

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No.D-33 of 2024

Criminal Jail Appeal No.D-45 of 2024

Present:

Mr. Justice Shamsuddin Abbasi

Mr. Justice Jan Ali Junejo.

Appellant:	Khan son of Manthar Unar, Through Mr. Atta Hussain Qadri, Advocate
State:	Mr. Muhammad Noonari, Deputy Prosecutor General, Sindh
Date of hearing:	10-04-2025
Date of Judgment:	10-04-2025

JUDGMENT

Jan Ali Junejo, J.—This Criminal Appeal is directed against the judgment dated 13-05-2024 (hereinafter referred to as the “Impugned Judgment”), passed by the Court of learned 1st Additional Sessions Judge/MCTC / Special Judge for CNSA, Shikarpur (here-in-after referred to as the “Trial Court”) in Special Case No.196/2024, arising out of FIR No.17/2024, registered at Police Station Lakhi Gate, Shikarpur under Section 9(c), 9 (3-C) of the Control of Narcotic Substances Act, 1997 (as amended in 2022). Through the impugned judgment, the appellant Khan son of Manthar Unar, was convicted under the said provision and sentenced to nine (09) years of rigorous imprisonment, along with a fine of Rs.80,000/-, and in default, to undergo six (06) months of simple imprisonment.

2. The prosecution’s case, in essence, is that on 07-03-2024 at approximately 4:30 p.m., ASI Muhammad Ramzan Arain, along with other police personnel, apprehended the appellant near the Hockey Stadium situated on the Shikarpur Beghari link road. During the course of the arrest, a plastic shopping bag containing 1005 grams of charas was allegedly recovered from the appellant's possession. A recovery memo was duly prepared at the scene, and the recovered narcotics were sealed on the spot in accordance with procedure. Thereafter, the appellant was transported to the police station,

where a formal First Information Report (FIR) was lodged. Subsequently, a chemical analysis was conducted, the results of which confirmed the substance to be charas. Upon completion of the investigation, a final challan was submitted, and the matter was forwarded for trial.

3. Following the framing of charge on 06-05-2024, the prosecution led its evidence by examining a total of five (05) witnesses, whose testimonies formed the foundation of the prosecution case as under:

PW-1: ASI Muhammad Ramzan Arain, Exhibit No.:Exh-4 Complainant and arresting officer; author of FIR, who produced the following documents:

- **Exh-4/A – *Memo of Arrest and Recovery*:** Detailing the circumstances of the arrest and the seizure of narcotics.
- **Exh-4/B – *Departure Entry*:** Entry made in the police register before proceeding for patrol.
- **Exh-4/C – *Arrival Entry*:** Entry made upon return to the police station.
- **Exh-4/D – *FIR Copy*:** Formal registration of the case against the accused.

PW-2: H.C. Muhammad Mithal, Exhibit No.:Exh-5. Mashir (witness) to the arrest and site inspection, who produced the following document:

- **Exh-5/A – *Memo of Site Inspection*:** Describing the scene and confirming presence of contraband and preparation of the recovery documents.

PW-3: SIP Ghulam Nabi Shaikh, Exhibit No.:Exh-6: Investigating Officer (I.O.), who produced the following documents:

- **Exh-6/A – *Property Register Extract*:** Entry confirming the deposit of charas into the malkhana (police store).
- **Exh-6/B – *Road Certificate No.38 dated 11-03-2024*:** For the dispatch of sealed charas parcel to the chemical laboratory.
- **Exh-6/C & 6/D – *Investigation Diary Entries*:** Reflecting the chronological progress of investigation.
- **Exh-6/E – *Chemical Examiner’s Report No.1133 dated 20-03-2024*:** Confirming that the recovered substance was charas, weighing 1005 grams.

PW-4: H.C. Khadim Hussain, Exhibit No.7. In-charge Malkhana, who supports **Exh-6/A** (Property Register).

PW-5: P.C. Ali Muhammad, Exhibit No.8. He was entrusted with the sealed parcel and **Road Certificate** by the I.O. and personally delivered the case property to the chemical laboratory at Rohri on **11-03-2024** and supported the authenticity of **Exh-6/B**, confirming the safe dispatch and acknowledgment of sealed parcel by the chemical lab.

