

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No. 301 of 2022.

Before:

Mr. Justice Zafar Ahmed Rajput- CJ  
Justice Ms. Tasneem Sultana-J.

Appellant : Abdul Samad through Mr. Muhammad Ilyas Awan, Advocate.

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

Date of Hearing : 03.11.2025.

Date of Judgment : 06.03.2026.

**JUDGMENT**

**TASNEEM SULTANA, J.**— Through this Criminal Appeal, the appellant Abdul Samad has challenged the judgment dated 25.04.2022 passed by the learned Special Court-II (C.N.S), Karachi in Special Case No. 337 of 2016, arising out of Crime No. 29 of 2016 registered at Police Station ANF-Clifton, Karachi under Sections 6/9-C read with Sections 14/15 of the Control of Narcotic Substances Act, 1997 (hereinafter referred to as "the CNS Act"), whereby he was convicted and sentenced to suffer life imprisonment and to pay a fine of Rs. 500,000/-, and in default thereof, to undergo five years' further Simple Imprisonment. The benefit of Section 382(b) Cr.P.C was extended to the appellant.

2. Brief facts of the prosecution case are that on 26.05.2016 at about 0345 hours, Inspector/SHO Tahir Ahmed of ANF Clifton received credible spy information through high-ups that a notorious smuggler Liaquat Balouch, along with his agent Abdul Samad (the appellant), was present at a house situated near Balouch School, Abdul Khaliq Road, Shariq Lane, Gali No.1, Lyari, Karachi, where a huge quantity of narcotics was stored for smuggling purposes. Upon receipt of this information, a raiding team was constituted under the supervision of DD Nazir Aziz. The team proceeded to the spot and reached there at about 0345 hours. On the pointation of the spy, the door of the house was knocked and opened by the appellant Abdul Samad, who was immediately apprehended. PC Yasir Ali and PC Meraj Ahmed, who accompanied the raiding party, were nominated as mashirs. It is further alleged that on search of the premises on the pointation of the appellant, two white cloth sacks and eight white nylon sacks containing narcotics were recovered from a room. From the

first cloth sack, 2.500 kilograms of heroin, and from the second cloth sack, 7.800 kilograms of opium were secured. From two nylon sacks, 21 kilograms each of charas puries were found, and 1 kilogram was drawn from each as sample. The remaining six sacks contained 158 packets of charas, each weighing 1 kilogram (total 158 kilograms), from which 20 grams was drawn from every packet as sample. All parcels were sealed at the spot. From the personal search of the appellant, Rs. 190/-, a colour photocopy of CNIC, and one mobile phone with SIM card were allegedly recovered. The appellant allegedly disclosed that the narcotics and the house belonged to Liaquat Balouch, who had fled shortly before the raid. The recovered narcotics, samples and articles were seized under memo, and FIR No. 29/2016 was lodged for offences under Sections 6, 9(c), 14 and 15 of the CNS Act.

3. After completion of the investigation, Inspector Tahir Ahmed submitted charge-sheet under Section 173 Cr.P.C against the appellant Abdul Samad and absconding co-accused Liaquat Balouch. Proceedings under Section 512 Cr.P.C were initiated against the co-accused, who was declared a proclaimed offender. The learned trial Court, after supplying requisite documents as provided under Section 265-C Cr.P.C, framed a formal charge against the appellant, to which he pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined four witnesses: PW-1 Inspector Tahir Ahmed (Complainant/IO); PW-2 SI Ali Mohammad (Malkhana Incharge); PW-3 Mr. Anisur Rehman (learned Judicial Magistrate); and PW-4 PC Mairaj Ahmed (Mashir). Thereafter, the prosecution evidence was closed vide statement at Ex.11.

5. The statement of the appellant under Section 342 Cr.P.C was recorded, wherein he professed innocence and claimed false implication. However, he neither examined himself on oath under Section 340(2) Cr.P.C to disprove the prosecution's allegations, nor led any evidence in his defence.

6. After hearing learned counsel for the parties, the learned trial Court vide impugned judgment dated 25.04.2022 convicted and sentenced the appellant as stated above. Hence, the present appeal.

