

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.702 of 2022

Appellant Iqbal alias Bala alias Bracelet son of Abdul Ghani
through Mr. Raj Ali Wahid Kunwar, Advocate.

Respondent The State through Ms. Rubina Qadir, D.P.G.

Criminal Appeal No.703 of 2022

Appellant Muhammad Shahzad alias Mulla son of Iqbal
through Mr. Raj Ali Wahid Kunwar, Advocate.

Respondent The State through Ms. Rubina Qadir, D.P.G.

Date of Hearing **31.08.2026**

Date of Judgment **04.09.2026**

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J U D G M E N T

Shamsuddin Abbasi, J.- Appellants, Iqbal alias Bala alias Bracelet and Muhammad Shahzad alias Mulla, were tried by the learned Additional Sessions Judge-V/Model Criminal Trial Court, Karachi East, in Special Narcotics Case No.1986 of 2022, arising out of FIR No.233 of 2022, registered at Police Station Jamshed Quarters, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. Upon conclusion of the trial, the learned trial Court, vide judgment dated 14.11.2022, convicted both the appellants under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced each of them to suffer rigorous imprisonment for four years and to pay a fine of Rs.30,000/-. In default of payment of fine, each appellant was directed to undergo simple imprisonment for a further period of five months. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to them.

2. Briefly stated, the prosecution case, insofar as relevant for the disposal of the present appeal, is that on 14.04.2022 at about 0500 hours the appellants were apprehended by the police. It is alleged that 3200 grams of charas was recovered from the possession of appellant Iqbal alias Bala alias Bracelet son of Abdul Ghani whereas 3400 grams of charas was

recovered from the possession of appellant Muhammad Shahzad. The alleged arrest and recovery were effected in the presence of police officials, whereafter the subject FIR was registered.

3. During the course of investigation, the recovered narcotic substance was sent to the Chemical Examiner for analysis and a positive report was received. Upon completion of the investigation, challan was submitted against the appellants under the aforesaid provision of law. The learned trial Court framed charge against the appellants at Ex.2, to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution has examined four witnesses, complainant SIP Abdul Aziz, as PW.1 at Ex.3, PC Abdul Wahab as PW.2 at Ex.4, SIP Ali Akbar (investigating officer) as PW.3 at Ex.5 and HC Syed Raheel Akhtar as PW.4 at Ex.9. Thereafter, the prosecution closed its side of evidence through a statement at Ex.10.

5. After the conclusion of the prosecution evidence, the statements of the appellants under Section 342, Cr.P.C. were recorded at Exs.11 and 12, respectively. In their statements, the appellants denied the allegations levelled against them and stated that they have been falsely implicated in the present case. However, neither of the appellants opted to appear as a witness on oath in terms of Section 340(2), Cr.P.C. to disprove the prosecution allegations, nor did they produce any evidence in their defence.

6. The learned trial Court, after hearing the learned counsel for the appellants and the learned prosecutor, and upon appraisal and evaluation of the evidence available on record, vide impugned judgment dated 14.11.2022, convicted and sentenced the appellants as detailed in para-1 (supra), which necessitated the filing of the listed appeals, which are being decided together through this common judgment.

7. It is contended on behalf of the appellants that the impugned judgment is contrary to law and facts and is the result of misreading and non-reading of evidence available on record. It is next submitted that the prosecution has failed to establish the alleged recovery from the conscious and exclusive possession of the appellants beyond reasonable doubt.

