

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Justice Zafar Ahmed Rajput (CJ)
Justice Jan Ali Junejo

Criminal Appeal No. 129 of 2023

Appellants : Daro Khan son of Naseer Ahmed Khan and Baaz Khan son of Ahmed Khan through Mr. Raja Babar Hamid, Advocate

Criminal Appeal No. 73 of 2023

Appellant : Raz Muhammad son of Syed Muhammad through Mr. Muhammad Imran Meo, Advocate

Respondent : The State, through Mr. Habib Ahmed, Special Prosecutor for ANF

Date of Hearing : 25.11.2025

Date of Judgment : 21.01.2026

JUDGMENT

Jan Ali Junejo, J.- Both the above criminal appeals are directed against the same judgment, dated 09.01.2023, ("***Impugned Judgment***") passed by the learned Special Judge-II (Control of Narcotic Substances), Karachi ("***Trial Court***") in Special Case No.24 of 2022, whereby the present Appellants, namely, (1) Daro Khan s/o Naseer Ahmed Khan (2) Baaz Khan s/o Ahmed Khan and (3) Raz Muhammad s/o Syed Muhammad were convicted under section 265-H (2), CrPC and each of them was sentenced for the offence punishable under section 9-C read with sections 14 and 15 of the Control of Narcotic Substances Act, 1997 ("***the Act***") to life imprisonment and to pay a fine of Rs.200,000/- each. In case of default thereof, they were further directed to undergo two (02) years' imprisonment. The benefit of section 382-B, CrPC was, however, extended to the Appellants. Co-accused, Abdul Wadood and Feroz Khan, were acquitted of the charge. Since both the appeals arise out of the same FIR and the same Impugned Judgment, they were heard together and are being disposed of through this common judgment.

2. The prosecution case, as unfolded through FIR No.19 of 2019 registered at Police Station ANF Gulshan-e-Iqbal, Karachi, is that on 03.08.2019, Inspector Abdul Rasheed Dari received spy information through high authorities that one inter-provincial narcotics smuggler, namely, Abdul Baqi along with his companions would transport a huge quantity of narcotics from Quetta to Karachi in three vehicles, namely Toyota Land Cruiser bearing registration No. RIY-1224, Double Cabin bearing registration No. KS-6670 and Toyota Car bearing registration No. BDG-327. It was alleged that the Land Cruiser was being driven by Daro Khan and Abdul Wadood was also boarded, the Double Cabin was being driven by Baaz Khan and Feroz Khan was also boarded, while the Toyota Car was being driven by accused Raz Muhammad. The raiding party intercepted the said vehicles near Hub River Road Toll Plaza, Karachi and recovered 120 kilograms of charas from the Land Cruiser, 20 kilograms of charas along with one SMG from the Double Cabin and 13.2 kilograms of charas and 2 kilograms of opium from the Toyota Car. All the accused persons were arrested at the spot and after usual formalities FIR was registered.

3. Copies of the statements and relevant documents were duly supplied to the Appellants and co-accused as required by law. Thereafter, a formal charge was framed against them, to which all the accused persons pleaded not guilty and claimed trial. In order to substantiate its case, the prosecution examined the following five witnesses:

PW-1 Inspector Abdul Rasheed Dari (Complainant / Investigating Officer): He deposed that on receiving spy information he constituted a raiding party, intercepted the three vehicles near Hub River Road Toll Plaza, effected recovery of narcotics from the vehicles, arrested the accused persons, prepared the necessary mashirnamas, sealed the case property and conducted the investigation.

PW-2 PC Muhammad Shoaib (Mashir of Recovery): He deposed that he accompanied the raiding party, witnessed the interception of the vehicles, recovery of narcotics from them and preparation of the mashirnama of recovery and arrest.

PW-3 Mohammad Ahmed-Police Official (Carrier of Case Property): He deposed that the sealed samples of the recovered narcotics were handed over to him for safe transmission to the office of the Chemical Examiner, which he delivered accordingly.

PW-4 HC Khushhal Khan (Malkhana In-Charge): He deposed that the case property was deposited in the Malkhana and relevant entries were made in Register No.19.

PW-5 Siddiq (Alleged Vehicle Seller): He deposed that he had sold the Double Cabin and Toyota Car to accused Daro Khan on installments.

4. The statements of the accused persons were recorded under section 342, CrPC, wherein they denied the allegations and professed their innocence.

Accused Daro Khan and Feroz Khan opted to examine themselves on oath under section 340(2), CrPC, while the remaining accused declined to do so. The accused produced no defence witness. After conclusion of trial, the learned Trial Court, vide Impugned Judgment, convicted the present Appellants and acquitted the co-accused Abdul Wadood and Feroz Khan. Hence, the present criminal appeals.