4. After completion of the prosecution evidence, the learned trial court recorded the statement of the appellant under Section 342 Cr.P.C., which was exhibited as Exhibit-10. In his statement, the appellant denied all allegations leveled against him. He claimed innocence, asserting that he was arrested without any narcotics in his possession and was falsely implicated. He, however, did not opt to appear on oath under Section 340(2) Cr.P.C., nor did he produce any witness in his defense. The prosecution then closed its side of the evidence on 11.05.2024 through a formal statement at Exhibit-09, after which the matter proceeded toward final adjudication. Consequently, the “Impugned Judgment” was passed by the learned trial Court.

5. Learned counsel for the appellant contended that the appellant is a first-time offender, and no previous criminal record was proved against him. He further submitted that the trial was vitiated by procedural irregularities, particularly the failure to provide the appellant effective legal representation. The advocate appointed for the appellant on state expense had no opportunity to prepare adequately, and the entire cross-examination of prosecution witnesses was conducted on the same day their testimonies were recorded. The defense, therefore, was reduced to a mere formality. Counsel prayed for a lenient view in the matter, urging that the appellant has already undergone substantial incarceration, and that the sentence be reduced to the period already undergone.

6. Conversely, the learned DPG for the State opposed the appeal. He argued that the prosecution successfully proved its case beyond a shadow of doubt through cogent oral and documentary evidence. The recovery was made in the presence of official witnesses, the chain of custody was well maintained, and the chemical report positively confirmed the substance as charas. He maintained that minor procedural lapses, if any, do not vitiate the prosecution case. In narcotics cases, even small irregularities should not overshadow the societal threat posed by such offenses. He, therefore, requested the court to dismiss the appeal in toto.

7. Upon meticulous examination of the record and thoughtful consideration of the arguments presented by both sides, it is evident that the appellant's fundamental right to a fair trial, as enshrined under Article 10-A of the Constitution, was seriously compromised. The appointment of defense counsel coincided with the recording of prosecution evidence, leaving no reasonable opportunity for the advocate to review the case material or adequately prepare for cross-examination. Notably, on 11-05-2024, the court recorded the testimonies of five prosecution witnesses and conducted their cross-examinations on the very same day—an approach that substantially prejudiced the defense and undermined the fairness of the proceedings. The record does not reflect that cross-examinations were conducted in any meaningful or substantive manner by the counsel representing the appellant at state expense. Rather, it indicates that the cross-examinations without posing any material questions, limiting merely formal ones. This raises a strong presumption that the cross-examinations were either improperly conducted or not conducted at all. Additionally, there is no indication in the record that the subsequently appointed advocate, Mr. Babar Ali Channa, was provided with essential case documents or allowed sufficient time to prepare. This omission is particularly troubling, given that proper cross examination was not conducted. This is duty of court to ensure proper cross-examination but also to uphold the accused' right to a fair and meaningful defense. Precedent also supports such an approach; in analogous circumstances, in the case of *Faiz Ahmed v. The State (2006 MLD 459)*, a Division Bench of the Lahore High Court not only reduced the sentence of imprisonment but also deemed it just and appropriate to reduce the fine imposed on the appellant. Deprivation of such representation strikes at the core of a fair trial, and this concern becomes even more grave in cases involving stringent punishments. While the conviction itself—based on a valid recovery and a confirming chemical report—stands on legally sound footing as per superior court rulings, the procedural deficiencies, the appellant's first-time offender status, and the significant period of incarceration already undergone, together form strong mitigating factors. In light of the above, although the conviction is maintained, it is considered just and equitable to reduce the sentence to the period already undergone by the appellant.

8. In light of the aforementioned reasons, while the conviction of the appellant Khan son of Manthar Unar is upheld, the sentence is reduced to the period already undergone. With these observations, the present Criminal Appeal filed on behalf of the Appellant stands disposed of. The appellant shall be released forthwith, if not required to be detained in any other case. Consequently, Criminal Jail Appeal No. D-45 of 2024 is hereby resolved and disposed of in accordance with the aforementioned findings and conclusions.

JUDGE

JUDGE

S.Ashfaq/-