According to learned counsel, the alleged recovery was effected at an early hour of the morning from a public place, yet no independent person has been associated as a mashir and all the witnesses produced by the prosecution are police officials. It is also submitted that the prosecution has failed to establish a safe and unbroken chain of custody of the alleged narcotic substance from the time of its recovery until its examination by the Chemical Examiner. It is submitted that material discrepancies exist regarding the handling, custody and transmission of the case property and that the prosecution has not satisfactorily established that the samples allegedly dispatched to the Chemical Examiner were the same samples allegedly recovered from the possession of the appellants. It is argued that mere production of a positive Chemical Examiner's report is not sufficient unless the prosecution independently establishes the safe custody and safe transmission of the recovered substance. Learned counsel submits that the prosecution evidence suffers from material infirmities and does not inspire confidence particularly when no independent witness has been joined with the alleged arrest and recovery. Learned counsel has also argued that the learned trial Court has failed to properly appreciate the contradictions and deficiencies appearing in the prosecution evidence and recorded conviction merely on the basis of statements of police officials without subjecting the prosecution case to the strict scrutiny required in a case involving a serious penal consequence. It is contended that the prosecution was under an obligation to prove every essential ingredient of the offence beyond reasonable doubt, which it has failed to do. Learned counsel, therefore, submits that the impugned judgment is liable to be set aside and the appellants are entitled to acquittal by extending them the benefit of doubt.

8. Conversely, learned Deputy Prosecutor General has supported the impugned judgment and contended that the prosecution has successfully proved its case against the appellants beyond reasonable doubt through cogent, consistent and trustworthy evidence. It is next submitted that substantial quantities of charas viz 3200 grams from appellant Iqbal alias Bala alias Bracelet and 3400 grams from appellant Muhammad Shahzad were recovered from their possession and the evidence of the complainant and mashir of arrest and recovery remained consistent on all material particulars. She has further contended that there is no legal requirement that a recovery must invariably be witnessed by private persons. According to her, the

testimony of police officials cannot be discarded merely because they belong to the police department particularly when no previous enmity, ill-will or ulterior motive has been alleged or established against them for falsely implicating the appellants in a case involving a substantial quantity of narcotics. It is further submitted that the prosecution has duly established the chain of custody of the case property. The evidence on record shows that the recovered narcotic substance was deposited in the Malkhana, subsequently handed over to the Investigating Officer for onward transmission and ultimately sent to the Chemical Examiner, whose report confirmed the substance to be charas. It is argued that no material discrepancy has been pointed out which could reasonably suggest any possibility of tampering, substitution or manipulation of the case property. It is submitted that the learned trial Court has properly appreciated the evidence in its true perspective and has recorded a well-reasoned judgment based upon reliable and confidence inspiring evidence. The minor discrepancies, if any, pointed out by the defence are inconsequential and do not affect the core of the prosecution case. She has, therefore, prayed that the appeal, being devoid of merit, may be dismissed and the conviction and sentence awarded to the appellants may be maintained.

9. We have carefully considered the submissions advanced by the learned counsel for the appellants and the learned State Counsel and have minutely reappraised the entire evidence available on record with their able assistance.

10. The principal contentions regarding the alleged break in the chain of custody, contradictions in the prosecution evidence and the application under Section 491, Cr.P.C. are devoid of merit. The alleged discrepancies are neither material nor sufficient to cast doubt on the identity, safe custody or transmission of the narcotic substance. Likewise, the application under Section 491, Cr.P.C. unsupported by proper proof or independent corroboration does not establish false implication. These grounds, therefore, do not undermine the prosecution case.

11. The prosecution has produced a complete and coherent chain of evidence regarding the custody and transmission of the case property to the office of Chemical Examiner. The complainant and mashir of recovery have

consistently deposed about the recovery of narcotic substance from the possession of both appellants. Thereafter, HC Syed Raheel Akhtar was examined to establish the safe custody of the case property in the Malkhana. He categorically deposed that the case property was deposited with him on 14.04.2022 and was subsequently handed over to the Investigating Officer SIP Ali Akbar on 15.04.2022 under the relevant entry recorded in Register No.19. The Investigating Officer further deposed regarding the onward transmission of the samples for chemical examination. The report of the Chemical Examiner confirmed that the samples received and examined were charas. Thus, the prosecution evidence establishes each material link in the chain viz recovery of the narcotic substance from the appellants, its deposit in the Malkhana, its custody thereunder, its subsequent handing over to the Investigating Officer for onward transmission and its examination by the Chemical Examiner. Significantly, nothing has been brought on record through cross-examination to suggest that the case property was tampered with, substituted or otherwise manipulated at any stage. Mere assertion that the prosecution has failed to establish the chain of custody without pointing out any specific missing link or circumstance creating a reasonable possibility of tampering is insufficient to discard otherwise reliable evidence. The chain of custody, therefore, stands satisfactorily and safely established.