7. The learned counsel for the appellant contended that appellant is innocent and has been falsely implicated in this case with mala fide and ulterior motives; that the Complainant Inspector Tahir Ahmed acted in dual capacity as both complainant and Investigating Officer, thereby

vitiating the entire investigation and trial; that there exists a material and fatal contradiction between the copy of the report showing 5.2 kilograms of heroin and the FIR showing 2.5 kilograms of heroin, while the net weight of heroin was shown as merely 892 grams in the chemical examiner's report; that PW-4 PC Mairaj Ahmed admitted in cross-examination that he could not identify whether the recovered substance was heroin or not, and that the number of packets (thellies) was not mentioned in his testimony; that the contraband was allegedly not recovered from the personal possession of the appellant but from a room in a house which was not owned by him, and the prosecution has miserably failed to establish through any documentary evidence that the house belonged to the appellant or that he had any connection whatsoever with the absconding co-accused Liaquat Balouch; that despite alleged prior spy information, no independent witnesses from the locality were associated with the raid, and no lady constable was present despite legal requirements, thus constituting gross violation of Section 21 of the CNS Act; that the appellant has no previous criminal record and is a first-time offender; that the house was located in a thickly populated area of Lyari, yet no private or independent witnesses were associated with the recovery; that the Malkhana Incharge remained silent about the description of case property, and safe custody was not properly established; that the mashir admitted that no information was given to the concerned police station as required under Police Rules 1934, Volume 3, Chapter 25/25.3; that no road certificate was produced by PC Mairaj, and no photographs of the place of recovery were submitted to corroborate the prosecution story; that the appellant has been languishing in custody since 2016 (over nine years as of date). On all these submissions, the learned counsel has prayed that the appeal be allowed, the impugned judgment be set aside, and the appellant be acquitted of all charges and released forthwith.

8. Conversely, the learned Special Prosecutor for ANF has supported the impugned judgment and contended that the appellant was arrested red-handed on the spot on 26.05.2016, and huge quantities of narcotics including 2.5 kilograms of heroin, 7.8 kilograms of opium and 200 kilograms of charas were recovered on his pointation from the house of co-accused Liaquat Baloch. The quantities recovered suggest commercial storage rather than transient possession. All material witnesses were examined, including the Complainant/ IO, mashir, Malkhana Incharge, and the Judicial Magistrate who supervised sampling and destruction. All prosecution witnesses supported the case and remained consistent

on all material points. No material contradiction was established despite extensive cross-examination. No motive or enmity was established against the Complainant or prosecution witnesses. The case property was sent for chemical examination, and the report was positive, confirming the nature of recovered substances. The prosecution proved its case beyond reasonable doubt, and therefore the impugned judgment does not call for interference by this Court.

9. Heard. Record perused.

10. A tentative yet comprehensive re-appraisal of the prosecution evidence reflects that the conviction of the appellant rests primarily upon the alleged recovery of narcotics effected from a house situated near Baloch School, Lyari, on the pointation of the appellant at the time of raid conducted by ANF officials. The prosecution case proceeds on the premise that upon spy information a raiding party reached the said premises, apprehended the appellant and recovered substantial quantity of narcotics comprising heroin, opium and charas from a room of the house. The recovery was subsequently subjected to chemical analysis which returned positive and the learned trial Court, placing reliance upon the ocular account of police officials, chemical report and safe custody of case property, recorded conviction under Section 9(c) of the CNS Act, 1997.

