

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Mohammad Karim Khan Agha J.
Mr. Justice Zulfiqar Ali Sangi J.**

**Criminal Appeal No. 538 of 2021
Confirmation Case No.14 of 2021**

Appellant : Naeem Akhtar @ Ali Haider and Samiuddin
through Mr. Muhammad Farooq, Advocate.

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

Date of Hearing : 14.09.2022

Date of Judgment : 27.09.2022.

J U D G M E N T

ZULFIQAR ALI SANGI-J., Appellants were tried by learned Special Court-II (CNS), Karachi in Spl. Case No.1179/2017 bearing Crime No.21/2012 U/s 6,9 CNS Act r/w sections 14,15 of CNS Act of P.S. Clifton, Karachi. Appellant Samiuddin was convicted U/s 6,9 r/w section 14,15 of CNS Act and sentenced to suffer life imprisonment with fine of Rs.1000,000/- (One million), in default to suffer imprisonment for five years with benefit u/s 382-B Cr.P.C, whereas appellant Naeem Akhtar @ Ali Haider has been convicted under same sections and sentenced to death subject to confirmation by this court vide judgment dated 08.09.2021. By means of this appeal, appellants have impugned their convictions and sentences.

2. Brief facts of prosecution case are that on 13.11.2012, on tip-off ANF party headed by SI Maqsood Ahmed of P.S. ANF Clifton, Karachi reached in front of Murshid Hospital, Mawachh Goth, Karachi, got stopped Alto Car bearing No.AHG-285 and arrested appellants Naeem Akhtar, Samiuddin and one Syed Akhtar Hussain, who expired during incarceration, sitting on driver seat, rear seat and front seat respectively and recovered five bags containing 20 foil packets of chars each weighing one K.G containing four thin slabs. Accused disclosed that they brought narcotics from godown situated at Plot No.UCGP-44/S, main Suparco Road and on their pointation ANF party raided the godown and recovered 161 nylon sacks

containing 3213 Kgs chars in different shapes. Thereafter accused and case property were brought to P.S and FIR was lodged.

3. Charge against appellants was framed to which they pleaded not guilty and claimed trial. At the trial, prosecution examined P.Ws. complainant Maqsood Ahmed, Mujahid Khan, Abdul Shakoor, Intikhab Ahmed, Tariq Rasool, Saifur Rasool, Muhammad, who produced relevant documents i.e. FIR, mashirnama of arrest and recovery etc. and then prosecution closed its side.

4. Statements of appellant's u/s 342 Cr.P.C were recorded wherein they denied prosecution allegations and pleaded their innocence. They, however, neither examined themselves on oath nor led any evidence in their defense.

5. On conclusion of the trial, learned trial court after hearing the parties convicted and sentenced the appellants through impugned judgment as stated above.

6. Learned counsel for the appellants mainly argued that the appellants are innocent and have been falsely implicated in this case; that no independent witness was associated despite information in advance which makes the case doubtful; that description of alleged recovered foils containing charas such as colour, shape etc. are not mentioned in the memo of recovery; that P.W.1 in his cross-examination has admitted that no incident has taken place on 13.11.2012 at 1530 hours, which has made entire story doubtful; that P.W.1 further admitted that sample was not taken from each packet and only two packets were sent to the chemical examiner which after examination were found charas, thus, it cannot be said that all packets were containing charas; that PWs 1 and 2 stated that they weighed the charas at spot with digital weighing scale but they did not produce any proof that they had digital weighing scale at the time of leaving P.S; that no reliable and trustworthy evidence was produced before the trial court to justify their conviction; that there are contradictions between evidence of the P.Ws in regard to the details of the incident as mentioned in the FIR; that prosecution had failed to prove charge against the appellants beyond shadow of doubt, hence he prayed for setting aside the impugned judgment and

acquittal of the appellants. Learned counsel has relied upon cases of Syed Mushtaque Vs. The State (PLD 2003 Kar 216), Akber Vs. The State (2017 YLR 277), State Vs. Mujahid Naseem Lodhi (PLD 2017 SC 671, State Vs. Sohail Khan (2019 SCMR 1288), State Vs. Fakhar Zaman (2019 SCMR 1122), and State Vs. Muhammad Ramzan & others (2019 SCMR 1295).