5. Learned counsel for the Appellants has contended that the Impugned Judgment is the result of misreading and non-reading of the evidence on record; that the prosecution failed to prove conscious possession of the alleged narcotics, as no specific cavity, its location, or the manner of recovery was established; that the complainant himself conducted the investigation, which vitiated the entire proceedings; that the chain of custody of the case property is completely broken due to serious defects in Register No.19; besides, there is unauthorized custody of the Makhana keys and there are material contradictions in the weight of the recovered substance; that no independent witness was associated despite the alleged recovery having been made at a public place; that ownership and possession of the vehicles are not proved.

6. On the other hand, the learned Special Prosecutor for the ANF has supported the Impugned Judgment. He has argued that the prosecution witnesses had fully supported the case in their deposition and the recovery of a huge quantity of narcotics from the possession of the Appellants stood duly proved; that the minor discrepancies, if any, do not affect the merit of the prosecution case; that the chemical examiner's report confirms the nature of the recovered narcotic substance; that the learned Trial Court has rightly appreciated the evidence on record, and recorded a well-reasoned conviction.

7. We have heard the learned counsel for the parties and have scrutinized the record with their assistance.

8. Upon such scrutiny, we find the prosecution evidence to be coherent, confidence-inspiring and mutually corroborative on all material particulars: receipt of information, interception of the convoy at Hub River Road Toll Plaza, recovery of commercial quantities of narcotics from each vehicle under the exclusive control of the Appellants, on-the-spot sampling and sealing, safe custody, and positive chemical analysis. The objections raised by the defence, regarding source information, conscious possession, chain of custody, Register No.19, weights, ownership of vehicles, investigation by the complainant, and absence of private witnesses, do not create any reasonable doubt in the presence of intact seals, consistent seizure documentation, and unimpeached testimonies of the PWs. In offences under the Control of Narcotics Substances Act, once

possession is proved, the statutory presumption under section 29 of the Act is attracted; the Appellants have failed to rebut it through any cogent material. We, therefore, discern no misreading or non-reading of evidence in the Impugned Judgment that could warrant interference.

9. Notwithstanding the arguments urged on behalf of the Appellants, upon an overall and holistic appraisal of the record, we are satisfied that the prosecution successfully established, beyond reasonable doubt, the elements of the offences charged against the Appellants under section 9-C read with sections 14 and 15 of the Act. The occurrence is supported by mutually corroborative ocular and documentary evidence, the recoveries are contemporaneously recorded, the samples were drawn and sealed at the spot, transmitted to the Chemical Examiner under seal, and the reports received confirm that the recovered substances were narcotics within the contemplation of the Act. The alleged deficiencies pointed out by the defence, even if assumed for the sake of argument, do not erode the core of the prosecution case, particularly in view of the statutory presumptions and reverse burden under sections 29 and 54 of the Act, which the Appellants failed to rebut.

10. The complainant (PW-1) categorically deposed about receipt of credible information through official channels, constitution of a raiding party, interception of the three specified vehicles at the precise location near Hub River Road Toll Plaza, and effecting of recovery. The information stands sufficiently particularized by the make, registration numbers, convoy mode and origin-destination trajectory. In narcotics interdictions, secrecy and immediacy are intrinsic, and the informant's non-examination is not *ipso facto* fatal when the raid is otherwise independently corroborated through ANF functionaries who participated in the operation and whose testimonies remained unshaken on material particulars. Reliance can be placed on established precedents that the testimony of official witnesses, if confidence inspiring, does not require independent civilian corroboration as a rule of law; it is a rule of caution only, especially where the raid occurs at a transient public point and securing neutral witnesses is impracticable.

11. The recoveries were affected from three vehicles being simultaneously escorted and controlled by the Appellants, each occupying and operating the particular vehicle from which narcotics were found. Such dominion and control, coupled with the magnitude and concealment of contraband, sufficiently establish conscious possession within the meaning of section 9-C, attracting the presumption under section 29 of the Act. The evidence shows that the narcotics were recovered from concealed compartments of the vehicles, methodology common to inter-provincial trafficking rings, and the mashirnama(s) prepared by

PW-1 in the presence of PW-2 detail the seizure, sealing, and sampling. The defence offered no plausible explanation consistent with innocence regarding their presence together in a convoy and the transport of massive quantities of contraband. Their bare denial in statements recorded under section 342, CrPC, and failing in producing tangible alternate narrative, fails to discharge the reverse onus.

