibility of the prosecution evidence particularly in view of the successive recoveries allegedly effected by the same raiding party on the same day and in the presence of same mashirs. He has argued that the prosecution has failed to establish an unbroken chain of custody of the alleged narcotic substances and their representative samples from the time of recovery until their receipt at the office of chemical examiner. He has questioned the evidentiary value of the entries and the transmission of the sample parcels and submitted that any uncertainty regarding their safe custody and safe transmission would render the chemical examination reports unreliable. It is argued that the prosecution has failed to establish the identity and integrity of the alleged recovered substances through dependable evidence. He has maintained that the appellants have denied the allegations in their statements under Section 342, Cr.P.C. and pleaded false implication. It is submitted that the learned trial Court failed to consider the documents produced by Imran Khan (appellant in Criminal Appeal No.555 of 2025), which formed part of the common defence plea of all the appellants. He further submitted that all the appellants belong to the same family as appellants Haider Khan, Imran Khan, Azharuddin and Aurangzeb are brothers while appellant Shah Hayat is the son of appellant Haider Khan and the remaining two appellants are their relatives. It is argued that the prosecution evidence when examined in its entirety suffered from material deficiencies that rendered the convictions and sentences unsustainable. On these submissions, learned counsel has prayed that the impugned judgments may be set aside and the appellants may be acquitted of the charges by extending them the benefit of doubt.

6. Conversely, learned Special Prosecutor for ANF has supported the impugned judgments and contended that the prosecution has established its case against the appellants through confidence inspiring and consistent evidence. It is next submitted that the raiding party has acted upon credible secret information and has intercepted the three trucks resulting in the recovery of substantial quantities of narcotic substances from the respective

trucks. According to him, the recovery proceedings were duly witnessed by the mashirs whose testimony remained sufficient to establish the prosecution case. It is also submitted that the prosecution witnesses have consistently supported the material particulars of the recoveries and that no material contradiction has been brought on record to discredit their testimony. It is argued that the absence of private witnesses did not render the evidence of official witnesses unreliable particularly when no ulterior motive, personal animosity or reason for false implication has been established against them. Regarding the safe custody and safe transmission of the recovered substances, he has argued that the testimony of the Malkhana Incharge and the official entrusted with the sample parcels read together with the relevant register entries and chemical examination reports established the continuity of custody and transmission of the samples. He maintained that the appellants have failed to identify any material circumstance sufficient to displace the prosecution evidence or undermine the findings recorded by the learned trial Court. The impugned judgments are based on proper appreciation of the evidence and did not suffer from any misreading, non-reading or material illegality warranting interference by this Court and prayed for dismissal of appeals.

7. We have heard learned counsel for the appellants and learned Special Prosecutor for ANF and have carefully examined the evidence and other material available on record with their assistance.

8. Through their respective appeals, the appellants have challenged the judgments of conviction and sentence, all dated 04.10.2023, passed by the learned Special Court No.I (Control of Narcotic Substances), Karachi, in three separate cases arising out of recoveries allegedly effected from three trucks on 11.01.2019. By the impugned judgments, the appellants were convicted and sentenced to imprisonment for life along with fine of Rs.300,000/- each and in default of payment of fine to suffer simple imprisonment for a further period of one year and six months.

9. The prosecution case primarily rests upon the testimony of PW.1 Inspector Zahid Ali, the complainant and recovery officer, and PW.2 PC Muhammad Shoaib, one of the mashirs of the memos of arrest and recovery. Since the alleged recoveries were effected successively from three trucks by the same raiding party on 11.01.2019, we have examined the evidence separately in relation to each FIR, keeping in view the nature of the recovery,

the circumstances in which the narcotic substances were discovered, the respective roles attributed to the appellants and the evidence, if any, connecting each appellant with the concealed contraband. It is essential to determine not only whether the recoveries were established, but also whether the prosecution has proved beyond reasonable doubt that each appellant had the requisite knowledge of and conscious connection with the narcotic substances allegedly recovered.

