

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

***Present:***

***Mr. Justice Mohammad Karim Khan Agha J.***

***Mr. Justice Zulfiqar Ali Sangi J.***

**CRIMINAL JAIL APPEAL NO.498 OF 2021**

Appellant: Muhammad Umair @ Kabo son of  
Muhammad Usman,  
through Mr. Muhammad Hanif Samma,  
Advocate.

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

**CRIMINAL JAIL APPEAL NO.520 OF 2021**

Appellant: Shahzaib @ Kaka son of Ali Bukhsh,  
through Mr. Arshad Rauf, Advocate.

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

Date of Hearing: 10.11.2022  
Date of Judgment: 18.11.2022

**J U D G M E N T**

**ZULFIQAR ALI SANGI-J.**, Appellants were tried by the learned Special Court-II (C.N.S), Karachi in Special Case No.296 of 2018, bearing Crime No.23 of 2015 U/s 6/9 (C) read with section 14/15 of CNS Act, 1997, registered at P.S ANF-II Muhammad Ali Society, Karachi whereby appellants Shahzaib @ Kaka and Muhammad Umair @ Kabo were convicted under section U/s 6/9 (C) read with section 14/15 of CNS Act, 1997 and sentenced to Life Imprisonment with fine of Rs.500,000/- (Rupees Five Lac Only) and in default thereof they were ordered to undergo further Simple Imprisonment for five (05) years vide judgment dated 28.08.2021. The benefit of section 382-B Cr. P.C was also extended to them. By means of these appeals, appellants have impugned the convictions and sentences awarded to them by the trial court.

2. The brief facts of the prosecution case are that on 03.04.2015 at about 1700 hours, Complainant Inspector Muhammad Asim Raza

of PS ANF-II Muhammad Ali Society, Karachi along with other ANF officials on spy information reached near the street of House No.AV-460, Anso Goth, Malir, Karachi from where one person managed to escape from the spot after throwing a bag containing 92 different shoppers in the shape of pieces of Charas weighing 37.670 Kgs, whereas the Complainant's party arrested accused Shah Zaib @ Kaka and recovered a bag from his shoulder containing Charas in the shape of rods weighing 15 Kgs and on pointation of accused Shah Zaib @ Kaka the complainant's party entered into the said house and arrested accused Muhammad Umair @ Kabo who after avoiding took out five bags below the cot out of which three bags containing 93 packets of Charas in the shape of slabs weighing 93.930 Kgs whereas remaining two bags containing 94 packets of Charas in the shape of rods weighing 103.400 Kgs. After observing the required formalities at the spot both the arrested accused persons were brought to the police station along with recovered contraband and an FIR was lodged against the arrested accused persons.

3. After the usual investigation case was challaned before the court having jurisdiction and after completing legal formalities charge against the appellants was framed to which they pleaded not guilty and claimed trial. At trial the prosecution examined four (04) witnesses including the complainant, mashirs of arrest and recovery and the incharge of Malkhana and the person who took the case property to deposit it in the chemical laboratory and produced certain documents and other items in support of the case of the prosecution.

4. The statements of appellants u/s 342 Cr. P.C were recorded wherein they denied the prosecution allegations and pleaded their innocence. They, however, neither examined themselves on oath nor led any evidence in their defence. After the trial, the learned trial Court convicted and sentenced the appellants through impugned judgment as stated above. Hence the appellants have filed these appeals against their convictions.

5. Learned counsel for the appellants mainly contended that the appellants are innocent and have been falsely implicated in this case; that nothing was recovered from them and the charas has been foisted; that there are material contradictions in the evidence of

