

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.D-17 of 2024

Present: Mr. Justice Shamsuddin Abbasi
Mr. Justice Jan Ali Junejo

Appellant: Abdul Bari son of Muhamamd Khan
Pathan, through Mr. Habibullah G.
Ghouri, Advocate

Respondent/State: Mr. Ali Anwar Kandhro, Addl. PG

Date of hearing: 10-04-2025

Date of Judgment: 13-05-2025

JUDGMENT

Jan Ali Junejo, J.-- The Appellant challenges the judgment dated 16.03.2024 (hereinafter referred to as the "*Impugned Judgment*") passed by the 1st Additional Sessions Judge/MCTC/Special Judge for CNSA Cases, Shikarpur (hereinafter referred to as the "*Trial Court*"), in Special CNS Case No.586/2021 (State v. Abdul Bari Pathan), arising out of the FIR No.27/2021 registered at Police Station New Foujdari, Shikarpur, under Section 9(c) of the Control of Narcotic Substances Act (CNSA), 1997. By the said judgment, the Appellant was convicted under Section 245(ii) Cr.P.C and sentenced to rigorous imprisonment for life with a fine of Rs.1,000,000/-, and an additional 10 years' simple imprisonment in default of payment.

2. The prosecution's case can be summarized as follows:

On February 14, 2021, a police team led by SIP Hafeezullah Jaffri (now deceased) intercepted the appellant near Momin Wahi, Shikarpur, while he was transporting 42 kg of charas in troller No.TLK-508. The contraband was reportedly recovered from two plastic sacks, weighed, sealed, and seized at the scene. A recovery memo (Exh-6/A) and a site inspection report (Exh-6/B) were prepared, with police officials HC Amanullah Malik (PW-6) and PC Saleem Memon (PW-7) serving as witnesses. The case property was sent to the Chemical Analyzer on February 15, 2021, which confirmed the substance as charas (Exh-8/G). Following the investigation, a challan was submitted, and before the trial

commenced, the charge was framed against the appellant, who did not plead guilty”.

3. To substantiate its case, the prosecution presented the following witnesses before the Trial Court:

1. **HC Amanullah Malik (PW-1)**

- **Testimony:** He testified about the arrest of the appellant on February 14, 2021, while he was transporting 42 kg of charas in troller No.TLK-508. He detailed the recovery process, stating that the charas was found in two plastic sacks, which were weighed, sealed, and documented in a recovery memo (Exh-6/A).
- **Cross-Examination:** During cross-examination, the defense did not effectively challenge his credibility or the specifics of the recovery. His account remained consistent and coherent, reinforcing the prosecution's narrative.

2. **PC Saleem Memon (PW-2)**

- **Testimony:** Saleem corroborated the testimony of HC Amanullah regarding the recovery of charas. He confirmed witnessing the weighing and sealing process and the preparation of the site inspection report (Exh-6/B).
- **Cross-Examination:** Similar to Amanullah, Saleem's testimony was not substantially disputed during cross-examination. His reliability as a witness was upheld, as he corroborated critical aspects of the prosecution's case without any significant contradictions.

3. **SIP Ali Hassan Syed (PW-3)**

- **Testimony:** He produced the FIR (Exh-8/A), property register entries (Exh-8/B), and dispatch documents confirming that the charas was sent to the Chemical Laboratory for analysis on February 15, 2021. He also presented the chemical report (Exh-8/G), which confirmed that the material was indeed charas.
- **Cross-Examination:** The defense sought to question the processes followed during the investigation, but the integrity of the documentation and the procedures was maintained throughout his testimony. The documentation was presented as thorough and methodical.

4. **WHC ASI Nadeem Hussain (PW-4)**

- **Testimony:** Nadeem substantiated the chain of custody of the recovered charas through entries in the Malkhana Register (Exh-8/B). He outlined how the evidence was handled from the point of seizure to its dispatch for chemical analysis.

- **Cross-Examination:** The defense attempted to probe into possible discrepancies in the handling of evidence, but Nadeem's responses remained consistent and supported the prosecution's claims. The chain of custody was confirmed, alleviating concerns regarding tampering or mismanagement of the evidence.

4. Upon concluding the prosecution's evidence, the Trial Court recorded the appellant's statement under Section 342 of the Cr.P.C. In his statement, the appellant denied the allegations against him, asserting that he was falsely implicated as "Abdul Bari," while his true identity was "Abdul Baqi," as indicated on his CNIC (Exh-11/A). He chose not to testify under oath as permitted by Section 340(2) of the Cr.P.C., but he did present DW-1, Rafique Ahmed Hajano, an Assistant Director at NADRA. DW-1 provided a computer-generated CNIC record (Exh-12/A-C) but admitted that he could not verify the appellant's identity or authenticate the original NADRA record.

5. The learned counsel argues that the appellant, whose actual name is Abdul Baqi as per his CNIC, was falsely implicated in the case. He argues that the police arrested him while he was driving a troller and subsequently fabricated the recovery of 42 kg of charas to showcase their efficiency. He further argues that the prosecution's case is fraught with inconsistencies and contradictions, particularly surrounding the identity of the accused. He further argues that the prosecution failed to establish its case beyond a reasonable doubt, and therefore, the appellant is entitled to acquittal.