10. PW.1 Inspector Zahid Ali in his evidence has deposed that acting upon secret information, the raiding party intercepted three trucks one after another on 11.01.2019 and recovered substantial quantities of narcotic substances concealed in their respective tool boxes. In FIR No.05 of 2019, 20 kilograms of heroin powder was recovered from truck bearing Registration No.SPN-197; in FIR No.06 of 2019, 15 kilograms of heroin powder was recovered from truck bearing Registration No.TLM-381 and in FIR No.07 of 2019, 25,200 grams charas was recovered from truck bearing Registration No.TLN-750. According to the complainant, the recoveries were effected separately, representative samples were drawn from the recovered substances at the place of recovery and sealed for chemical examination and the remaining case property was also secured and sealed at the spot and upon returning to P.S., the respective FIRs were registered and the case property and sealed sample parcels were handed over to PW.3 SI Zaid Ali, the Malkhana Incharge, for keeping the same in safe custody.

11. PW.2 PC Muhammad Shoaib, one of the mashirs of the recovery proceedings, has corroborated the complainant's testimony regarding the interception of the trucks, the recovery of narcotic substances from their respective tool boxes, the preparation of separate recovery documents and the drawing and sealing of representative samples and the remaining case property at the spot. Both witnesses have maintained that the recovery proceedings in the three cases were conducted separately notwithstanding that the same raiding party and mashirs were involved.

12. We have carefully scrutinized the depositions of both witnesses in the light of their cross-examination. Their testimony remained consistent on material particulars of the respective recoveries and no substantial contradiction or infirmity has been brought to our notice that would render their account inherently improbable or unreliable. The fact that the same raiding party effected three successive recoveries on the same day and that

the same mashirs witnessed those proceedings does not establish fabrication or false implication. The evidentiary worth of their testimony must be assessed on its intrinsic merits, its consistency with the contemporaneous record and the surrounding circumstances. Upon such assessment, we find no sufficient basis to discard their account of the recovery proceedings merely because the three cases arose from successive operations conducted by the same raiding party.

13. It is a settled principle of law that an official witness is as competent to testify as any other witness and that his evidence cannot be discarded merely because of his official status. The absence of an independent private witness is likewise not fatal to the prosecution case. Although such absence may call for closer scrutiny in the circumstances of a particular case, there is no inflexible rule requiring the prosecution to associate or examine every person present at the place of recovery. Where the testimony of official witnesses is consistent, confidence inspiring and free from material contradiction and is supported by the contemporaneous documentary record, it may safely be relied upon. In the cases in hand, the defence has not established any personal animosity, ulterior motive or other material circumstance suggesting that the recovery witnesses fabricated the proceedings or falsely implicated the appellants. We, therefore, find no justification for rejecting their testimony solely on the ground that they belonged to the ANF department.

14. The next question concerns the safe custody and safe transmission of the recovered narcotic substances and their representative samples. PW.3 SI Zaid Ali, the Malkhana Incharge, has deposed that on 11.01.2019 Inspector Zahid Ali deposited the case property and sealed sample parcels pertaining to the respective FIRs with him for safe keeping the same in safe custody, whereupon the relevant entries were made in Register No.XIX. His testimony read with the corresponding entries establishes the initial deposit and identification of the case property and sample parcels in the Malkhana. This witness has further deposed that that on 14.01.2019 the sealed sample parcels were handed over to Inspector Zahid Ali for onward transmission to the office of the chemical examiner. PW.4 PC Imam Bux, the official entrusted with the sample parcels has testified that he received the sealed parcels on 14.01.2019 under the relevant Roznamcha entry No.7, deposited the same at the office of the chemical examiner against the prescribed

receipt on the same day and upon returning to P.S. recorded his arrival through Roznamcha entry No.8.

15. We have examined the aforesaid oral evidence alongside the forwarding letter dated 14.01.2019 issued by the complainant, available at Ex.3/E, the road certificate at Ex.3/G, the chemical examiner's report at Ex.3/F, the entries in Register No.XIX and the corresponding Roznamcha entries. These documents read collectively with the testimony of PW.3 SI Zaid Ali and PW.4 PC Imam Bux establishes the successive stages of custody and transmission of the sample parcels. The evidence shows that the samples were drawn and sealed at the place of recovery, deposited in the Malkhana and subsequently transmitted to the chemical examiner. The defence has not pointed out any material discrepancy in the relevant entries or the testimony of the witnesses sufficient to establish that the seals were tampered with, the samples were substituted or the parcels received by the chemical examiner were different from those originally drawn from the recovered substances. We are, therefore, satisfied that the prosecution has established the chain of safe custody and safe transmission of the representative samples to the office of chemical examiner through reliable oral and documentary evidence. The integrity and identity of the samples examined by the chemical examiner stand established and the chemical examination reports lend corroboration to the prosecution case regarding the nature of the substances recovered.