prosecution witnesses which has not been properly considered by the learned trial court; that the safe custody of the narcotic has not been satisfactorily proven which renders the positive chemical report meaningless; that the alleged incident took place at the street outside of House No.AV-460, Anso Goth, Malir, Karachi, which is a populated area but none from the public was associated as a witness of the incident; that no independent witness has been joined and all the witnesses are police officials, therefore, their evidence cannot be safely relied upon; that the prosecution failed to prove its case against the appellants beyond a shadow of reasonable doubt but learned trial court convicted the appellants, which is not sustainable under the law and as such the impugned judgment is liable to be set aside. He lastly prayed for the acquittal of the appellants. Learned counsel has relied upon the cases of ***Subanullah v. The State (2022 SCMR 1052)***, ***Zafar Khan and another v. The State (2022 SCMR 864)***, ***Muhammad Shoaib and another v. The State (2022 SCMR 1006)***, ***Haji Nawaz v. The State (2020 SCMR 687)***, ***Abdul Basit v. the State and others (2018 SCMR 1425)***, ***Abrar Hussain v. The State and another (2017 P.Cr.L.J Lahore Multan Bench 14)***, ***Riaz Mian and another v. The State (2014 SCMR 1165)***, ***Tariq Pervez v. the State (1995 SCMR 1345)***, ***Nazeer Ahmed v. The State (PLD 2009 Karachi 191)*** and ***Agha Qais v. The State (2009 P.Cr.L.J Lahore 1334)***.

6. On the other hand learned Special Prosecutor, ANF has contended that the prosecution has successfully proved its case by examining the important witnesses; that the appellants were caught red-handed on the spot and Charas was recovered from them which was kept in safe custody; that the prosecution proved safe custody and its safe transmission to the chemical lab; that there are no major contradictions in the evidence of witnesses nor the same were pointed out by the defence counsel; that the impugned judgment does not suffer from any illegality or legal infirmity. He lastly prayed for the dismissal of the appeals. He has relied upon the cases of ***Raja Ehtisham Kiyani v. The State (2022 SCMR 1248)*** and ***Faisal Shahzad v. The State (2022 SCMR 905)***.

7. We have heard learned counsel for the appellants as well as learned Special Prosecutor, ANF and perused the material available

on record so also the case law cited at the bar with their able assistance.

8. The prosecution to prove the recovery of the contraband (Charas) from the appellants at the relevant date, time and place had examined the Complainant who is also the investigation officer of the case Muhammad Asim Raza (PW-2) and the mashir of the recovery SIP Afzal Nazeer (PW-1) who have fully supported the case of the prosecution and on the same lines have deposed that on 03.04.2015, they were working at PS ANF-II, Korangi and received spy information through higher officers about the contraband material and on information and direction of higher officers a raiding party was constituted and left police station vide roznamcha entry No.10, along with special informer at 1600 hours, and at 1700 hours, they reached at the pointed spot viz; in the street of House No.AV-460. They saw that two persons having a bag on their shoulders were coming into the street and on the pointation of the spy informer they tried to apprehend them out of which one person while throwing his bag on the spot made his escape good while taking benefit of the narrow streets and one accused was arrested who disclosed his name to be Shahzeb alias Kaka s/o Ali Bux, r/o Bakra Piri Asso Goth, Malir-15, Karachi. The accused disclosed the name of the escaped accused to be Akbar Khekara who escaped away from the spot. The bag from the possession of accused Shahzaib alias Kaka was secured and was opened in which rods of charas wrapped with red pani were laying. It weighed 15 kg gross and was sealed at the spot for chemical examination. The complainant then opened the bag thrown by Akbar Khekhra the escaped accused and recovered 92 shoppers containing pieces of charas duly packed. The complainant then put the secured 92 shoppers containing pieces of charas in the same bag and then weighed the same on the spot which became 37.670 kg charas gross and then the same was sealed for chemical examination. The accused Shazeb disclosed that charas is also available in House No.AV-460 and he can point out said charas. Then accused Shazeb led them towards house No.AV-460 where on entering they saw in the otaq one person was sleeping. The complainant awakened said person and inquired about name etc, on which he disclosed his name to be Umair alias Kabo s/o Muhammad Usman, r/o House No.V-460, Aasoo Goth, Malir-15, Karachi. The complainant inquired from