7. On the other hand, learned counsel for the ANF has contended that the prosecution has successfully proved its case by examining the P.Ws, who have no enmity with the appellants; that there are eyewitnesses who deposed that in their presence the appellants were arrested and narcotics was recovered from them under mashirnama of arrest and recovery; that all the P.Ws have supported the prosecution case, therefore, conviction and sentence awarded by the trial court requires no interference by this court and the confirmation reference should be answered in the affirmative.

8. We have heard learned counsel for the appellants as well as learned special prosecutor for the ANF and perused the material available on record.

9. The prosecution to prove the case against the appellants has examined two eyewitnesses in respect of their arrest and recovery of contraband material from their possession. PW-1 Maqsood Ahmed Mahar is the complainant so also investigating officer of the case, whereas, PW-2 P.C Abdul Shakoor is eyewitness and the mashir. Both the witnesses deposed against the appellants in one and the same line and stated that on 13.11.2012 they were available at Police Station ANF-Clifton, Karachi where special informer came at 1400 hours and gave them information that Naeem Akhtar @ Ali Haider, Samiuddin and Akhtar Hussain, drug smugglers will bring huge quantity of narcotics in their Alto Car bearing Registration No.AHG-285, of red colour (Surkhi) for supplying the same to their special agent and they will come in front of Murshid Hospital, Mawachh Goth, Karachi. The informer further disclosed to them that, if immediate action will be taken then the narcotics will be recovered so also accused will be arrested. Hence in view of such information and direction of higher officer, one raiding party consisting of the complainant, Naib Sobaidar Zar Muhammad, A.S.I-Rashid, A.S.I-

Muhammad Ali, A.S.I-Arif Lodhi, A.S.I-Wajid Hameed, Hawaldar Arif, Hawaldar Ali Abbas, PC Abdul Rehman, PC Abdul Shakoor, PC Farhan, PC Rizwan, PC Imtiaz Balladi, PC Mazaharuddin and other ANF staff was constituted who were duly armed with official weapons on government vehicles under the supervision of Asmatullah Khan Deputy Director along with special informer under Roznamcha entry No.4, at about 1430 hours left the P.S at about 1530 hours and reached at Murshid Hospital, Mawachh Goth, Karachi, where they started secret surveillance. At about 1545 hours, Alto Car bearing Registration AHG-285 came from SUPARCO road and stopped in front of Murshid Hospital. They saw that one driver and two other persons were sitting in said car. The spy informer pointed out the said car to be the same car in which narcotics and accused were available. Hence they encircled the said car and apprehended all the three accused who were available in the car. Complainant asked the passerby people to act as mashir but they refused to act as mashir due to fear of narcotics smuggler. Hence he cited ASI Wajid Hameed and PC Abdul Shakoor as mashirs and inquired name etc.; from the accused on which the accused sitting on driving seat disclosed his name to be Naeem Akhtar son of Ghulam Hussain presently R/O Flat No.101, Qasim House, near Mama Hotel, Layri, Karachi permanent resident of Bhitaiabad Malir, Karachi. The accused also disclosed his nick @ name as Ali Haider. The accused who was sitting on the front seat of the car disclosed his name to be Syed Athar Hussain son of Syed Fazal Haq R/O House No.2/9, Muhalla New Karachi, Sector 5-D, Karachi. The accused sitting on back seat of driving seat disclosed his name as Samiuddin son of Qayumuddin, R/O House No.9-10, Par Bati Building Ranchor Line, Karachi. The complainant inquired about narcotics from all accused on which they disclosed that narcotics are in one plastic bag lying in front seat foot pad and four plastic bags lying on back seat and foot pad of back seat, total five plastic bags. Complainant opened said five plastic bags lying in the car and found that in each plastic bag 20 foil packets of yellow colour were lying total 100 foil packets of yellow colour were lying in all the five plastic bags. Complainant opened all said foil packed packets of yellow colour and found that four slabs of Charas wrapped in plastic were lying in each foil packed packet of yellow colour and the same were weighed and each packet of Charas was 1 kilogram total 100