16. We are conscious that a chemical examination report cannot, by itself, cure a material defect in the chain of custody. Its evidentiary value depends upon proof that the samples examined were the same samples drawn from the recovered substances and that identity and integrity remained intact throughout custody and transmission. In the cases in hand the evidence of the Malkhana Incharge and the carrier witness, supported by the relevant register entries, forwarding documents and chemical examination reports, establishes the continuity of custody and transmission. The objection concerning the identity and integrity of the samples, therefore, does not furnish a sufficient ground to discard the prosecution case.

17. The more important question concerns the conscious possession of the narcotic substances and the respective roles of the appellants. It is a settled principle that the recovery of narcotics from a vehicle does not automatically render every occupant or employee of that vehicle criminally

liable. The prosecution must establish that the particular accused had the requisite knowledge of and conscious connection with the concealed contraband. Such knowledge need not invariably be proved by direct evidence, it may be inferred from proved circumstances forming a coherent and convincing chain. Nevertheless, the inference must rest upon the cumulative effect of the evidence and not merely upon suspicion, status or physical presence. In the cases in hand, the position of appellants Haider Khan, Imran Khan and Aurangzeb, who were respectively driving the three trucks, is materially distinguishable from that of the remaining occupants. The prosecution has not relied merely upon their presence at the driving seats rather according to the consistent account of PW.1 Inspector Zahid Ali and PW.2 PC Muhammad Shoaib upon being questioned regarding the narcotic substances, each of these three drivers disclosed that the contrabands have been concealed in the tool box of the truck and each driver then voluntarily unlocked the tool box with key and facilitated the recovery of the concealed substance. In the first case, Haider Khan disclosed the presence of narcotics in truck No.SPN-197 and unlocked its tool box, from which 20 packets of heroin powder were recovered. In the second case, Imran Khan disclosed the concealment of narcotics in truck No.TLM-381 and unlocked its tool box, from which 15 packets of heroin powder were recovered. In the third case, Aurangzeb disclosed the concealment of narcotics in truck No.TLN-750 and opened its tool box, from which packets of charas were recovered. These circumstances assume particular significance when considered cumulatively. The narcotic substances were concealed in the tool boxes of the very trucks being driven by three appellants Haider Khan, Imran Khan and Aurangzeb. More importantly, the recoveries followed the respective disclosures and the opening of the tool boxes by the drivers themselves. Their direct operational control over the vehicles, their ability to access the tool boxes and their conduct in facilitating the recovery when considered alongside the substantial quantities of narcotics allegedly concealed therein and the consistent recovery evidence provide a rational and legally sustainable basis for inferring their knowledge of and conscious connection with the contrabands. We are mindful that the mere fact that a person occupies the driving seat does not invariably establish conscious possession of every article found in the vehicle. Each case must be decided on its own facts. In the case of *Hussain Shah and others v. The State* (PLD 2020 Supreme Court 132), the august Supreme Court has maintained the conviction of a driver in circumstances involving a substantial quantity of charas concealed in a secret cavity of the vehicle. Likewise, in the case of *Kashif Amir v. The State*

(PLD 2010 Supreme Court 1052), the Hon'ble Supreme Court has recognized that a person's position as the driver and his control over the vehicle may, depending upon the surrounding circumstances, constitute an important circumstance in determining possession of articles concealed therein. Similar principles were considered in the cases of *Muhammad Noor v. The State* (2010 SCMR 927) and *Ghulam Qadir v. The State* (PLD 2006 Supreme Court 61). These authorities do not lay down an inflexible rule that every driver must be convicted whenever narcotics are recovered from a vehicle. Their application depends upon the evidence establishing the particular driver's connection with the concealed substance. In the cases before us, the circumstances extend beyond the mere presence of the three appellants at the steering wheels. Each driver was exercising operational control over the relevant truck and each disclosed the location of the concealed contraband and voluntarily opened the tool box in which contrabands were found. These acts considered with the nature and quantity of the recovered substances and the reliable evidence establishing the recoveries distinguish their position from that of persons whose mere presence in trucks affords no sufficient basis for inferring conscious possession. No material circumstance has been established suggesting that the tool boxes were opened by someone else or that the drivers' connection with the concealed contraband was merely incidental. We are, therefore, satisfied that the cumulative circumstances establish the conscious possession of the narcotic substances against Haider Khan, Imran Khan and Aurangzeb beyond reasonable doubt.

