

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

Criminal Appeal No. 01 of 2024

**Present:**

**Justice Zafar Ahmed Rajput**

**Justice Tasneem Sultana**

**Appellants** : (1) Hafizuddin s/o Sard Ali Khan and  
(2) Balkay Khan s/o Azam Khan, through  
M/s. Safiullah Rind and Muhammad Aslam  
Advocates.

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

**Date of hearing** : 14.03.2025  
**Date of order** : 14.03.2025

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

**ZAFAR AHMED RAJPUT-J:-** Impugned in this Criminal Appeal under Section 48 of the Control of Narcotics Substances Act, 1997 (*hereinafter the “Act of 1997”*), read with Section 410, Cr. P.C, is the judgment, dated 13.12.2023, passed in Special Case No.1689 of 2023, arising out of Crime No.195/2023, registered under Sections 9(1)3(c) of the Act of 1997 at P.S Memon Goth, Karachi, whereby the Additional Sessions Judge-IV/Special Court (CNS) Malir, Karachi, convicted the appellants for the said offence and awarded them sentence to suffer R.I. for fourteen (14) years and to pay a fine of Rs. 4,00,000/- or, in default thereof, to undergo S.I for six (06) months. The benefit of Section 382-B, Cr. P.C was, however, extended to the appellants.

2. Brief facts of the prosecution case, as narrated in the F.I.R., are that on 09.06.2023, at about 10:00 a.m., a police party headed by SIP Talib Hussain of PS Memon Goth, Karachi arrested the appellants from Service Road near Jatoi Hotel, Main Superhighway, Gadap Town, Malir, Karachi on being found each of them in possession of 2000 grams charas; for that they were booked in the aforesaid F.I.R.

3. After usual investigation, police submitted the report under section 173, Cr. P.C. and having been completed requisite codal formalities, on 26.08.2023, the Trial Court framed the formal charge (Exh.2) against the appellants, to which they pleaded not guilty and claimed to be tried, vide pleas recorded at Exh.2/A-B. At the trial prosecution, in order to substantiate the charge, examined SIP Syed Badar Zafar, the Investigating Officer (**I.O.**), as PW-1 at Exh.3; SIP Talib Hussain, the complainant, as PW-2 at Exh.4; HC Noor Hassan, the mashir, as PW-3 at Exh.5 and HC Fayaz Hussain, the Incharge Malkhana, as PW-4 at Exh.6. They produced relevant documents in their evidence. The statements of appellants under section 342, Cr. P.C were recorded at Exh.8 & 9, wherein they denied the allegation against them and pleaded innocence. Upon the assessment of the evidence on record, the Trial Court convicted the appellants and awarded them sentence as mentioned above, vide impugned judgment.

4. Learned counsel for the appellants have contended that the impugned judgment being unwarranted under the law and facts is liable to be set aside; that the Trial Court has not appreciated the evidence on record properly, which has resulted in recording conviction of the appellants in a case of acquittal; that the complainant police officer did not make efforts to engage private person to witness the alleged recovery; that the appellants were arrested from their house and in this regard the elder brother of appellant Balkay Khan submitted an application to SHO; that there is delay of three days in sending the recovered charas to Chemical Examiner, and such delay is fatal to the case of prosecution; that the prosecution failed to prove that the case property was lying in safe custody from the time of recovery to depositing the same in the office of Chemical Examiner; hence, the appellants are entitled to the acquittal of the charge.

5. Conversely, learned Addl. P.G has fully supported the impugned judgment by maintaining that the recovery of huge quantity of narcotic drug in terms of date,

time and place is fully supported by the prosecution witnesses and there is no lapse in the control and custody of the case property.

6. We have heard the learned counsel for the appellants as well as learned Addl.P.G and have scanned the material available on record with their assistance.

