

# THE HIGH COURT OF SINDH AT KARACHI

## Criminal Appeal No.671 of 2023

Present:  
Naimatullah Phulpoto, J.  
Irshad Ali Shah, J.

Appellant: Sabzal Khan through Mr. Naveed  
Ahmed Baloch, advocate

The State: through Mr. Abrar Ali Khichi,  
Additional Prosecutor General

Date of hearing: 18.09.2024

Date of announcement: 18.09.2024

### JUDGMENT

IRSHAD ALI SHAH, J. It is the case of the prosecution that the appellant was found in possession of 10 packets of charas weighing to be 11.9 (11900) grams by the police party of PS Quaidabad led by SIP Sadardin, for which he was booked and reported. At trial, the appellant did not plead guilty to the charge and the prosecution to prove the same, examined four witnesses and then closed its side. The appellant in his statement recorded u/s. 342 Cr.PC denied the prosecution's allegation by pleading innocence by stating that he was taken into custody by Rangers officials then they transferred his custody to the police officials who involved him in a false case. None was examined by the appellant in his defence or himself on oath to prove his innocence. On completion of the trial, the appellant was convicted u/s. 6/9 of CNS Act, 1997, and sentenced to undergo rigorous imprisonment for life (25 years) and to pay a fine of Rs.500,000/- and in default in payment whereof to undergo simple imprisonment for six months with the benefit of Section 382(b) Cr.PC by learned 1<sup>st</sup> Additional Session Judge/ MCTC Malir Karachi, vide judgment dated 16<sup>th</sup> November 2023, which the appellant has impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by the learned counsel of the appellant that the appellant is innocent and has been involved in this case falsely by the police officials; there is a dispute concerning the colour of the plastic shopper containing charas; there is no independent witness to the incident; the report of Chemical Examiner does not satisfy the protocol and it has been collected with delay of about two months and more-so, the evidence of P.Ws being doubtful has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to his acquittal by extending him the benefit of the doubt. In support of his contention, he relied upon the case of *Sardaran Bibi v. the State and others* (2023 SCMR 1116).

3. Learned Additional Prosecutor General by supporting the impugned judgment has sought dismissal of the instant Criminal Appeal by contending that the prosecution has been able to prove its case against the appellant beyond the shadow of the reasonable doubt. In support of his contention, he relied upon the case of *Shabbir Hussain v. the State* (2021 SCMR 198).

4. Heard arguments and perused the record.

5. At the very outset, it may be stated that the gravity of the offence(s) of nature has got impact on society as a whole. It is a settled proposition of law that in the case of possession of narcotics substance; if the case, otherwise, is proved then technicalities of a procedural nature or otherwise should be overlooked.

6. In the case of *Ismaeel v. The State* (2010 SCMR-27), it has been held by the Apex Court that;

*“.... It is now settled proposition of law by flex of time that 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 true facts of the case*

*and drawing correct and rational inferences and conclusions while deciding such type of cases. The Court should consider the entire material as a whole and if it is convinced that the case is proved then conviction should be recorded notwithstanding procedural defects as observed by this Court in Munawar Hussain's case 1993 SCMR-785."*

7. While appreciating the peculiar facts of the present case, it is said that in such like case, the prosecution has only to show by evidence that the accused had dealt with the Narcotic Substance or has physical custody over it or is directly concerned with the same, then the presumption would be that accused has committed the offence alleged against him unless it is proved otherwise.

