

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Appeal No.512 of 2024

Present:

Mr. Justice Zafar Ahmed Rajput, CJ
Mr. Justice Jan Ali Junejo

Appellants : 1. Mst. Asiya D/o Meer Khan
2. Islamuddin S/o. Aslam Khan, through
Mr. Ajab Khan Khattak, Advocate

Respondent : The State, through Mr. Habib Ahmed,
Special Prosecutor, ANF (**SP**)

Date of Hearing : 30.03.2026
Date of Judgment : 30.03.2026

JUDGMENT

Jan Ali Junejo, J.- This Crl. Appeal is directed against the judgment, dated 15.07.2024 (the "**impugned judgment**"), passed by the learned Special Court-III (CNS), Karachi (the "**Trial Court**") in Special Case No.04/2024 (Old Case No.43/2023), arisen out of FIR No. 31 of 2023, registered under Section 9 (1) 3 (d) of the Control of Narcotic Substances (Amendment) Act, 2022 (the "**Act**") at P.S. ANF, Clifton, Karachi, whereby the appellants were convicted under Section 9(1)(3)(c) of the said Act and sentenced to suffer R.I. for nine years with fine of Rs.80,000/- each, in default thereof to undergo S.I. for two months more. The benefit of Section 382-B, CrPC was, however, extended to them.

2. Briefly, the case of the prosecution as set out in the FIR is that on 11.07.2023, Sub-Inspector Asghar Ali of ANF Clifton received spy information that two suspects carrying narcotics in a rickshaw would pass near Masjid Abu Huraira, Ittehad Town, Keamari, Karachi between 1700–1730 hours. Acting on such information, a raiding party comprising SI Asghar Ali, ASI Razaf Akhtar, PC Farrukh Naveed, LPC Erum Shahzadi and others proceeded to the pointed location. At about 1715 hours, a rickshaw was intercepted on the pointation of the informer. The driver disclosed his name as Islamuddin, while the woman seated behind identified herself as Mst. Asiya Bibi. On search, police recovered two packets (1 kg each) of charas from the fold of driver's shalwar. From the

travelling bag of woman, police recovered five packets (1 kg each) of charas, total recovery 07 kg. From each packet, police separated 10 grams charas for chemical analysis. The Appellants/accused were arrested. After usual investigation, challan was submitted and the appellants were tried.

3. During the trial, the prosecution examined four witnesses to prove its version, whose evidence is summarized as follows:

PW-1 Faridullah Khan stated that on 13.07.2023 he received seven sealed sample parcels of Crime No.31/2023 from the malkhana through ASI Shah Fahad on the direction of SI Asghar Ali, along with related documents, and transported them to the chemical laboratory where he deposited the samples and returned the receipt to the I/O. He produced his departure and return entries and identified the sealed envelopes in court. In cross-examination, he admitted that vehicle details and the laboratory letter were not mentioned or produced, but denied any falsehood. His evidence was relied upon for transmission of samples to the laboratory.

PW-2 SI Asghar Ali (I/O) deposed that on 11.07.2023, acting on spy information, he intercepted a rickshaw near Abu Huraira Masjid and recovered two 1-kg packets of Charas from accused Islamuddin and five 1-kg packets from accused Asiya Bibi. Samples were drawn, sealed, and both accused were arrested at the spot. He produced the FIR, recovery memo, chemical report, and the entire case property. In cross-examination, he admitted several omissions regarding duty entries, vehicle description, independent witnesses, and absence of CDRs and financial record, but denied that the recovery was false. His evidence constituted the core of the prosecution case.

PW-3 ASI Mohammad Shah Fahad (Malkhana Incharge) testified that on 11.07.2023 the I/O deposited the case property, sample parcels, personal search articles, and rickshaw keys with him, which he entered in Register No.19 and kept in safe custody. On 13.07.2023, he handed over the sealed samples for dispatch to the chemical laboratory through PC Faridullah. He produced attested malkhana and roznamcha entries and identified all articles in court. He admitted that the weight was not taken in his presence but denied false implication.