Kilogram Charas. Then it was put in packets of yellow colours containing Charas in same position viz: 20 packets in each plastic bag and sealed the same for Chemical Examination. On personal search of accused Naeem Akhtar three mobile phone i.e. Nokia-603, Nokia-100, Nokia C2-00 with sim, one purse of black colour containing cash Rs.4000/- in shape of six currency notes of Rs.500/- one currency note of Rs.1000/-, original CNIC of accused, original driving license of accused Naeem Akhtar, two ATM cards of Standard Chartered Bank and Bank Al-Habib, three ATM receipts, one paper chit, on which bank account No.01-1768802-01 of accused Naeem Akhtar was written, two bank deposit slips, two keys and other chits and cards from the pocket of accused Naeem Akhtar were secured. On personal search of accused Syed Akhtar Hussain cash Rs.350/- in shape of three currency notes of Rs.100/-, one currency note of Rs.50/- his coloured photocopy of CNIC, one little black diary, mobile phone Nokia C1-00 from right pocket of the shirt of the accused were secured. On personal search of the accused Samiuddin cash of Rs.1350/- in shape of one currency note of Rs.1000/-, three currency notes of Rs.100/- one currency note of Rs.50/-, photocopy of his CNIC, and one paper chit on which Abid Jan South Africa was written, one boarding tag Cathy Pacific Airline in the name of accused, one mobile phone 202 Nokia with sim and other visiting cards and chits from right side pocket of the shirt of accused were secured. On the search of the car complainant secured original registration book of the car in the name of Nadeem Ahmed Riaz son of Riaz Ahmed Javed from dash board of the car. Complainant inquired from the accused from where they have brought the secured Charas, on which all the accused disclosed that they brought the secured Charas from Plot No.UCGP-44/S main SUPARCO Road, Mawachh Goth and the keys of said godown were recovered from the pocket of accused Naeem Akhtar. All the accused disclosed that other narcotics substance were available in said godown and the owner of the secured narcotics is Anwar @ Javed Chaudhri @ Chaudhri, who is also known by some other nick name as well. The complainant then arrested the accused and prepared such mashirnama of arrest of accused, recovery of Charas, car, mobiles, cash etc. on the spot in presence of mashirs, read over its contents to them, who after hearing the contents, accepted it as true and correct and put their

signatures on it, and complainant also put his signature. Both the mashirs also put their signatures on all five sealed plastic bags containing Charas and complainant also put his signature on said sealed plastic bags containing Charas. As the accused disclosed availability of narcotics in godown Plot, No.UCGP-44/S main SUPARCO road, Mawachh Goth, Karachi, therefore, at that time the Court hours were over. Hence due to fear of disappearance of evidence the complainant could not pick the lady searcher and under the supervision of Asmatullah Deputy Director along with his staff, accused and secured property left the spot on the directions of his higher officers at 1745 hours and went towards the godown disclosed by the accused. They reached at about 1800 hours, on the pointation of accused at the pointed godown situated on Plot, No.UCGP-44/S main SUPARCO road, Mawachh Goth, Karachi. They saw that the outer gate of the godown was lying locked. The complainant nominated ASI Wajid Hameed and PC Abdul Shakoor as mashirs because no other person was available there and then he handed over the key recovered from the pocket of accused Naeem Akhtar, who opened the lock of the gate of the godown with said keys. They entered in the godown and found that there were four rooms on left hand side from the gate of godown. They found that outer door of room No.1 adjacent to entrance gate of godown was lying locked. The accused Naeem Akhtar opened the lock of said door with the keys recovered from his possession. All the accused led police party towards the nylon bags lying in said room. The complainant took out the nylon bags from the room and in all 161 nylon bags were recovered from said room. All the accused disclosed that in all bags narcotics is available. 88 nylon bags were of white colour and remaining 73 nylon bags were of khaki colour. Due to recovery of huge quantity of narcotics the complainant through telephone requested to his higher officer to send other staff alongwith vehicle for his help. He opened 88 white colour nylon bags and found that in 87 white colour nylon bags multi colour foil packed packets viz: 20 packets in each bag were lying. In one white colour nylon bag 13 multi colour foil packed packet were lying. Thus in all, he secured 1753 multi colour foil packed packets from all 88 white colour nylon bags. He also opened all 1753 multi colour foil packed packets and found that Charas wrapped in plastic in shape of slabs. He weighed