8. In the case of *Muhammad Noor and others v. The State (2010 SCMR-927)*, it has been held by the Apex Court that;

*"The above section expressly cast a duty upon the Court to presume in a trial under the Act that the accused has committed the offence under the Act unless contrary is proved. If the case is of possession of narcotic drugs then first prosecution has to establish the fact that the narcotic drugs were secured from the possession of the accused then the Court is required to presume that the accused is guilty unless the accused proves that he was not in possession of such drugs. Therefore, it is necessary for the prosecution to establish that the accused has some direct relationship with the narcotic drugs or has otherwise dealt with it. If the prosecution proves the detention of the article or physical custody of it then the burden of proving that the accused was not knowingly in possession of the article is upon him. The practical difficulty of the prosecution to prove something within the exclusive knowledge of the accused must have made the Legislature think that if the onus is placed on the prosecution the object of the Act would be frustrated. It does not mean that the word 'possess' appearing in the section 6 of the Act does not connote conscious possession. Knowledge is an essential ingredient of the offence as the word "possess" connotes in the context of section 6 possession with knowledge. The Legislature could not have intended to mere physical custody without knowledge of an offence, therefore, the possession must be conscious possession. Nevertheless it is different thing to say that the prosecution should prove that the accused was knowingly in possession. It seems to us that by virtue of section 29, the prosecution has only to show by evidence that the accused has dealt with the narcotic substance or has physical custody of it or directly concerned with it, unless the accused proves by preponderance of probability that he did not knowingly or consciously possess the article. Without such proof the accused will be held guilty by virtue of section 29, Act 1997.*

9. Having referred to the above proposition, it would be better to discuss the evidence. It is, inter-alia, stated by complainant SIP Sadardin and PW/ mashir HC Faiz Rasool that on 15.09.2021 they with the rest of the police officials were conducting patrol within the jurisdiction of PS Quaidabad; they were intimated by the spy in person about the presence of the appellant at the place of incident; on such information, they proceeded to the pointed place; found the appellant present there; he was apprehended; on inquiry, he disclosed his name as Sabzal Khan; the plastic shopper which he was having was secured; it was found containing 10 packets of charas; those were weighed to be 11.9 (11900) grams; it was sealed at the spot; the memo of arrest and recovery was prepared; the appellant with recovery so made from him was taken to PS Quidabad; the property was kept in *Malkhana*. Such a fact is confirmed by P.W ASI Mir Hassan Incharge of *Malkhana*. It was further stated by them that the FIR of the incident then was lodged and further investigation of the case was conducted by I.O/SIP Muhammad Hafeez. It was stated by him that during the investigation, he visited the place of the incident; prepared such a memo and recorded 161 Cr.PC statements of the P.Ws; delivered the Narcotics Substances to the Chemical Examiner in person; who certified the same to be charas and after completing the usual investigation, he furnished the challan of the case before the Court having jurisdiction. All the witnesses have stood by their version on all material points despite lengthy cross-examination by learned counsel for the appellant; they could not be disbelieved only for the reason that they are police officials and there is no independent witness to the incident. Indeed, their evidence takes support strongly in the shape of recovery of huge quantity of Narcotics Substance from the appellant with a remote chance of its foistation who even otherwise as per his version is resident of Mastong, Balochistan. The dispute concerning the colour of plastic shopper

containing charas being blue, white or transparent being immaterial is not enough to disbelieve the case of the prosecution. The report of the Chemical Examiner has been issued after observing the entire protocol; therefore, it would be hard to disbelieve the same only for the reason that it is collected late from the office of Chemical Examiner. Whatever is stated by the complainant and his witnesses could not be disbelieved based on the simple plea of innocence raised by the appellant during his examination u/s. 342 Cr.PC who even otherwise has not been able to examine any witness or himself on oath to prove his innocence.

10. In the case of *Zafar v. The State (2008 SCMR-1254)*, it has been held by the Apex Court that;

*“---S. 9(c)---Evidence of police officials---Competence---Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police employees”.*

11. The case law which is relied upon by the learned counsel for the appellant is on distinguishable facts and circumstances; in that case, the acquittal of the accused was recorded by observing that a single doubt is enough to extend the benefit of the doubt to him. In the instant case, no doubt is apparent with may justify this Court to extend its benefit to the appellant.

12. Based upon the above discussion, it is concluded that no case to interfere with the impugned judgment is made before this Court by way of the instant Criminal Appeal; it is dismissed accordingly.

13. Above are the reasons for the short order of even date, whereby the instant Criminal Appeal was dismissed.

**JUDGE**

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