

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.544 of 2023

Appellant	Sadam Hussain son of Jalal Khan through M/s Mallag Assa Dashti, Merrukh Zehri, Niaz Ahmed and Ms. Palwasha Tareen, Advocates.
Respondent	The State through Mr. Habib Ahmed, Special Prosecutor ANF.
Date of Hearing	<u>24.08.2026</u>
Date of Judgment	<u>24.09.2026</u>

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J U D G M E N T

Shamsuddin Abbasi, J.- Sadam Hussain son of Jalal Khan, appellant, along with co-accused Ahsanullah son of Ameer Zada, was tried by the learned Special Court-II (C.N.S.), Karachi, in Special Case No.20 of 2022 (FIR No.07 of 2022) registered at Police Station ANF-Clifton, Karachi, for offences under Sections 6/9(c) read with Sections 14 and 15 of the Control of Narcotic Substances Act, 1997. By a judgment dated 25.09.2023, he was convicted under Section 9(c) read with Sections 14 and 15 of CNS Act, 1997 and sentenced life imprisonment along with fine of Rs.200,000/- and in default thereof to suffer further imprisonment for two years. The appellant was, however, extended the benefit of Section 382-B, Cr.P.C.

2. Briefly stated, the prosecution case, insofar as relevant to the disposal of the present appeal, is that on 17.02.2022 complainant Inspector Muhammad Hassan received information to the effect that a narcotic dealer namely Saleh Muhammad, resident of Quetta, had concealed a huge quantity of charas in an under construction house, situated in Katchi Abadi, Lashari Goth, Malir, Karachi, for onward supply in the city through his special agent. Upon receipt of such information, he constituted a raiding party comprising ASI Asghar Ali, PC Adnan, PC Maqbool Ahmed, PC Ahmed Aftab and PC Naveed Abbas. The raiding party, duly armed with official weapons, proceeded towards the pointed place in official mobile, which was being

driven by Athar Naeem. Upon reaching the place the raiding party found two persons standing at the gate of the said under construction house. One of them was holding a blue coloured shopper in his right hand. With the assistance of the accompanying staff, both persons were apprehended. The complainant requested passersby to act as witnesses, but they declined. Thereafter, in the presence of ASI Ali Asghar and PC Adnan, the blue-coloured shopper held by one of the apprehended persons was searched. The person disclosed his name as Ahsanullah son of Ameer Zada. The shopper was found to contain two packets of charas each weighing one kilogram making the total recovered quantity from his possession two kilograms of charas. The other apprehended person disclosed his name as Sadam Hussain son of Jalal Khan, who disclosed the availability of further charas inside the house and led the ANF officials to the bathroom, where he pointed out and got recovered eight white nylon sacks, seven of which contained 20 packets, wrapped in yellow-coloured solution tape, whereas the eighth sack contained eight similarly wrapped packets. Thus, a total of 148 packets were recovered. Upon weighing, 120 packets were found to contain 1200 grams of charas each whereas the remaining 28 packets weighed one kilogram each making the total recovered quantity on the pointation of Sadam Hussain 172 kilograms. The complainant separated 10 grams from each packet for chemical examination and sealed the samples separately. The remaining narcotic substance recovered from each accused was also sealed separately. Both accused were arrested at the spot and after completing the requisite legal formalities they were brought at police station where FIR was lodged.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant and co-accused were sent up to face the trial.

4. Upon their indictment, the appellant and co-accused pleaded not guilty to the charged offence and claimed trial. At trial, the prosecution has examined complainant Inspector Muhammad Hassan as PW.1 at Ex.10 and SIP Asghar Ali as PW.2 at Ex.11. They have exhibited relevant documents in their evidence and were subjected to cross-examined by the defence. Thereafter, the prosecution closed its side vide statement at Ex.12. The

appellant and co-accused were examined under Section 342, Cr.P.C. at Ex.14 and Ex.13, respectively. The appellant denied the allegations levelled against him by the prosecution, professed his innocence and pleaded false implication. According to him, he had been picked up from Abdullah Goth on 10.02.2022 by the Rangers, who kept him in wrongful confinement for six or seven days and remained in contact with his brother demanding Rs.1,000,000/- for his release and as his brother failed to fulfill their illegal demand, the Rangers handed over his custody to ANF and subsequently he was involved in this false case. He, however, neither opted to appear on oath in terms of Section 340(2), Cr.P.C. to substantiate his defence nor produced any witness in his defence.