6. The learned APG for the State argues that the appeal should be dismissed considering the significant quantity of charas recovered from the Appellant's possession. He argues that the prosecution presented substantive evidence and laboratory report. He further argues that there is no indication of animosity or ulterior motives between the appellant and the police personnel

involved in the arrest and investigation. He further argues that the prosecution successfully established its case using both oral and documentary evidence, thereby justifying the trial court's decision. He further argues that the trial Court findings are valid and there is no need of interference.

7. We have carefully considered the arguments advanced by the learned counsel for the appellant and the learned Additional Prosecutor General for the State, and have thoroughly perused the evidence available on record. The prosecution has presented consistent, cogent, and credible evidence establishing the guilt of the Appellant beyond reasonable doubt. The record reflects a clear chain of events: the lawful departure of the police party, the arrest of the Appellant while transporting 42 kilograms of charas, the on-site weighing and sealing of the contraband, preparation of the arrest and recovery memo, and the prompt registration of the FIR. Notably, despite extensive and searching cross-examination, the defense did not raise substantive challenges to the material aspects of the prosecution's case, thereby implying tacit acceptance of its version. The testimonies of the police officials remained firm, coherent, and free from contradictions, and their credibility was not effectively impeached. The prosecution successfully demonstrated the recovery of charas, its secure custody, and timely dispatch to the Chemical Laboratory, which received the case property on 15.02.2021, just one day after the incident on 14.02.2021. The laboratory analysis confirmed the substance as charas with a net weight of 42 kilograms, as corroborated by Exh-8/G. This weight was consistently reflected across all critical documents, including the FIR, mashirnama, and prosecution witnesses' depositions. The Appellant's plea that he was "Abdul Baqi" rather than "Abdul Bari" is found to be devoid of merit. The record clearly shows that the appellant identified himself as "Abdul Bari"

at the time of arrest, during investigation, and in the course of judicial proceedings, and he signed relevant documents accordingly without objection. No evidence has been adduced to suggest any malice or personal grudge between the police and the accused, thereby removing any basis for doubting the veracity of the official witnesses. It is a well-settled principle, reaffirmed by superior courts, that official witnesses are as credible as private witnesses in the absence of demonstrated enmity or bias. The trial court rightly held that Section 25 of the Control of Narcotic Substances Act, 1997, expressly excludes the application of Section 103 of the Cr.P.C., which relates to the requirement of association of private witnesses. The absence of private witnesses in such a context does not, per se, render the prosecution case doubtful. Furthermore, the defense failed to discharge the burden of proof placed upon the accused under Section 29 of the CNSA, particularly in light of the overwhelming evidence produced by the prosecution. The record is devoid of any material contradiction or discrepancy in the statements of prosecution witnesses. The consistency in their testimonies, supported by documentary and scientific evidence—including the chemical analysis conducted in accordance with the United Nations Office on Drugs and Crime (UNODC) Guidelines, 2009—leaves no room for reasonable doubt. The chain of custody of the case property has been effectively established through the testimony of WHC ASI Nadeem Hussain, further reinforcing the integrity of the prosecution's case. In light of the above circumstances, the impugned judgment issued by the learned Trial Court is grounded in sound reasoning and supported by compelling evidence. Therefore, no interference by this Court is warranted. In comparable circumstances, the Honourable Supreme Court of Pakistan upheld the conviction and sentence in a case under the Control of Narcotic Substances Act, 1997, in *Naveed Akhtar v. The State (2022 SCMR 1784)*, whereby it

was observed that: *“Perusal of the record would reveal that recovery of narcotics, noted above, was made by one Muhammad Nazir S.I. (PW.5) which was received by Jameel Hussain Shah constable (PW.1) for safe custody. The 35 sealed parcels of narcotics were handed over to one Muhammad Ashraf HC (PW.2) by said Jameel Hussain Shah constable for its onward transmission for chemical analysis. The Narcotics Analysis Report is present on file as Exh-LPF which confirms that the recovery, effected from the appellant, on his disclosure, was charas. The appellant in his statement recorded under section 342, Cr.P.C. alleged false implication and mala fide but record of the case would show that he could not explain and establish the same. We also do not find any reason or malice for which appellant was implicated falsely or with any mala fide. While replying to Question No.6 he submitted that he would appear as his own witness under section 340(2), Cr.P.C. The record shows that besides three defence witnesses the appellant did not appear as his own witness to face the test of cross-examination. The defence version is nothing more than an effort in futile as the defence witnesses failed to shatter the evidence brought on record by the prosecution”.*

8. For the foregoing reasons, the present Criminal Appeal is found to be devoid of merit, and legally unsustainable. The impugned judgment of the learned trial Court is well-reasoned, founded upon reliable evidence, and in consonance with the settled principles of law. It, therefore, calls for no interference by this Court. Consequently, the conviction and sentence awarded to the appellant by the trial court are hereby affirmed, and the Criminal Appeal is dismissed accordingly.

JUDGE

JUDGE