

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Crl. Jail Appeal No.516 of 2024
(Ali Raza v. the State)

Crl. Jail Appeal No.517 of 2024
(Shahid Khan v. the State)

Crl. Appeal No.510 of 2024
(Khan Zaman v. the State)

Crl. Revision Application No.33 of 2024
(Ali Raza and others v. the State)

Mr. Khawaja Muhammad Azeem, advocate for the appellant in Appeal No.516 of 2024

Mr. Ahmed Ali Dewan assisted by Irfat Hussain Lakho, advocate for the appellant in Appeal No.517 of 2024

Mr. Zahid Farooq, advocate for the applicants in Crl. Rev. No.33 of 2024

Mr. Zakir Hussain Bughio, advocate for the appellant in Appeal No.510/2024

Mr. Ali Haider Saleem, Additional Prosecutor General Sindh

Date of hearing: 10.08.2026

Date of Judgment: 20.08.2026

JUDGMENT

Omar Sial, J. On 31.03.2023, S.I.P. Khan Nawaz, while on patrol duty near Mouchko Check Post, received spy information about charas being smuggled in a car (No. AVS-742) from Hub Chowki. Around 0030 hours, the car was intercepted with three occupants — Ali Raza, Shahid Khan, and Khan Zaman. A search led to recovery of 15 packets of charas (12 yellow-taped, 3 white-taped) weighing 18,400 grams from the trunk,

plus an unlicensed pistol from a bag in the car. Personal searches of the accused yielded a wallet, CNIC copy, and mobile phone from Ali Raza, and cash, a police card, and a mobile phone from Shahid Khan. The case property was sealed, the car was seized under Section 550 Cr.P.C., and the accused were brought to the P.S., where FIR (No. 110 of 2023) under Sections 6 and 9(1)(3)(E) was registered.

2. The three accused pleaded not guilty and claimed trial. At the trial, the prosecution examined **PW-1 S.I. Khan Nawaz** (the complainant and the officer who recovered the narcotics and arrested the accused); **PW-2 S.I. Mohammad Arshad Jatt** (witness to the arrest and recovery); **PW-3 S.I. Ansar Iqbal Jatt** (head mohrar and the maalkhana in-charge); **PW-4 S.I. Rashid Mughal** (the investigating officer). In their respective section 342 Cr.P.C. statements, the accused denied all wrongdoing and professed innocence. They further said that H.C. Abbas arrested them on 31.3.2023 and booked them in this false case. They declined to give a statement on oath or to produce any witnesses in their defense.

3. At the end of the trial, the learned 1st Additional Sessions Judge Karachi West, on 03.07.2024, convicted the accused and sentenced all three to life imprisonment and payment of a fine of Rs.100,000 each. This judgment is the subject of the present appeal.

4. The appellant's learned counsels have all primarily argued that safe custody and transmission of the narcotics was not proved at the trial and thus conviction cannot be sustained. The learned Additional Prosecutor General supported the trial court judgment but agreed that the time frames involved in the movement of the narcotics and the discrepancy in the seals of the seized goods, as pointed out by the defense counsels, were part of the record; thus, he could not say much on that aspect. We have listened to all counsel and re-appraised the evidence. Our observations and findings are as follows.

5. The arrest and the recovery of narcotics were alleged to have taken place between 0030 and 0130 hours on 01.04.2023. The property was sealed on the spot. PW-1 Khan Nawaz said at the trial that after the F.I.R. had been registered, he had handed over the narcotics at the police station to H.C. Naeem Khan, who then made the requisite entry in the Register 19. Contradicting what Khan Nawaz said, PW-3 Ansar Iqbal Jatt (the maalkhana in charge) said that it was not H.C. Naeem Khan but S.I. Khan Nawaz himself who had given him the property for safekeeping in the maalkhana at 2015 hours on 01.04.2023. This was a material discrepancy because the F.I.R. was registered at 0200 hours on 01.04.2023 and not deposited in the maalkhana till 2015 hours. No record or explanation exists on the record to show where and with whom the case property was for a period of 18 hours, i.e., from the time of the registration of the F.I.R. till the time it was deposited in the maalkhana. Another material contradiction concerns who deposited the property. According to Khan Nawaz, he gave it to H.C. Naeem, who then deposited it, whereas according to the maalkhana in charge, Khan Nawaz deposited it himself.

6. The record reflects another break in the chain of safe custody. PW-3 Ansar Iqbal Jatt (the maalkhana in charge) testified that he gave the case property to the investigating officer, PW-4 Rashid Mughal, on 03.04.2023 to take the narcotics to the laboratory for analysis. PW-4 Rashid Mughal also testified that he took out the property on 03.04.2023 to take it to the laboratory. However, the Register XIX produced at trial shows that PW-3 Ansar Iqbal Jatt (the maalkhana in charge) handed over the narcotics to PW-4 Rashid Mughal (investigating officer) on 02.04.2023, i.e., a day earlier than what the witnesses claimed.

7. The final nail in the prosecution's coffin, as far as safe custody and transmission was concerned, was the discrepancy in the number of seals on the case property. PW-3 Ansar Iqbal Jatt (the maalkhana in charge) testified that when the case

property was given to him for safekeeping, it had four seals affixed on it. PW-4 Rashid Mughal (investigating officer), however, testified in his examination-in-chief that the narcotic parcels given to him had two seals on them. Tampering with the property cannot be conclusively ruled out.

8. It is now well settled that if the prosecution fails to prove an unbroken chain of safe custody and transmission, a conviction cannot be sustained. Reference may be made to **Sarfaraz Ahmed vs The State (2024 SCMR 1571)**, **Asif Ali vs. The State (2024 SCMR 1408)**, **Said Wazir vs. The State (2023 SCMR 1144)**, **Javed Iqbal vs. The State (2023 SCMR 139)**.

9. Given the above, the appeals are allowed and the appellants acquitted of the charge. They should be released if not required in any other custody case. Criminal Revision Application No. 33 of 2024 is dismissed as having become infructuous.

JUDGE

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