each secured multi colour foil packed packet which become 1 kilogram and total 1753 kilogram Charas was recovered from said 88 white nylon plastic bags. He separated two multi colour foil plastic packed packets containing Charas from each 88 white colour nylon plastic bag for the purpose of samples and put serial No.1 to 88 on each two packets of each bag for their proper identification and then put 20 multi colour foil packed packets of Charas in each 8 plastic bags and sealed the same as samples for chemical examination. He also put 16 multi colour foil packed packets containing Charas in one plastic bag and sealed the same as sample and put alphabetic number viz A to H on eight sealed sample parcel bag and on 9th sealed sample parcel bag for their proper identification. He put the remaining multi colour foil packed packets of Charas in 88 bags and sealed the same. He also put serial No.1 to 88 on said sealed bags containing remaining Charas for their proper identification. Thereafter he opened 73 khaki colour nylon bags in order to check it and found that 20 multi colour foil packed packets were lying in each 73 khaki nylon bags and total 1460 multi colour foil packed packets from all 73 khaki nylon secured bags which he opened and found that Charas in shape of slabs were lying in all multi colour foil packed packets. He weighed all the secured multi colour foil packed packets containing Charas, which become 1 kilogram in each packet viz; total 1460 kilograms. He separated two multi colour foil packed packets containing Charas from each 73 bags as sample for chemical examination and put serial No.89 to 161 on two multi colour foil packed packets containing Charas separated from each 73 bags for their proper identification. He put 20 multi colour foil packed packets containing Charas in each six white colour plastic bags and remaining 26 packets of multi colour foil packed packet containing Charas in 7th white colour plastic bag and sealed all the seven white colour plastic bags containing samples on the spot and wrote word J to O on six white colour bags and P on the 7th white plastic bag containing samples of Charas for their proper identification. The complainant put the remaining multi colour foil packed packets in said khaki 73 nylon bags and sealed the same as remaining property on which he wrote serial No.89 to 161 for their proper identification. The total 3213 kilogram Charas was recovered from all 161 nylon bags recovered from the room of godown. After the recovery he

prepared such mashirnama on the spot. They brought the accused alongwith secured property at P.S ANF Clifton on 14.11.2012, and registered the FIR. They both were cross-examined at length but we could not find any substantial material which favoured the appellants.

10. During investigation the complainant being the investigating officer deposited the property in Malkhana of ANF P.S Clifton, Karachi to which he himself was the incharge. Prepared Huliya form of accused and obtained their finger prints and so also got their photographs. On 14.11.2012 he sent the sealed sample parcels of Charas through A.S.I Muhammad Ali to the Chemical Examiner, Government of Sindh, Karachi for examination and report under letter No.FIR-21/2012/ANF/PS/RD-1247 dated 14.11.2012. He received chemical report of samples of secured Charas on 06.12.2012, from the Chemical Examiner, Government of Sindh Karachi. He examined the owners of the vehicle and the godown who also supported the prosecution case. The accused disclosed before him that they used to supply narcotics in Pakistan and so also abroad, therefore, he wrote letter No.1280 dated 26.11.2012, to the Regional Director (Ops), branch for calling PISCES record of accused Naeem Akhtar, Ali Haider, Samiuddin, Syed Akhtar Ali and Wasim Ahmed from concerned quarter. The name of Wasim Ahmed was also included because he was owner of the secured car. He received letter No.KCA/FIR-21/2012 P.S./RD/Ops dated 9.1.2013 of Deputy Director (Ops) who sent the PISCES record of accused to him and letter No.8044 dated 12.12.2012 of Additional Director FIA, letter No.478 dated 10.12.2012 of Assistant Director IBMS, travel record with photo, photocopy of passport of accused Naeem Akhtar, accused Samiuddin, accused Syed Akhtar and Muhammad Wasim. From PISCES record the short trips of accused are proved. During investigation he came to know that accused Naeem Akhtar was arrested by narcotics police force of P.S. ANF-II, Muhammad Ali Society Karachi while carrying Heroin capsules in his abdomen then called the criminal record of accused Naeem Akhtar from PS ANF, vide letter No.1276 dated 22.11.2012, which was replied by S.H.O P.S. ANF, Muhammad Ali Society through his reply dated 28.11.2012 alongwith photocopy of FIR No.62/2008, PS ANF Muhammad Ali