7. It reflects from the evidence of prosecution witnesses that on 09.06.2023, PW-2 SIP Talib Hussain, the complainant (Exh.4), left P.S. Memon Goth vide Entry No.03 at 0810 hours (Exh.4/A) along with staff, namely, HC Noor Hassan, PC Iqbal and DPC Rahmatullah. During patrolling, he reached service road of Superhighway, near Jatoi Hotel and apprehended the appellants at 1000 hours being in suspicious condition. He conducted search of the appellants and, besides personal belongings, recovered from each of the appellants four pieces of charas contained in a blue colour shopper wrapped in yellow solution tape weighing 2000 grams (each). He sealed the property separately and arrested the appellants under a memo of arrest and recovery (Exh.4/B); he brought them and case property at PS, where he lodged the FIR (Exh.4/C) and handed over the case property to HM under entry No.85/2023 of Register No.19 (Exh.3/G). PW-1 SIP Syed Badar Zafar, the I.O., visited the place of incident and prepared such memo (Exh.3/B); he received case property from Incharge Malkhana and deposited the same with the Chemical Examiner on 12.06.2023 under his letter (Exh.3/H) and then he received the report (Exh.3/J). P.W-3 HC Noor Hassan, the mashir, has corroborated the evidence of PW-1 and 2, and verified his signatures on memo of arrest and recovery and site inspection (Exh.4/B) and (Exh.3/B), respectively. PW-4 HC Fayyaz Hussain, Incharge Malkhana, has verified that on 09.06.2023, he kept the case property in Malkhana in Mud No. 85/2023 of Register No.19. He produced the original registered in Trial Court and verified the copy thereof already available as Exh. 3/G as correct. He also affirmed the fact that, on 12.06.2023, PW-1/I.O. received the case property from him for chemical analysis. As per

Chemical Examiner's Report (Exh.3/J), on 12.06.2023, two sealed cloth parcels, each containing four yellow tape packets, were received from SIO PS Memon Goth, Karachi through PW-1/I.O. SIP Syed Badar Zafar; each parcel contained a net weight 1963 Kgs and 1958 Kgs, respectively (*gross weight 2000 kgs*) of charas. The case property was produced before the Trial Court during the evidence of PWs in sealed condition, which was de-sealed in the presence of S.P and defence counsel.

**8.** Both the PWs, i.e. SIP Talib Hussain (complainant) and HC Noor Hassan (mashir) have implicated the appellants to have been apprehended on/at aforementioned day, time and place on being in possession of 02 kilograms of charas each. The evidence of the said PWs. in respect of arrest and recovery of charas is consistent and confidence inspiring. There appears no material contradiction in the depositions of the PWs rendering the prosecution case as doubtful. Admittedly none of the prosecution witnesses had any enmity with the appellants nor was it suggested.

**9.** So far arguments of the learned counsel for the appellants regarding not associating any private person as mashir is concerned, it may be observed that Section 25 of the Act of 1997 specifically excludes application of Section 103, Cr. P.C in narcotic cases. In the case of *Muhammad Khan vs. The State* (2008 SCMR 1616), the Apex Court has been pleased to observe that the police witnesses are as good and respectable as other public witnesses and their statements cannot be discarded merely for the reason that they are the police employees. In the case of *Zafar vs. The State* (2008 SCMR 1254), the Apex Court has observed that police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police officials and non-inclusion of any private witness is not a serious defect to vitiate the case, thus, the recovery effected from appellants would neither become doubtful nor

loses the evidentiary value of deposition of PWs merely on the grounds that they are police officials and no public person was associated as mashir at the event of recovery of charas.

**10.** As regard safe custody, the recovery of charas was made on 09.06.2023, which was day of Friday; case property was kept in Malkhana; Sundry was holiday, thus, the same was sent to Chemical Examiner on Monday i.e. 12.06.2023, within two working days of the alleged recovery. As per report of chemical analyzer the parcels were received in sealed condition which is sufficient to establish the chain of safe custody of the sealed charas from the day and time of recovery to depositing it with the office of the Chemical Examiner. Even otherwise, it was not the case of the appellants before the Trial Court that the case property was tampered with while lying in the Malkhana.

**11.** It may be observed that in narcotic cases the Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in preparation of documents and in the statements of prosecution witnesses due to lapse of time or those having no impact on the material aspects of the case, have to be ignored. Once the prosecution *prima facie* establishes its case, then under Section 29 of the Act of 1997 burden shifts upon the accused to prove contrary to the case of the prosecution; in the instant case, the appellants have failed to do so.

**12.** For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment. Hence, instant criminal appeal is dismissed by maintaining the conviction. However, considering the fact that the appellants have no previous record of being convicted of any offence. The alleged offence provides lesser punishment against the recovery of charas from 1000 grams to 4999 grams. We are, therefore, inclined to modify the sentence awarded by the Trial Court to the appellants i.e. R.I. for fourteen (14) years and to pay a fine of Rs. 4,00,000/- or, in

default thereof, to undergo S.I for six (06) months to of R.I for nine (09) years and to pay fine of Rs. 80,000/- each, or in default thereof, to suffer S.I for six (06) months more. With this modification in the sentence, the instant appeal is dismissed.

JUDGE

JUDGE

*Tahseen/PA*