5. Upon culmination of the trial and after appraisal of the evidence available on record, the learned trial Court found the appellant guilty of the offence charged with and, thus, convicted and sentenced him in the manner set out in paragraph-1 (supra), which has given rise to the present appeal.

6. It is contended on behalf of the appellant that the impugned judgment is contrary to the evidence available on record and the appellant has been falsely implicated in this case. It is next submitted that the prosecution has failed to establish conscious possession of the alleged narcotic substance particularly when the recovery allegedly effected from an under construction house and not from the exclusive possession of the appellant. It is also submitted that the prosecution evidence suffers from material discrepancies regarding the manner and place of recovery, preparation of the samples and safe custody of case property and transmission of the representative samples to the chemical laboratory. According to learned counsel, there is violation of Article 40 of Qanun-e-Shahadat Ordinance, 1984. The evidence of the police officials is not sufficiently confidence inspiring in the absence of any independent witness despite the alleged recovery having been effected from a populated locality. He also pointed out contradictions in the prosecution evidence regarding the dates and particulars of handing over the samples, which cast serious doubt upon the integrity of the chain of custody. He, therefore, argued that the prosecution has failed to prove its case against appellant beyond reasonable doubt and prayed for his acquittal by extending him the benefit of doubt.

7. Conversely, learned Special Prosecutor ANF has supported the impugned judgment and submitted that the prosecution evidence is consistent on all material particulars and the appellant was apprehended at the spot wherefrom he himself led the raiding party to the bathroom and got recovered huge quantity of charas weighing 172 kilograms. It is next submitted that the recovery was duly supported by the ocular account of the complainant and mashir, while the chemical examination report confirmed that the recovered substance was charas. It is also submitted that the prosecution has successfully proved all events and chain of safe custody of case property and its safe transmission to the chemical examiner. He argued that the absence of private witnesses is not fatal to the prosecution case where the evidence of official witnesses is otherwise confidence inspiring and remains unshaken on material particulars. He, therefore, prayed for dismissal of appeal and maintaining the conviction and sentence awarded by the learned trial Court.

8. We have carefully reappraised the entire evidence available on record and considered the submissions advanced by learned counsel for the parties. The central question requiring determination is whether the prosecution succeeded in establishing beyond reasonable doubt that the substantial quantity of charas recovered from the under construction house was within the conscious knowledge and control of the appellant and that the recovered substance was duly preserved, sampled and transmitted to the chemical laboratory without any possibility of substitution or tampering. Upon such appraisal, we are of the considered view that the prosecution has succeeded in establishing both aspects of the case through cogent, consistent and confidence inspiring evidence.

9. The recovery in the present case is not a mere recovery from an unidentified or open place. The prosecution evidence establishes that upon being apprehended at the spot, the appellant disclosed the availability of narcotic substance inside the premises and himself led the raiding party to the bathroom where eight white nylon sacks were recovered. Seven sacks contained 20 packets each whereas the eighth contained eight packets making a total of 148 packets. The recovered substance together with the two packets recovered from co-accused weighed 174 kilograms in all. The manner in which the recovery was effected coupled with the appellant's

pointation leading the raiding party to the concealed narcotic substance constitutes a significant incriminating circumstance connecting him with the recovery. The fact that such a huge quantity of charas was concealed in sacks inside the premises and was recovered pursuant to the appellant's own pointation cannot reasonably be treated as a matter of chance or mere presence at the spot. The defence has not been able to demonstrate any material contradiction in the testimony of the complainant or the mashir on the question of recovery. Both prosecution witnesses remained consistent regarding the apprehension of the appellant, his disclosure regarding the presence of narcotic substance and the subsequent recovery of the sacks containing packets of charas. Their evidence on the material particulars has remained substantially intact despite cross-examination. No plausible reason has been suggested as to why the official witnesses would falsely implicate the appellant by planting such an quantity of charas upon him. Mere denial of recovery or an assertion of false implication unsupported by any independent or convincing material cannot displace otherwise reliable prosecution evidence.