12. PW-4 (Malkhana In-Charge) has proved deposit of case property, and PW-3 proved secure delivery of sealed samples to the Chemical Examiner. The seals were intact upon receipt, as evidenced by the Chemical Examiner's report, which tallies with the specimen seal impression and parcel particulars. Minor clerical omissions in Register No.19 or the mere absence of certain signatures do not negate a proven, unbroken chain when the essential links, recovery, sealing, deposit, dispatch, receipt, analysis and reporting, are cogently established. The defence has not shown any actual prejudice, tampering or substitution; speculation cannot supplant concrete proof.

13. The contention regarding a discrepancy between a Roznamcha entry and its so-called true copy vis-à-vis Malkhana record appears to be the result of a copying/transcription error or conflation of gross weight (including packing) with net weight. Crucially, the site seizure, parcel numbering, and sample labeling are consistent; and the Chemical Examiner's reports correlate to the very samples drawn at the spot. Jurisprudence is settled that insignificant variances in weight, in the absence of proof of manipulation, do not vitiate recovery of contraband, particularly where the reported narcotic content and seal integrity are unassailed. Here, the aggregate quantities are well beyond the threshold of section 9-C of the Act; thus, even adopting the lower figure, the offence squarely stands attracted.

14. In prosecutions under the Act, proof of registered ownership of the vehicle is not a *sine qua non* for conviction of the person found in conscious possession or control. The uncontested fact remains that the Appellants were found driving/occupying the very vehicles from which narcotics were recovered. PW-5's testimony about sale on installments, even with a financial dispute, does not exculpate the Appellants; rather, it demonstrates access and control over the vehicles. Absence of toll receipts or driving licenses is immaterial to the core issue of possession of contraband.

15. While separation of investigation from the complainant is a salutary practice, the law does not prescribe automatic nullity where the complainant also investigates, absent proof of mala fides or demonstrated prejudice causing miscarriage of justice. The defence could not point to any concrete instance of

fabrication or manipulation. The Trial Court, having observed the demeanor of the witnesses, found them trustworthy; we see no perversity warranting interference. In similar circumstances, the Apex Court in the case of **State through Advocate-General, Sindh v. Bashir and others (PLD 1997 SC 408)** held that: *“there is no legal prohibition for a police officer to be a complainant if he is a witness to the commission of an offence and also to be an Investigating Officer so long as it does not, in any way, prejudice the accused person. The Court will have to appraise the evidence produced by the prosecution as a whole and will have to form the opinion after evaluating the same”*.

16. The case does not hinge on any sophisticated electronic evidence requiring a statutory certificate; the conviction rests on ocular testimony, contemporaneous seizure documentation, safe custody, and chemical analysis. Any peripheral digital material, even if excluded, does not dilute the prosecution's otherwise complete proof.

17. It is settled principle of law that the statement of police official is as good as any other witness and conviction can be based thereon if their testimony is confidence-inspiring. The place and timing of interception at a toll plaza during a swiftly executed raid reasonably explains the non-association of civilians. The defence did not suggest any specific person present who was willing but not joined; nor did it demonstrate enmity with the ANF witnesses to motivate false implication of all three Appellants with three different vehicles and distinct recoveries. In analogous circumstances, the Honorable Supreme Court, in the case of **Liaquat Ali and another v. The State (2022 SCMR 1097)** has observed that: *“this Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioners in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remains un-shattered during cross-examination”*.

18. The acquittal of Abdul Wadood and Feroz Khan by the Trial Court on their distinct factual footing does not *ipso facto* entitle the present Appellants to parity. The Appellants' roles, as drivers/occupants exercising dominion over the vehicles from which substantial quantities were recovered, are qualitatively different. Selective appreciation is not demonstrated; rather, individualized assessment resulted in differential outcomes, which the law permits.

19. An appellate court interferes with findings of fact only where misreading or non-reading of evidence is shown leading to miscarriage of justice. The Impugned Judgment is well-reasoned and anchored in credible evidence. The defence's criticisms, at best, highlight minor irregularities that do not go to the root of the matter. The core substratum, recovery of narcotics in commercial quantities from vehicles controlled by the Appellants, safe sampling, intact seals, and positive chemical analysis, remains intact and unimpeached.

20. In view of the foregoing discussion, we are of the considered view that the prosecution has proved its case against the Appellants beyond reasonable doubt. The statutory presumptions under the Act stood attracted and remained unrebutted. No material illegality, misreading or non-reading of evidence has been pointed out that would warrant interference with the well-reasoned judgment of the learned Trial Court.

21. Resultantly, both the listed Criminal Appeals are dismissed. The Impugned Judgment of the Trial Court is upheld. The convictions and sentences of the Appellants are maintained.

JUDGE

CHIEF JUSTICE