

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.413 of 2026

[Abid alias Gawadri vs. The State]

Abid alias Gawadri : the Appellant through M/s. Raichand & Mumtaz Ahmed, advocates

The State : through Mr. Qamaruddin Nohri, Deputy Prosecutor General Sindh

Date of Hearing : 11.08.2026

Date of Decision : 19.08.2026

J U D G M E N T

Omar Sial, J.: Abid alias Gawadri was apprehended on 24.04.2025 by a police party of the Baghdadi police station led by S.I. Khalid Awan. He was found to possess 1200 grams of a substance which was suspected to be charas. Abid was arrested, and F.I.R. No. 123 of 2025 was registered under sections 6 and 9(3)(c) of the Sindh CNS Act, 2024.

2. Abid pleaded not guilty and claimed to be tried. At the trial, the prosecution examined **PW-1 P.C. Usama Lashari** (witness to the arrest and recovery); **PW-2 A.S.I. Waheed Awan** (maalkhana in charge) and **PW-3 S.I. Sohail Shahzad Shaikh** (investigation officer); **PW-4 S.I. Khalid Awan** (complainant). In his section 342 Cr.P.C. statement, Abid professed innocence. The learned Sessions Judge, Karachi South, however, convicted Abid on 11.06.2026 and sentenced him to nine years' imprisonment and a fine of Rs. 100,000.

3. We have listened to the appellant's learned counsel and the learned Deputy Prosecutor General. Our observation and findings are as follows.

4. In our reappraisal of the evidence, we note at the outset that the appellant was never confronted with the chemical analyst's report when his statement under section 342 Cr.P.C. was recorded. It is this report that, unless proved otherwise, is the conclusive proof of the seized substance being a narcotic. The law is now well settled. A piece of evidence with which an accused is not confronted during the recording of his section 342 Cr.P.C. statement cannot be used to convict him or her. Reference in this regards may be made to **Shabbir Ali vs The State (2025 SCMR 802)**; **Syed Fida Hussain Shah vs The State and another (2024 SCMR 1622)**; **Bashir Muhammad Khan vs The State (2022 SCMR 986)**; **Dr. Waqar Hameed vs The State (2020 SCMR 321)**; **Haji Nawaz vs The State (2020 SCMR 687)**; **Mohammad Saddique vs The State (2018 SCMR 71)**.

5. The **Haji Nawaz case** (supra) was a narcotics case where the accused had not been confronted with the Chemical Analyst's report. The Court observed that *“The prosecution had maintained that samples had been secured from each and every packet of the recovered substance which samples had subsequently been tested positive by the Chemical Examiner, but we note that at the time of recording the appellant's statement under section 342, Cr.P.C. the report of the Forensic Science Laboratory had not been put to him at all. The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342, Cr.P.C., then the same cannot be considered against him for the purpose of recording his conviction.”*

6. In narcotic-related prosecutions, the Chemical Analyst's report is usually the primary piece of evidence proving the recovered substance is in fact a narcotic — it's often the crux of the prosecution's case. Courts treat it as core, not peripheral, evidence. The accused were not confronted with the Chemical

Analyst's report; thus, it could not be conclusively determined whether the seized substance was a narcotic or not.

7. Another aspect of the case which we notice is that it was claimed by the prosecution that the entire arrest and recovery was videotaped. The tapes were played in the Trial Court and the learned trial judge noted that there were two videos and eleven photos on a USB produced by the prosecution. One video was found not to play whereas the other one played correctly for ten seconds after which it was a blank. Out of the eleven photos, only one showed the accused whereas no photo showed the arrest and recovery. Police malafide is evident from such police conduct. To satisfy the requirement for video recording as stipulated in the Sindh CNS Act, 2024, an effort was made to hoodwink the court.

8. The case property that was produced at the trial had details of another case written on it. PW-4 S.I. Khalid Sher Awan (the complainant) admitted during his cross-examination that *“it is correct to suggest that on the back side of the parcel cloth, the description of another case is mentioned.”* Safe custody and transmission of the narcotics thus becomes doubtful.

9. Yet another piece of evidence that reflects police malafide is that S.I. Khalid Awan, in his cross-examination, stated that while effecting arrest and recovery, he had prepared the mushirnama on *“the bonnet of the police mobile”* under the *“streetlight”* and with the help of his *“cell phone’s torch”*. Remarkably, in contrast, PW-1 P.C. Usama Lashari, the person who said that he witnessed S.I. Khalid Awan arrest, recover, weigh and seal the narcotics, testified that *“it was daylight so we did not need any source of light for the preparation of the mushirnama”*. The discrepancy and reflection of police malafide is obvious.

10. Given the above, the prosecution failed to prove its case beyond reasonable doubt and, in fact, the evidence reflects police malafide. The appeal is allowed and the appellant acquitted of the charge. He should be released forthwith if not required in any other case.

JUDGE

JUDGE