accused Umair alias Kabo in respect of narcotics on which after some evasive replies he took out five bags from below the cot and handed over the same to the complainant. The complainant checked all five bags and found that in three bags charas in the shape of slabs were lying viz; 31 packets of charas were in each bag, a total of 93 packets. The complainant weighed the secured 93 packets of charas on the spot and the weight of each packet became 1010 grams, totaling 93.930 grams gross. The complainant then opened the remaining two bags and found 47 packets of charas containing rods wrapped with red Pani in each bag. Thus a total of 94 packets were recovered. The complainant then weighed the secured charas of both bags on the spot and the weight of each packet of charas became 1100 grams, a total of 103.400 Kg gross. The complainant then sealed all the secured five bags of charas on the spot for chemical examination. Thus a total of 250 kg of charas was recovered in this case. The accused were arrested and a search was made in which a colour copy of the CNIC of accused Muhammad Umair alias Kabo and cash Rs.200/- from the right side pocket of his shirt was recovered and on the personal search of accused Shahzab alias Kaka cash Rs.150/- from the right side of his shirt was recovered. Mashirnama of arrest and recovery was prepared and read over its contents to mashirs which they signed. On returning to the police station FIR was registered. The accused persons were identified by them to be the same and the case property produced before the court was also identified by these witnesses to be the same. PW-2 further deposed that he conducted the investigation of the case and recorded statements under section 161 Cr.P.C. deposited the case property in the Malkhana and thereafter sent it for the chemical examination to which he received a positive report. He made entries in the relevant registers which he also exhibited in his evidence. They were cross-examined at some length by the defence counsel but we do not find any material contradiction in their evidence which may suggest any doubt about the recovery of all the narcotics mentioned above.

9. To prove the safe custody of the contraband and its safe transmission to the chemical laboratory the prosecution examined Tahir Ahmed (PW-4) who was the incharge of Malkhana at the relevant time being posted as SHO at P.S. ANF-II and deposed that on 03-04-2015, Inspector Asim Raza handed over to him the case

property of FIR No.23/2015 for depositing into the Malkhana which he had deposited according to Serial No.38 of Register No.19 the copy of said entry was exhibited by him during the evidence. He further deposed that on 06.04.2015 the total case property of FIR No.23 of 2015 he handed over to the I.O Asim Raza and PC Waheed Malik for the purpose of depositing it with the chemical examiner. Waheed Malik (PW-3), the person who had brought the property to the laboratory deposed that on 06.04.2015 he was present at P.S. ANF-II, Muhammad Ali Society, Karachi being PC and SHO Inspector Tahir Ahmed called him at his office and handed over case property viz. 7 sacks duly sealed weighing 250 Kgs Charas of FIR No.23 of 2015, for depositing the same to the chemical examiner Sindh Lab. He along with other ANF staff duly armed left PS in the official vehicle under entry No.3/1100 hours along with case property and reached chemical lab Sindh where he had deposited the same and obtained acknowledgement from the chemical lab. On reaching the police station he handed over the receipt of acknowledgement to the SHO Inspector Tahir and made his arrival entry being entry No.4. These witnesses were also cross-examined but nothing favourable to the appellants has been pointed out by the defence counsel.

10. We have carefully examined the evidence of the prosecution witnesses and found the same reliable, trustworthy and confidence-inspiring. The recovery of a huge quantity of charas was affected from the possession of the accused and the same was kept in safe custody and within the shortest period it was sent for chemical examination. The prosecution also proved the safe custody and its safe transmission by producing the witnesses in whose custody the property was in the Malkhana and through whom it was sent for chemical examination. All the chains from the recovery of the narcotics till sending the same for the chemical examination have been proven by the prosecution beyond a reasonable doubt. The same is also strengthened by the fact that the report of the chemical examiner was exhibited in the evidence which confirms that the parcel was received on the same date it was sent from the person who brought it. Therefore, it can safely be said that the safe chain of custody of the recovered narcotics was not compromised at all. Reliance is placed on the cases of ***Faisal Shahzad v. The State [2022 SCMR 905]*** and ***Ajab Khan v. The State [2022 SCMR 317]***.