Society, Karachi offence punishable u/s 6/9 (b) CNS Act. The S.H.O. P.S. ANF, Muhammad Ali Society in his reply also disclosed that accused was convicted in FIR No.62/2008, P.S. ANF Muhammad Ali Society for offence punishable u/s 9(b) for 18 months imprisonment and Rs.10,000/- fine, in default of payment of fine he was to undergo 15 days further imprisonment. On 5.12.2012 he also called criminal record of accused through Deputy Director (Ops) branch, from Director General Excise and Taxation Department, Karachi vide his letter No.1340 dated 5.12.2012, and the Deputy Director Provincial Intelligence Officer Excise, Sindh, Karachi sent his letter No.09 dated 31.1.2013, to the Deputy Director ANF, Karachi alongwith photocopy of FIR No.4/2005 dated 7.5.2005, registered against accused Syed Akthar Hussain U/s 6/9 (c) CNS Act and photocopy of mashirnama. On 19.11.2012, he also sent letter to S.H.O. P.S. Napier, Karachi calling criminal record of accused Samiuddin and received reply of S.H.O. P.S. Napier, Karachi vide letter No.5254 dated 22.11.2012 who reported that the accused Samiuddin is not involved in any case of his P.S. However, he is affiliated with Sipah-e-Sahaba Pakistan and was placed on 4th schedule 1997, vide Notification No.SOG-1/2-57/2003 dated 30.12.2003. The registration book of the car recovered from the accused was in the name of Nadeem Ahmed Riaz who was called by him at P.S. on 15.11.2012, who disclosed that he sold said car through agreement of sale to Wasim Ahmed s/o Muhammad Aslam for Rs.380,000/- vide agreement dated 18th April, 2011, who handed over him photostat copy of sale agreement alongwith photocopy of CNIC of Wasim Ahmed, which he secured under mashirnama in presence of mashirs ASI Muhammad Ali and PC Abdul Shakoor. He examined the owners of the car and the godown collected entire documentary evidence which reflects that the car was belonging to the accused persons and the godown was also taken by them on rent. The complainant/Investigation officer was also examined on the application under section 540 Cr.P.C filed on behalf of the State as PW-7 in respect of keeping the recovered contraband in safe custody so also its safe transmission to the Chemical Laboratory. During his cross-examination he also stated that at the time recovery of contraband there was no other Malkhana incharge and he was the incharge of Malkhana where he himself kept the charas in safe custody and the handed over it to ASI Muhammad

Ali who was examined as PW-6 and deposed that on 15.11.2012 he was present at PS ANF Clifton, Karachi being ASI and SI Maqsood Mahar had handed over to him 19 nylon sacks each containing 20/20 Kgs Charas, one nylon sack of 16 Kgs Charas and one nylon sack of 26 Kgs duly sealed, total weighing 422 Kgs Charas of FIR No.21/2012 alongwith documents for depositing with the chemical lab Sindh. On the same day he took the same to the chemical lab in the same and proper condition and handed over the same to the chemical examiner and obtained the acknowledgement on the letter addressed to the chemical examiner and returned back and handed over such letter to SI Maqsood Ahmed Mahar. The prosecution also examined the owners of the car and the godown to establish its connection with the accused persons. They all were cross-examined at length but their evidence was not dented at all.