11. The prosecution, in order to bring home the charge, examined Inspector Tahir Ahmed, the complainant and Investigating Officer, who narrated that on receipt of spy information he constituted a raiding party, proceeded to the house stated to belong to absconding accused Liaquat Baloch, where the present appellant was found present and on his pointation narcotics were recovered from a room of the premises. He detailed the recovery, sealing and preparation of mashirnama as well as dispatch of samples for chemical examination. During cross-examination, however, he conceded that the house did not belong to the appellant; no ownership or tenancy record was collected; nor any investigation was conducted to establish possession of the premises. He further admitted that no private person from the locality was associated in the recovery proceedings. These admissions, emerging from the mouth of the complainant himself, materially erode the probative force of the prosecution case insofar as attribution of possession to the appellant is concerned. When the evidence of this witness is tested on the touchstone of settled principles governing narcotics cases, particularly the requirement of proving conscious and exclusive possession, material infirmities surface. It is an admitted position emerging from the record

that the house from where the alleged recovery was effected did not belong to the present appellant but to absconding co-accused Liaquat Baloch, who was declared proclaimed offender during trial proceedings. The prosecution neither produced ownership documents nor tenancy record nor any utility connection or independent material to establish that the appellant was residing in, occupying, or exercising dominion over the said premises. Even the Investigating Officer conceded that no investigation regarding ownership or possession of the house was conducted. In absence of such foundational proof, mere presence of the appellant in the house cannot ipso facto establish conscious possession of narcotics lying therein.

12. The evidence of Mashir PC Mairaj Ahmed, though supporting the complainant on recovery proceedings, does not advance the prosecution case on the crucial aspect of possession, as he too remained unable to state anything regarding ownership or occupation of the house by the appellant. Being a police official of the same raiding party, and in absence of independent corroboration, his testimony requires cautious scrutiny. Likewise, the Malkhana Incharge confined his deposition to deposit and safe custody of case property while the learned Judicial Magistrate only proved the procedural aspect of sampling and sealing. Their evidence, though supportive of post-recovery formalities, does not connect the appellant with the alleged contraband.

13. It is by now well settled that where recovery is effected from premises, the prosecution must establish that the accused had exclusive control, knowledge and dominion over the place of recovery. In the present case, the evidence is conspicuously silent on this vital aspect. The prosecution did not produce any site plan reflecting exclusive occupation of the room by the appellant; no key, lock or article linking the appellant with the specific place of concealment was secured; that complainant and mashir admitted in their cross examination no investigation or inquiry was conducted regarding ownership of said house and nothing incriminating was recovered from personal search except routine articles. Thus, the essential nexus between the appellant and the recovered contraband remains unsubstantiated.

14. Another aspect creating doubt pertains to the role of absconding co-accused, the admitted owner of the house, who allegedly used the premises for narcotics activities. The prosecution case itself suggests that the principal nexus of narcotics trafficking was attributed to said absconder. In such scenario, the possibility that the contraband belonged to him and not to the present appellant cannot be ruled out, especially

when no independent evidence was produced to show that the appellant was partner, associate, custodian, or beneficiary of the narcotics business.

15. Though the prosecution case is structured around an alleged recovery of narcotics from the premises in question, supported by chemical examination and related formal evidence, yet the material brought on record does not sufficiently establish that the said recovery was from the conscious and exclusive possession of the present appellant. The evidence led is deficient in demonstrating his dominion or control over the place of recovery so as to irresistibly connect him with the contraband beyond reasonable doubt. The cross-examination of prosecution witnesses also reveals certain deficiencies regarding description of parcels, particulars of slabs, and handling of case property, which though individually may not be fatal, yet cumulatively add to the cloud of doubt already surrounding the prosecution case.

16. Perusal of record further reflects that complainant Inspector Tahir Ahmed has acted in dual capacity as both the complainant and the Investigating Officer. He lodged the FIR, conducted the investigation, and submitted the charge-sheet. In the present case, Inspector Tahir Ahmed is the author of the FIR (Ex.6/A), he led the raiding party, he allegedly recovered the narcotics, he prepared all the memos, he conducted the entire investigation, he recorded statements of witnesses under Section 161 Cr.P.C, he sent the case property for chemical examination, and he submitted the charge-sheet. This complete control over the investigation from inception to conclusion creates grave suspicion about the genuineness and fairness of the case. . In this regard, guidance may be sought from Police Rules, 1934. Rule 25.2(3) which reads as under:

"It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

Investigating officer is an important witness for defence also and in case he acts as a complainant and raiding officer, defence is deprived of his very precious right at same time and is forced not to depend upon same. Such an investigation is biased investigation. In case head of police party also becomes investigating officer, he may not be able to discharge his duties as required of him under Police Rules. As a matter of fact, concept of honest investigation is based on non-partisanship and neutrality. The reason and spirit of separating investigation wing from

the operation wing of police also emanates from the same fact which reflects in Article 18 of the Police Order, 2002, therefore, element of honest, transparent and fair investigation lacks in the instant case. Reliance is placed on the case of **Nazir Ahmad Vs. The State (PLD 2009 Karachi 191)** wherein The Hon'ble Supreme Court has observed that investigating officer is an important witness for the defence also and in case he acts as a complainant and raiding officer, the defence is deprived of his very precious right at the same time and is forced not to depend upon the same. In another case reported as **State Vs. Bashir and others (PLD 1998 SC 408)**, the Hon'ble Supreme Court observed that:

“As observed above, I.O. is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules.”

In another case of **Agha Qais v. The State (PLJ 2010 Cr.C. (Lahore) 511 (DB))**, it was observed as under:

“Inspector/PW acted as complainant, witness and Investigating Officer--Under law, complainant and accused are two opponent parties--In other words, they are two contesting parties--Judgment of trial Court was silent on point whether samples or charas was produced in Court or not--Trial Court noted stance of appellant that no charas was ever recovered from his possession--This fact creates doubts or serious lacuna in prosecution case--Unless recovered narcotics were produced in Court, it could not be found that accused was carrying them on his person and were recovered from him--It is very clear from statement of appellant u/S. 342 Cr.P.C. that report of Chemical Examiner was never put to him--Basis of whole prosecution was incriminating report of Chemical Examiner and by not putting same to appellant he was not afforded an opportunity to explain incriminating evidence--Trial Court focused its attention more on defence case to arrive at conclusion--Trial Court forgot that basic responsibility lies on prosecution to prove its case beyond any shadow of doubt in accordance with law--Appellant was acquitted of charges--Appeal allowed.”

17. Perusal of record further reflects that there is existence of material and irreconcilable contradictions regarding the quantity of heroin allegedly recovered. According to the FIR (Ex.6/A), the quantity of heroin recovered was **2.5 kilograms** (2500 grams). However, the learned counsel has pointed out that there exists another copy of the report which shows the quantity as **5.2 kilograms**. More significantly, the Chemical Examiner's Report shows the net weight of heroin as merely **892 grams** (less than 1 kilogram). The difference between 2.5 kilograms mentioned in the FIR and 892 grams reported by the Chemical Examiner represents a shortfall of approximately 1608 grams (more than 60% of the alleged quantity). This massive discrepancy has neither been explained nor reconciled by the prosecution. In the present case, the prosecution has offered no explanation whatsoever for this enormous discrepancy. This

creates a very serious doubt about whether the alleged recovery was genuine or whether the case property was tampered with or substituted at some stage. The benefit of this doubt must necessarily go to the appellant. In cases under the CNS Act, the quantity of contraband is of paramount importance as it determines not only the nature of the offence but also the quantum of sentence. Reliance is placed on the case of **Zulfiqar Ahmad and others v. The State (2011 SCMR 492)**, wherein honourable the Supreme Court observed that while minor contradictions may be ignored due to the passage of time, material contradictions that go to the root of the case cannot be overlooked.

18. In the present case, it is admitted position that despite the alleged prior spy information received through "high-ups," no independent witnesses from the locality were associated with the raid. The only witnesses nominated were PC Yasir Ali and PC Meraj Ahmed, who were members of the raiding party itself. Besides, it has come on record that the house was situated in Lyari, which is a thickly populated area, yet no effort was made to associate any private or independent witness from the locality. If the raid was conducted at 0345 hours (early morning), the prosecution could have associated the Imam of the local mosque, the caretaker of nearby Balouch School, shopkeepers, or any other respectable local inhabitant. Furthermore, the learned counsel has submitted that no lady constable was present during the raid, despite the fact that the search was conducted in a residential premises where ladies could easily be present. This is a further violation of the procedural safeguards. The deliberate failure to do so creates serious suspicion about the genuineness of the recovery. The provisions of Section 21 of the CNS Act are mandatory in nature and are intended to ensure transparency and to rule out the possibility of false implication. Non-compliance with these provisions vitiates the recovery.