PW-4 LPC Erum Shahzadi corroborated the raid and recovery proceedings, stating that on spy information the rickshaw was intercepted and Charas was recovered from both accused. She conducted the personal search of accused Asiya Bibi and identified the accused and entire case property in court. She admitted omissions in the memo regarding vehicle details, passersby, and specific markings on the recovered articles, and variation in signatures, but denied that the case was false. Her testimony supported the prosecution version of the recovery.

4. The Trial Court recorded the Appellants' statements under Section 342, CrPC, in which they claimed innocence. Appellant Asiya Bibi produced one defence witness, DW-1 Mst. Salam Bibi, who submitted her CNIC, an application to different officials, courier receipts, and newspaper clippings. Appellant Islamuddin did not produce any defence witness, but examined himself on oath under Section 340(2), CrPC.

5. After hearing the learned counsel for the Appellants as well as SP for the ANF, the Trial Court convicted the Appellants and sentenced them as mentioned above, vide the impugned judgment, holding that the prosecution had proved the charge against them through the recovery memo, prosecution witnesses, and the positive chemical report.

6. The learned counsel for the Appellants has vehemently argued that the impugned judgment is legally unsustainable, as it is founded on a flawed appreciation of evidence and a misapplication of the law; that several material defects and contradictions in the prosecution's case have created reasonable doubt, entitling the Appellants to acquittal of the charge; that the Trial Court itself recorded in paragraph 35 that the recovered quantity of 5000 grams reflected only the *gross* weight, including non-narcotic material such as "yellow solution tape and Panni" and that the prosecution failed to establish the *net* weight, which is a mandatory statutory requirement under the Act; that the appearance of "Panni" (*white plastic/wrapping*) in the case property produced before the Court, despite its absence in the Memo of Arrest and Recovery (Exh. 11/B), demonstrated a break in the chain of custody and raised suspicion of tampering or substitution; that a material contradiction is also existed between the deposition of key witnesses: PW-2 (*SI Asghar Ali (I/O)*) has deposed that the spot proceedings consumed about one and a half hours, PW-4 (*LPC Erum Shahzadi*) testified that they consumed about three and a half hours, hence, there is an unexplained and significant two-hour discrepancy; that the defense plea of prior arrest and false implication, corroborated by DW-1 (*Mst. Salam Bibi*), remained unrebutted by the prosecution. On these grounds, learned counsel has prayed for the acquittal of the Appellants of the charge by extending them benefit of doubt by setting aside the impugned judgment and sentences.

7. Conversely, the learned SP has fully supported the impugned judgment in its entirety, contending that the recovery of 7 kilograms of charas was convincingly established through the consistent, trustworthy testimonies of

PW-2 and PW-4, whose statements remained unshaken despite extensive cross-examination; that the discrepancies highlighted by the defense were minor, technical, and insignificant, having no bearing on the core prosecution claim; that once possession of narcotics is proved, the statutory presumption under Section 29 of the Act automatically operates against the accused, and the Appellants had failed to discharge the corresponding burden; that the Trial Court has rightly relied upon the recovery memos, chemical analysis report, and oral testimonies to convict the Appellants. Accordingly, he has prayed for the dismissal of the appeal by maintaining the conviction and sentences awarded by the Trial Court vide impugned judgment.

8. We have heard the arguments advanced by the learned counsel for the Appellants and the learned SP, and have examined the evidence available on record with their valuable assistance. After a thorough and independent reappraisal of the entire record, including the evidence adduced by the prosecution and the defense, this Court finds no infirmity in the findings of the Trial Court. The prosecution has successfully established the guilt of the Appellants beyond reasonable doubt, and the conviction is well-founded on cogent evidence. The testimonies of PW-2 (*SI Asghar Ali*) and PW-4 (*LPC Erum Shahzadi*) are consistent, cogent, and trustworthy regarding the time, place, and manner of recovery. Both the said witnesses have provided a detailed account of the raid, the interception of the rickshaw, and the recovery of narcotics from the possession of the Appellants. Specifically, the recovery of two kilograms of Charas from the fold of Islamuddin's shalwar and five kilograms from Mst. Asiya Bibi's traveling bag unequivocally establishes conscious possession of the contraband. The identification of the Appellants and the case property in open court by these witnesses further strengthens the prosecution's narrative. Minor discrepancies, if any, in their testimonies are natural in human recollection and do not detract from the core fact of recovery, especially when dealing with a substantial quantity of narcotics. The prosecution has squarely demonstrated

an unbroken chain of custody, ensuring the integrity and authenticity of the recovered evidence in following terms:

- Upon recovery, the narcotics were immediately sampled, sealed with the distinct "AA/ANF" embossed seal, and documented in the recovery memo, as testified by PW-2 and PW-4.
- PW-3 (ASI Mohammad Shah Fahad), the Malkhana Incharge, confirmed the prompt deposit of the case property and samples in the Malkhana on July 11, 2023, and duly recorded these entries in Register No. 19. This step ensures the safe custody of the evidence.
- PW-1 (PC Faridullah Khan) testified to the secure transmission of the sealed samples to the chemical laboratory on July 13, 2023, and confirmed obtaining a receipt. This crucial link ensures that the samples analyzed were indeed those recovered from the Appellants.
- The positive Chemical Examiner's report conclusively confirms that the seized substance was Charas. This report, coupled with the established chain of custody, leaves no doubt about the nature of the contraband.

9. Any suggestion of tampering or substitution is effectively negated by the consistent testimonies and documentary evidence, which collectively establish that the samples analyzed were the same as those recovered from the Appellants. This case squarely falls under the ambit of Section 29 of the Act, which stipulates:

"Where any narcotic drug, psychotropic substance or controlled substance is found in the possession of a person, it shall be presumed, unless the contrary is proved, that such person has committed an offence under this Act."

10. Once the prosecution successfully proved the recovery of alleged Charas from the conscious possession of the Appellants, the legal burden shifted to them to rebut this statutory presumption. The Appellants, in their statements under Section 342, CrPC, merely offered general denials and claims of false implication. While Appellant Asiya Bibi examined DW-1 (Mst. Salam Bibi) to support a plea of prior arrest, her testimony was general in nature and lacked specific, verifiable details that could effectively counter the direct and overwhelming evidence of recovery. The defense failed to discharge the burden placed upon it in terms of Section 29 of the Act. As regards the arguments of the learned counsel for the Appellants, it may be observed that:

- The testimonies of ANF officials, being public servants, carry a presumption of truth unless discredited by the defense. Furthermore, Section 25 of the Act expressly excludes the applicability of Section 103, CrPC.
- The alleged discrepancies concerning the description of wrapping materials or the reference to "Panni" not specifically mentioned in the memo are minor descriptive variations. Such minute omissions are not unusual in the course of dynamic raid operations and do not constitute material contradictions, particularly when the chain of custody is intact and the chemical analysis confirms the nature of the narcotics.
- The two-hour variance between PW-2 and PW-4 regarding the duration of the spot proceedings is a trivial inconsistency attributable to normal human error of estimation. Such variations are natural under stressful conditions and do not impinge upon the credibility of the witnesses with respect to the core facts of the raid and recovery.
- The defense plea of prior arrest and false implication, supported by DW-1, is a bald assertion unsupported by concrete evidence. No material was produced to establish malice, ulterior motive, or any circumstance capable of displacing the prosecution's direct and corroborated evidence of recovery. Mere allegations, without substantive proof, cannot outweigh the consistent and reliable evidence brought on record by the prosecution.

11. In narcotics cases, it may further be observed that the Courts often ignore minor discrepancies that are natural and only the material contradictions shake the very foundation of the prosecution's case. The discrepancies and the contradictions pointed out by the defense fall into the former category and do not create a reasonable doubt sufficient to overturn the conviction. The Trial Court correctly appraised the evidence and applied the relevant provisions of the Act. The sentence of nine years' rigorous imprisonment is proportionate to the gravity of the offense involving the quantity of the Charas.

12. For the foregoing reasons, the present Appeal, being devoid of merit, is hereby dismissed. The conviction and sentence awarded by the Trial Court, vide the impugned judgment, are accordingly maintained.

JUDGE

CHIEF JUSTICE