11. We have carefully examined the evidence of the prosecution witnesses and found the same reliable, trustworthy and confidence inspiring. The recovery of huge quantity of charas was affected from the possession of accused persons and the same was kept in safe custody and with 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 chemical examination have been proven by the prosecution beyond a reasonable doubt. The contention raised by the learned counsel for the appellant that PW-1 Maqsood Ahmed himself is the complainant and the investigation officer of the case therefore his evidence cannot be relied upon and its benefit must be given to the appellant has no force as there is no prohibition in the law for the police officer to investigate the case lodged by him as held by Honourable Supreme Court of Pakistan in the case of **Zafar v. The State (2008 SCMR 1254)**, wherein it is held as follows:-

*“11. 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 Office 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 appellant has not been able to point out any error of law in the impugned judgment and the same is unexceptionable.

12. The objection raised by 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 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 appellants 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 unshattered during the 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 as has been held by the Honourable Supreme Court of Pakistan in the case of **Salahuddin v. The State (2010 SCMR 1962)**, which reads as under:-

“4. We have carefully examined the entire record and perused the judgment impugned with the eminent assistance of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner. After having gone through the entire evidence by keeping the defence version in juxtaposition we have no hesitation in our mind to hold that prosecution has proved the

factum of recovery on the basis of forthright and convincing evidence. The statements of prosecution witnesses namely Ghulam Hassan, IP/SHO (P. W.1), Muhammad Ansar, SI (P.W.2) and Amanullah Kethran SIP/I.O. (P.W.3) have been thrashed out in depth who all have supported the prosecution version and stood firm to the test of cross examination and nothing beneficial could be elicited casting any doubt on their veracity. The petitioner was apprehended at the spot from a double seater Datsun pickup bearing registration No.WAC-526 on whose search 20 kilograms hashish (charas) was found for which F.I.R. was got lodged with promptitude and samples from alleged recovered material were sent to Chemical Expert without any loss of time which were found "charas" as a result of chemical examination. No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motive which was never alleged. In view of the overwhelming prosecution evidence the defence version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reason. **We are conscious of the fact that no private witness could be produced but it must not lost sight of that reluctance of general public to become witness in such like cases by now has become a judicially recognized fact and there is no way out but to consider the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard. We are fortified by the dictum laid down in Hayat Bibi v. Muhammad Khan (1976 SCMR 128), Yaqoob Shah v. The State (PLD 1976 SC 53), Muhammad Hanif v. State (2003 SCMR 1237). It is well settled by now that police officials are good witnesses and can be relied upon if their testimony remained unshattered during cross examination as has been held in case of Muhammad Naeem v. State (1992 SCMR 1617), Muhammad v. State (PLD 1981 SC 635). The contentions of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner qua violation of provisions as enumerated in section 103, Cr.P.C. seems to be devoid of merit when examined in the light of provisions as contained in section 29 of the Act which provides exclusion of section 103, Cr.P.C.** The learned trial Court has appreciated the entire evidence in accordance with well settled principles of appreciation of evidence and conclusion arrived at has been affirmed by the learned Division Bench vide judgment impugned which being well based does not warrant interference. The petition being meritless is dismissed and leave refused."

In another case of **Shabbir Hussain v. The State (2021 SCMR 198)**, the Honourable Supreme Court of Pakistan has observed as under:-

"Mehmood-ul-Hassan Inspector (PW-3) joined by Mumtaz Bibi Lady Constable (PW-4) in the witness box furnished details of the arrest and recovery. We have gone through their statements to find them in a comfortable and confident unison on all the salient

aspects of the raid as well as details collateral therewith. Learned counsel for the petitioner has not been able to point out any substantial or major variation or contradiction in their statements that may possibly justify to exclude their testimony from consideration. On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. **Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status.** Similarly, forensic report is sufficiently detailed to conclusively establish narcotic character of the contraband. The argument is otherwise not available to the petitioner as he never disputed the nature of substance being attributed to him nor attempted to summon the chemical analyst to vindicate his position. A challenge illusory as well as hyper-technical is beside the mark in the face of "proof beyond doubt" sufficient to prove the charge to the hilt. Petition fails. Leave declined."