18. The position of the remaining appellants, namely Shah Hayat, Atta-ur-Rehman, Azharuddin and Aamir Khan, requires separate consideration. Their presence in the respective trucks is not in dispute according to the prosecution case, however, their presence as occupants, without more, cannot automatically be equated with conscious possession of the narcotic substances concealed in the tool boxes. The prosecution was required to establish through reliable evidence or sufficiently compelling surrounding circumstances that each of these appellants knew of the concealed narcotics and had a conscious connection with them. The distinguishing circumstances relied upon against the three drivers are not established against these four appellants with the same degree of certainty. The prosecution evidence identifies the respective drivers as the persons who disclosed the location of the contraband and opened the tool boxes to facilitate the recoveries. No sufficiently reliable and independent circumstance has been brought to our

notice establishing that Shah Hayat, Atta-ur-Rehman, Azharuddin or Aamir Khan have participated in the concealment, had prior knowledge of the narcotic substances or exercised control over the tool boxes in which they were found. Their mere presence alongside the drivers, even when considered with the substantial quantities of narcotics recovered, does not, without further connecting evidence, establish their conscious possession beyond reasonable doubt. We are conscious that the prosecution is not required to prove the knowledge of an accused exclusively through direct evidence. Nevertheless, the circumstances relied upon must reasonably connect that particular accused with the contraband. The inference that may properly be drawn against a driver who exercises operational control over a vehicle and personally discloses and opens the place of concealment cannot automatically be extended to every other occupant. To do so would amount to substituting collective suspicion for proof of individual criminal responsibility. The fact that the appellants belong to the same family or are related to one another does not, in itself, establish their complicity nor does such relationship establish their innocence. Their liability must be determined on the evidence against each individual. In the cases in hand, the prosecution has not produced sufficient evidence to establish the requisite knowledge and conscious possession of Shah Hayat, Atta-ur-Rehman, Azharuddin and Aamir Khan. The possibility that they were merely accompanying the drivers, without knowledge of the narcotics concealed in the tool boxes, cannot safely be excluded. This is not a case in which the benefit of doubt is being extended merely because private witnesses were not associated or because the prosecution witnesses belong to the department rather the doubt arises from the absence of sufficiently reliable evidence connecting these four appellants individually with the concealed contraband. It is an established principle of criminal jurisprudence that even a single circumstance creating reasonable doubt in a prudent mind is sufficient to entitle an accused to its benefit as a matter of right and not as a matter of grace. Accordingly, extending the benefit of doubt to Shah Hayat, Atta-ur-Rehman, Azharuddin and Aamir Khan, we find that their convictions cannot be sustained.

19. For the foregoing reasons, we are of the view that the prosecution has established the recoveries and the identity of the narcotic substances through reliable ocular testimony, supported by the relevant documentary record and the chemical examination reports. The evidence regarding safe custody and safe transmission of the representative samples has also been

established. More importantly, the circumstances surrounding the recoveries including the direct operational control exercised by the three drivers over their respective trucks, their disclosures regarding the concealed narcotics and their voluntary unlocking of the tool boxes, establish their conscious possession beyond reasonable doubt. The appellants Haider Khan, Imran Khan and Aurangzeb have failed to demonstrate any misreading or non-reading of evidence, material contradiction or legal infirmity warranting interference with their convictions. Their respective appeals are, therefore, dismissed, and their convictions and sentences awarded by the learned trial Court are maintained. On the other hand, the prosecution has failed to establish beyond reasonable doubt the conscious possession of the narcotic substances against Shah Hayat, Atta-ur-Rehman, Azharuddin and Aamir Khan. Their appeals are allowed, their convictions and sentences are set aside and they are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith if not required to be detained in connection with any other case.

20. The Criminal Appeal No.554 of 2023, Criminal Appeal No.555 of 2023 and Criminal Appeal No.556 of 2023 stand disposed of in the foregoing terms.

JUDGE

JUDGE