10. Equally important is the unimpeached chain of safe custody and safe transmission of the case property and representative samples to the chemical examiner. The complainant has categorically deposed regarding the seizure and sealing of the recovered charas and the drawing of representative samples from the recovered packets. The relevant Malkhana/Register No.XIX entry has been produced in evidence establishing deposit of the case property in safe custody. The prosecution has further proved the subsequent taking out of the sealed sample parcels from the Malkhana and handing over to PW.2 ASI Asghar Ali under the relevant road certificate and entry, who confirmed that he received the sealed parcels along with the requisite documents and deposited them at the Sindh chemical laboratory. Thus, the prosecution has satisfactorily accounted for the movement of the representative samples from the place of recovery to the Malkhana and thereafter from the Malkhana to the chemical laboratory.

11. The chemical examiner's report assumes considerable significance in this regard. The representative parcels transmitted to the laboratory were duly examined and the report confirmed that the contents thereof were charas. Nothing has been brought on record to suggest that the seals of the

parcels were tampered with before their receipt at the laboratory or that the samples examined by the chemical examiner were different from those drawn from the recovered substance. The prosecution has, therefore, established the necessary nexus between the narcotic substance recovered at the spot, the representative samples deposited in the Malkhana and the parcels ultimately examined by the chemical laboratory.

12. The objection regarding absence of private witnesses also does not persuade us to discard the prosecution case. The recovery was effected by officials acting in discharge of their lawful duties and their testimony cannot be discarded merely because they belong to the raiding agency. What is required is a careful examination of their evidence. In the case in hand, their testimony regarding recovery, sealing, deposit and transmission of the case property has remained materially consistent and has received independent corroboration from the documentary record and the chemical examiner's report.

13. The plea of appellant that he had been picked up by the Rangers several days prior to the occurrence and was thereafter handed over to the ANF also does not inspire confidence. This plea was raised by the appellant at the stage of his examination under Section 342, Cr.P.C. He, however, neither appeared on oath under Section 340(2), Cr.P.C. nor produced any evidence in support thereof. No complaint, application or any other material has been brought on record to substantiate the alleged illegal detention or demand for illegal gratification. Such an unsupported plea therefore cannot create a reasonable doubt in the otherwise coherent and corroborated prosecution case. We are mindful of the settled principle that in a narcotics case the prosecution must prove its case beyond reasonable doubt and must establish an unbroken chain connecting the accused with the recovered substance as well as the representative samples with the substance allegedly recovered. In the case in hand that burden has been satisfactorily discharged. The recovery of the huge quantity of charas was made pursuant to the appellant's pointation, the recovered substance was duly secured and sealed, the recovered charas and representative samples were deposited in the Malkhana, representative samples were thereafter taken out through the prescribed process and transmitted through PW.2 ASI Asghar Ali and the chemical laboratory upon examination of the parcels confirmed that the

parcels contained charas. No material break in this chain has been established by the defence.

14. The cumulative effect of the ocular evidence, recovery proceedings, documentary record relating to safe custody and the chemical examiner's report leaves no reasonable doubt regarding the identity of the recovered substance or its safe transmission for chemical examination. The defence has failed to bring on record any circumstance sufficient to discredit the prosecution evidence or to establish a plausible alternative to the prosecution's account. The learned trial Court, therefore, committed no illegality or misreading of evidence in recording the conviction of the appellant.

15. For the foregoing reasons, we are of the considered view that the prosecution has proved its case against the appellant beyond reasonable doubt. The conviction recorded by the learned trial Court is based upon sound appreciation of the evidence and calls for no interference by this Court. Consequently, the conviction and sentence awarded to the appellant through impugned judgment dated 25.09.2023 are maintained and the present appeal being bereft of any merit is dismissed.

JUDGE

JUDGE