12. We are unable to attach any legal significance to the applications and documents referred to by the appellants in their statements recorded under Section 342, Cr.P.C. whereby they sought to set up a plea of false implication at the instance of one Raja Masood, who alleged to be the Investigating Officer in another criminal case involving their friend, namely Nadeem. Firstly, none of the said documents was produced and exhibited before the learned trial Court in accordance with law. Mere reference to a document or application in a statement under Section 342, Cr.P.C. does not dispense with the requirement of proving its contents through legally admissible evidence nor can an unproved document be treated as substantive evidence in favour of the accused. More importantly, the application purportedly filed under Section 491-A, Cr.P.C. by their friend Sheeraz Qureshi upon which considerable reliance has been placed does not inspire confidence as a strong piece of evidence. The circumstances appearing on record suggest that the said application appears to have been brought forward as an afterthought to lend support to the plea of false implication raised by the

appellants during the trial. In the absence of its proper production, proof and exhibition coupled with the apparent delay, the said application cannot be relied upon. It is a well settled principle that a plea taken by an accused in his statement under Section 342, Cr.P.C. cannot be treated as substantive evidence unless it is supported by independent and legally admissible material. The appellants neither entered in the witness box under Section 340(2), Cr.P.C. nor produced any witness or other legally admissible evidence to establish the alleged motive of false implication. Consequently, the unproved applications and documents, which were neither exhibited nor subjected to the test of evidence cannot be relied upon to discredit the otherwise consistent and confidence-inspiring prosecution evidence. Even otherwise, mere allegation that the appellants were falsely implicated at the instance of Raja Masood in connection with some other case concerning their friend Nadeem does not by itself establish their innocence in the present case. The appellants were required to place before the Court some reliable material showing a nexus between the alleged previous dispute and the present recovery or demonstrating a plausible motive on the part of the police officials to falsely implicate them. No such evidence has been produced. A vague and unsupported plea of enmity or false implication cannot outweigh direct evidence of recovery particularly when the prosecution witnesses have remained consistent on material particulars and their evidence finds corroboration from the Chemical Examiner's report. It is also significant to note that no previous enmity, personal hostility or ulterior motive has been established against the complainant, mashir or any other prosecution witnesses which could reasonably explain why they would falsely implicate the appellants in a serious narcotics case involving substantial quantities of charas while allowing the actual offenders to escape. In the absence of any cogent explanation or legally admissible evidence in support of the plea of false implication, such defence remains a bald assertion and cannot create a reasonable doubt in an otherwise well-established prosecution case. The learned trial Court has, therefore, rightly appreciated the evidence in its proper perspective. The prosecution has successfully established the recovery of 3200 grams of charas from appellant Iqbal alias Bala alias Bracelet and 3400 grams of charas from appellant Muhammad Shahzad. The safe custody and onward transmission of the case property have also been satisfactorily proved while the positive report of the Chemical Examiner lends further corroboration to the prosecution case. The defence

plea of false implication being unsupported by legally admissible evidence does not inspire confidence and is insufficient to dislodge the prosecution case.

13. In view of the foregoing discussions, we are of the considered view that the prosecution has proved its case against both appellants beyond reasonable doubt. No material illegality, misreading, non-reading or erroneous appreciation of evidence has been pointed out in the impugned judgment warranting interference by this Court. Consequently, the conviction and sentence recorded by the learned trial Court are maintained and the appeal is bereft of merits stands dismissed. The appellants, who are presently on bail, shall be taken into custody and remanded to jail to serve out the sentence awarded to them. In the event of their non-appearance at the time of pronouncement of this judgment, the office shall issue NBWs against them through the concerned SHO with directions to secure their arrest and produce them before the Court for execution of their sentence.

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