19. In the present case, there is absolutely no evidence on record to establish that the house in question belonged to the appellant or that he had any ownership, tenancy or lawful possession thereof. The prosecution's own case is that the house belonged to Liaquat Balouch, who is still absconding. Allegedly it was disclosed by the appellant to raiding party that "the narcotics and the house belonged to Liaquat Balouch." Even if this disclosure statement is taken at face value which itself is doubtful given the dual role of the IO. Moreover, there is no evidence whatsoever to establish the relationship between the appellant and the absconding co-accused Liaquat Balouch, or to show that the appellant was his "agent" as alleged in the FIR. The term "agent" is used casually in the FIR without any factual foundation or corroborative evidence.

**20.** PW-4 PC Mairaj Ahmed, who was examined as mashir witness, has made damaging admissions in his cross-examination which seriously undermine the prosecution case. He admitted that he could not identify whether the recovered substance was heroin or not. This admission is fatal because if the mashir witness himself cannot identify the contraband at the time of recovery, how can it be said that the recovery was fair and transparent? Furthermore, PW-4 admitted that the number of packets (thellies) was not mentioned by him. This creates doubt about the actual quantity and packaging of the alleged contraband. Most significantly, PW-4 admitted in cross-examination that no information was given to the concerned police station. This is a serious procedural lapse which has not been explained by the prosecution. Additionally, PW-4 could not produce any road certificate, and no photographs of the place of recovery were submitted. These are basic requirements to corroborate the prosecution story, and their absence creates doubt about the veracity of the alleged recovery.

21. The learned Special Prosecutor for ANF argued that no motive or enmity was established against the Complainant or prosecution witnesses, and therefore there was no reason for false implication. While this argument appears attractive at first blush, it cannot cure the fundamental defects and infirmities in the prosecution case discussed above. Absence of motive for false implication may be a relevant consideration, but it cannot substitute for lack of proof or cure fundamental defects in the prosecution case. The prosecution must prove its case beyond reasonable doubt based on credible evidence, and absence of motive cannot fill the gaps in evidence.

22. The principle of criminal jurisprudence mandates that if a single circumstance creates reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession, but as a matter of right. In this respect reliance is placed on the case of **Muhammad Mansha v. The State (2018 SCMR-772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The

State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)".

Similar view was taken by Hon'ble Supreme Court in its recent judgment reported in the case of **Muhammad Riaz and others v. The State (2024 SCMR 1839)**.

23. Upshot of the above discussion is that the prosecution evidence does not inspire the level of confidence required to uphold conviction in a case entailing capital punishment under the CNS Act. The foundational element of conscious possession remains unproved; the ownership and control of premises stand unestablished; the recovery is from a place admittedly belonging to an absconding accused and prosecution failed to establish appellant's connection with the house from where alleged recovery of contraband was effected or with co-accused Liaquat Balouch (owner of the house. These infirmities are not superficial but go to the root of the prosecution case and render the attribution of recovered narcotics to the present appellant highly doubtful. When examined the aforesaid defects, irregularities and contradictions conjointly, we find that in view of above fundamental infirmities and doubts in the prosecution case, the conviction recorded by the learned trial Court cannot be sustained.

24. For the detailed reasons discussed above, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The case suffers from multiple fatal defects and material contradictions, as discussed above, which create reasonable doubt regarding the guilt of the appellant. In view of the foregoing discussion, the instant Criminal Appeal No. 301 of 2022 is allowed. The impugned judgment dated 25.04.2022 passed by the learned Special Court-II (C.N.S), Karachi in Special Case No. 337 of 2016 is set aside. The appellant Abdul Samad is acquitted of the charges framed against him under Sections 6/9-C read with Sections 14/15 of the Control of Narcotic Substances Act, 1997, and is ordered to be released forthwith if not required in any other case.

**JUDGE**

**THE CHIEF JUSTICE**