11. The contentions of defence counsel that the complainant and the investigation officer of the case are the same people therefore his evidence cannot be relied upon and its benefit must be given to the appellant. This contention has no force as there is no prohibition in the law for the police officer to investigate the case lodged by him as has been held by the Honourable Supreme Court of Pakistan in the case of ***Zafar v. The State (2008 SCMR 1254)***, wherein it is held in Para-11 that “So far as the objection of the learned counsel for the applicant that the Investigation Officer is the complainant and the witness of the occurrence and recovery, the matter has been dealt with by this Court in the case of State through ***Advocate-General Sindh v. Bashir and others PLD 1997 SC 408***, wherein it is observed that *a Police Officer is not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an Investigating Officer, so long as it does not in any way prejudice the accused person.* Though the Investigation Officer and other prosecution witnesses are employees of A.N.F., they had no animosity or rancor against the appellant to plant such a huge quantity of narcotic material upon him. The defence has not produced any such evidence to establish animosity qua the prosecution witnesses. All the prosecution witnesses have deposed in line to support the prosecution case. The witnesses have passed the test of lengthy cross-examination but the defence failed to make any dent in the prosecution story or to extract any material contradiction fatal to the prosecution case. The prosecution has been successful to bring home the guilt of the appellant to the hilt by placing ocular account, recovery of narcotic material, the Chemical Examiner report G.1, Exh.P.3. The learned counsel for the appellant has not been able to point out any error of law in the impugned judgment and the same is unexceptionable. Even otherwise, mere status of one as an ***official*** would not alone prejudice the competence of such witnesses until and unless he is proved to be ***interested***, who has a motive, to falsely implicate an accused or has previous enmity with the person involved. Reliance is placed on the case of ***Farooq v. The State (2008 SCMR 970)***.

12. As regards the contentions of the learned counsel for the appellants that having prior information no private persons were associated as witness/mashir in the recovery proceeding hence the

provision of section 103 Cr. P.C was violated by the complainant and the evidence of police officials cannot be relied upon while awarding the conviction in cases of capital punishment also has no force as the reluctance of the general public to become a witness in such cases has become a judicially recognized fact and there was no way out but to consider the statement of the official witnesses as no legal bar or restriction has been imposed and even then there was no time to collect independent witnesses. No direct enmity or ill will has been suggested by the appellant against the complainant or any of the officials who participated in recovery proceedings during cross-examination and therefore in the circumstances the police officials were good witnesses and could be relied upon if their testimony remained un-shattered during their cross-examination. Even otherwise, the provision of Section 25 of the CNS Act has provided the exclusion of Section 103 Cr.P.C. during recovery proceedings. Reliance is placed on the cases of ***Salah-uddin v. The State (2010 SCMR 1962)***, ***Shabbir Hussain v. The State (2021 SCMR 198)*** and ***Mushtaq Ahmad v. The State & another (2020 SCMR-474)***. In the case of Mushtaque Ahmed (supra) it was held that the “Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring”.

13. In the instant case total amount of recovery affected from the appellants viz 250 Kg of charas was sent for chemical examination. The huge quantity of charas like the present cannot be foisted easily on anyone without any enmity or ill-will and even if there may be enmity or ill-will against a person even then a low quantity of the narcotic substance is sufficient to book a person in the case to teach him a lesson or otherwise. The entire 250 kgs charas was sent for chemical examination and the result of the test was positive. The chemical report has not even been challenged by the defence at the trial. The report reflects that the property was received at the lab on 06-04-2015 by the hand of PC Waheed (PW-3) and it was seven sealed white gatto (nylon bag) parcels each with 01 seal. The seals



are perfect and as per copy sent. The weight of the parcels is mentioned in the report as Parcel No.1 15 kgs, Parcel No.2 37.670 kgs, Parcel No.3,4 and 5 each 31.310 kgs total of 93.930 kgs and Parcel No. 6 and 7 each 51.700 kgs total 103.400 kgs and the total weight of all the 07 parcels became 250 kgs charas. Even there is no difference in the weight as stated by the prosecution witness in their evidence and the weight reflects in the chemical examiner's report. It is a settled proposition of law that by the flux of time in the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be overlooked in the larger interest of the country, if the case stands otherwise proved, the approach of the Court should be dynamic and pragmatic in approaching facts of the case and drawing correct and rational inferences and conclusions while deciding the such type of cases. "No drug peddler can be acquitted in the narcotics case on technicalities." Reliance is placed on the case of ***Ghulam Qadir v. The State (PLD 2006 SC 61)***.

14. Thus based on the particular facts and the circumstances of the case in hand as discussed above, we have found that the prosecution has proven its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence in the shape of oral/direct and documentary evidence corroborated by the report of the chemical examiner. The impugned Judgment passed by the learned trial court does not suffer from any illegality, gross irregularities or infirmities so as to call for interference by this court. Resultantly, the appeals in hand are dismissed.

15. The appeals are disposed of in the above terms.

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