Yet in another case of ***Mushtaq Ahmad v. The State & another (2020 SCMR-474)***, the Honourable Supreme Court of Pakistan has also held as under:-

“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. We have carefully examined the evidence in respect of safe custody of the narcotic substance and the safe transmission of the samples towards the chemical laboratory for analysis and found that the same has been proved by the prosecution by examining PW-7 Maqsood Ahmed who at that time was the incharge of Malkhana and kept the charas in safe custody who is also complainant and the investigation officer of the case and during cross-examination stated that **“There was no any Malkhana incharge because Malkhana incharge was me being SHO”.** He exhibited the Malkhana entry

through which he deposited the recovered narcotics in the Malkhana which is available at page 587 of the paper book. The recovery was effected on 13 to 14-11-2012 and the same was sent for chemical examination on 15-11-2012 through SI Muhammad Ali who was examined as PW-6 and fully supported the case of prosecution. On examination of chemical analyzer's report available at page 385 of the paper book it is clarified that the property was deposited on 15-11-2012 by the ASI Muhammad Ali of P.S ANF Clifton. The description of the articles contained in the parcel are **"Parcel No. 1 to 21 each parcel nineteen bags containing twenty packets remaining one bag marked I containing sixteen packets and one bag marked P containing twenty six packets each contains greenish brown semi soft slabs with smell of chars each covered with plastic Total packets 422."** The report further reflects that the samples were with three seals perfect and as per copy sent. The Honourable Supreme Court of Pakistan in the case of ***Izzatullah and another v. The State (2019 SCMR 1975)***, has observed as under:-

"Other pieces of evidence have been found by us as independently sufficient to drive home the charge; forensic report confirms the lethal nature of the substance, recovered in a quantity that cannot be possibly foisted in routine; seizure of the vehicle clinches the case. Argument of safe custody does not hold much water as Abdul Faraz 28/C (PW-10) took the sample to the Forensic Science Laboratory along with Rahdari Ex.PW8/3 was not cross-examined despite opportunity. Forensic Report (Ex.PZ) corroborates the position taken by the said PW. Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in a comfortable unison: being functionaries of the Republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trustworthy, as in the case in hand. Both the courts below have undertaken an exhaustive analysis of the prosecution case and concurred in their conclusions regarding petitioners' guilt and we have not been able to take a different view than concurrently taken by them. Petitions fail. Dismissed."

In another case of ***Zahid and another v. The State (2020 SCMR 590)***, the Honourable Supreme Court of Pakistan observed as under:-

.....The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals.

14. Learned counsel for the appellants emphasized that there are material contradictions in the case of prosecution but no such material contradiction has been highlighted to create doubt in the prosecution story. Courts are supposed to dispose of the matter with a dynamic approach, instead of acquitting the drug paddlers on technicalities as has been held by the Honourable Supreme Court of Pakistan in the case of ***Ghulam Qadir v. The State (PLD 2006 SC 61)***. In another case ***The State/ANF v. Muhammad Arshad (2017 SCMR 283)***, it is observed by the Honourable Supreme Court of Pakistan that no proper investigation was conducted, but if the material that came before the court was sufficient to connect the accused with the commission of the crime the accused could still be convicted notwithstanding minor omissions that had no bearing on the outcome of the case.

15. 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 the reliable, trustworthy and confidence inspiring evidence in shape of oral/direct and documentary evidence corroborated by the report of 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 in respect of conviction of the appellants. However, we feel that learned trial Court has passed the sentence to the appellant Naeem Akhtar and awarded him death sentence on the basis of his previous conviction in the narcotics case which is in violation of the legal procedure provided under the law.

16. The charge was framed on 13-02-2013 but nothing in the charge is mentioned in respect of the previous conviction which is the mandatory requirement of **section 221(7) Cr.P.C** wherein word **“shall”** has been used, which deals with the charge in respect of previous convictions and it provides as under:-

S. “221(1) Previous conviction when to be set put:
If the accused having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the

*purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, **the fact, date and place of the previous conviction shall be stated in the charge**, if such statement has been omitted, the Court may add it any time before sentence is passed.*

Perusal of the above provision reflects that **firstly**, at the stage of framing the charge **“the fact, date and place of the previous conviction shall be stated in the charge”**. **Secondly**, **“if such statement has been omitted, the Court may add it any time before sentence is passed.”** The first part of the above provision has not been complied with by the trial court and later on when the prosecutor felt that the illegality has been committed by the trial court then an application under section 221 (7) Cr.P.C was filed on 27-07-2019 and the same was declined by the trial court vide order dated: 05-08-2019. For ready reference **section 265 (I)** Cr.P.C is reproduced as under:-

265-1. Procedure in case of previous conviction.

(1) In a case where, by reason of a previous conviction the accused has been charged under Section 221, sub-section (7) the Court, after finding the accused guilty of the offence charged and recording a conviction shall record the plea of the accused in relation to such part of the charge.

(2). If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge the Court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon and then pass sentence upon him according to law.

Again another provision in the Criminal Procedure Code 1898, for proving the previous convictions and acquittals is available in shape of section 511 which reads as under:-

“511. Previous conviction or acquittal how proved: *In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force- (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or the order. (b) In case of a conviction, either by a certificate signed by the officer incharge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.”*

17. We have also examined the order dated: 05-08-2019 passed by the trial court on an application under section 221(7) Cr.P.C filed by the prosecution wherein the trial court after proper hearing and appreciating the above provisions of law had declined the same and observed as under:-

“I have heard the learned SSP for ANF, learned counsel for the accused persons and perused record of the case. It appears that Inspector Maqsood Ahmed Complainant/I.O. of this case lodged FIR on 14.11.2012 and he himself investigated the case being its I.O and the perusal of the charge sheet shows that he did not bother to opine anything with regard to the previous conviction of the accused Naeem Akhtar nor during the course of evidence, which recorded after the hectic efforts of the Court, succeeded to produce any record in shape of certified copy of the judgment or the conviction warrant even learned SSP for ANF did not provide any certified copy of the judgment and conviction warrant alongwith this application and as per section 511 Cr.P.C, which provides the mechanism to prove previous conviction by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was held, or in case of conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any other part thereof was inflicted and or by production of the warrant of commitment under which the punishment was suffered. Such necessary ingredients of the above section to produce the certified copy if the prosecution wanted to add the previous conviction of the accused which is lacking miserably in this case. Furthermore even otherwise if the previous conviction is not brought on record or not added in the charge despite of production of the previous conviction then it may be asked during the course of statement of accused to be recorded under section 342 Cr.P.C and admittedly statement of the accused is to be recorded after closing of the side which did not do so by the prosecution and the matter was before Court of Special Court-I, CNS, Karachi prior to transfer before this Court since 2012 and the prosecution has already taken undue time to conclude the evidence of the witnesses in this case and at this belated stage filing of such application without any supporting document is nothing but to wastage the precious time of this Court.

In such circumstances I am not inclined to allow this application, which is hereby dismissed.”

18. The prosecution has failed to comply with the above provisions in respect of proving the previous conviction of the appellant Naeem Akhtar as per the procedure provided supra. Even after passing the above order by the trial court no serious efforts were made to comply

the supra provisions but in spite of it the trial court on the basis of previous conviction awarded death sentence to the appellant Naeem Akhtar. It is well settled principle of interpretation law that “*If the words of the Statute are themselves clear and unambiguous, no more is necessary to expound those words in their natural and ordinary sense, the words themselves in such a case best declare the intentions of legislature*”, as held in the case of **Mumtaz Hussain v. Dr. Nasir Khan and others (2010 SCMR 1254)**. In another case of **Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 SC 501)**, it is held that:-

“Where the plain language of a statute admits of no other interpretation then the intention of the legislature conveyed through such language is to be given its full effect.”

19. Thus based on the particular facts and circumstances of the case in hand we are of the view that the death penalty awarded by the trial court to the appellant Naeem Akhtar is a harsh one and not in accordance with law and we while exercising powers under section 423 Cr.P.C reduce/alter it to imprisonment for life with the benefit of section 382-A Cr.P.C, however all other sentences and penalties awarded by the trial court are maintained. The confirmation reference answered in negative.

20. The appeal of the appellant Samiuddin is also dismissed.

21. The appeals and the confirmation case are disposed of in the above terms.

J U D G E

J U D G E