

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.D-50 of 2023

PRESENT:

Mr. Justice Mehmood A. Khan

Mr. Justice Abdul Hamid Bhurgri

Appellant: Yameen son of Din Muhammad Chand,
Through Mr. Mian Taj Muhammad Keerio,
Advocate.

The State: Through Mr. Shawak Rathore,
Deputy Prosecutor General.

Date of Hearing: 11.02.2025.

Date of Judgment: 11.02.2025.

J U D G M E N T

Abdul Hamid Bhurgri, J,- Assailed in this appeal by the appellant is the Judgment dated 17.04.2023, passed by the learned Special Judge for the Control of Narcotics Substances (CNS), Sanghar, in Special Case No.31 of 2023. The case arises from Crime No.9 of 2023, registered at Police Station Sinjhor, for an offence under Section 9(i)(3)(c) of the Control of Narcotic Substances {Amendment} Act, 2022. In the said Judgment, the appellant, Yameen, was convicted for offence punishable under Section 9(i)(3)(c) of the CNS Act {Amended Act 2022} and sentenced to Nine years of Rigorous Imprisonment (R.I), along with a fine of Rs.80,000/- (Rupees Eight Thousand). In the event of non-payment of the fine, he was ordered to undergo further six months of Simple Imprisonment (S.I). However, the benefit of Section 382-B of the Code of Criminal Procedure (Cr.P.C) was extended to the accused.

2. The prosecution's case, as outlined in the FIR, states that on 31.01.2023 at 1700 hours, complainant SIP Shakeel Ahmed Jat of the CIA Centre, Sanghar, lodged an FIR at Police Station Sinjhor. He alleged that on the aforementioned date, he, accompanied by his subordinate staff,

departed from the CIA Centre for patrolling via entry No.11 at 1430 hours. During the patrol, upon reaching Meeran-Khadro Road, they received intelligence that an individual was engaged in the sale of charas at Rind Minor Shakh Mori, located on the link road leading towards Deputy village.

3. Upon receiving this information, the patrolling team proceeded to the designated location at approximately 1530 hours, where they observed an individual selling charas. Upon sighting the police vehicle, the suspect attempted to evade but was subsequently apprehended by the complainant and PC Najeebullah. Upon interrogation, the suspect identified himself as Yameen son of Din Muhammad by caste Chang, resident of village 36 Jamrao, Taluka Sinjhor.

4. A personal search of the accused yielded the discovery of a black plastic bag in his possession, which was examined and found to contain six large pieces of charas. Out of these, one piece was broken into four smaller pieces, while another piece was broken into five smaller pieces, with the inscription "Sher-e-Sindh" printed on the plastic wrapping. Additionally, two currency notes of Rs.100/- each (totaling Rs.200) were recovered from his right side pocket. The contraband was subsequently weighed to be 3000 grams of charas, which was sealed for chemical analysis. Meanwhile, the recovered currency was separately secured.

5. The entire process of arrest and recovery was meticulously documented in the presence of mashirs PC Najeebullah and PC Aftab Ali. The accused along with the seized contraband, was then taken to the police station, where the complainant formally lodged an FIR against him on behalf of the State.

6. During the investigation, the Investigating Officer recorded statements under Section 161 Cr.P.C from the prosecution witnesses. Samples of the seized charas were dispatched for chemical analysis on 02.02.2023, through PC Shahid Ali (PW-5). The subsequent chemical report confirmed the presence of narcotics. Upon the completion of the

investigation, a challan was submitted against the accused for the aforementioned offence.

7. The trial court framed charges against the accused, to which he pleaded not guilty and claimed trial. During the proceedings, the prosecution examined PW-1 SIP Shakeel Ahmed Jat, who produced documentary evidence, including his departure entry No.11, memo of arrest and recovery and FIR (Ex.5/A to 5/D). PW-2PC Najeebullah, who acted as a mashir, presented his inspection report of the crime scene at Ex.6/A, while PW-3 SIP Ghulam Muhammad Dahri, the Investigating Officer, submitted entries No.16,17,18,27,49 and 31, along with the CRO record of the accused and the chemical examination report (Ex.7/A to 7/I). PW-4 WHC Mukhtar Ahmed Rajput, the custodian of Malkhana, produced entry No.6 of register No.16 (Ex.8/A), whereas PW-5 PC Shahid Ali, the carrier of case property presented his testimony at Ex.9. The prosecution concluded its case following the statement of the learned ADPP at Ex.10.

8. The accused's statement was recorded under Section 342 Cr.P.C at Ex.11, where the incriminating evidence was brought to his attention for an explanation. The accused categorically denied the allegations, professing his innocence and asserting that he had been falsely implicated. However, he refrained from producing any defence evidence or testing under oath to rebut the prosecution's claim.

9. The learned trial judge, after hearing both parties and examining the available evidence, convicted and sentenced the appellant accordingly. Hence the present appeal.

10. The appellant's counsel has contended that the prosecution's case is riddled with material contradictions, inconsistencies, legal irregularities, thereby undermined its credibility. He has pointed out the place of arrest to be a public place albeit no private witness has been shown, the counsel has stated that prosecution's case is hinged upon statements of police officials nevertheless the accused was intercepted at

a public place and their evidence cannot be relied upon as they were interested witnesses. He stated that it is clear violation of section 103 Cr.P.C. He further asserted that these deficiencies in the prosecution's case have created substantial doubts, warranting the appellant's acquittal in the present appeal.

11. Conversely, Mr. Shewak Rathore, the learned Deputy Prosecutor General, Sindh has fully supported the impugned Judgment, arguing that the prosecution had successfully established its case beyond reasonable doubt. He emphasized that the recovered narcotics were kept in safe custody from the time of seizure until trial, and it would be implausible to falsely attribute such a significant quantity of charas to the appellant. In support of his arguments, he has relied upon the precedent set in *Faisal Shahzad v. the State* (2022 SCMR 905).

12. At the very outset, it is imperative to highlight the gravity of Narcotics-related offence and their profound ramifications on society. It is now a well-established principle of law that minor procedural or technical lapses should not be allowed to overshadow the substance of a case where the guilt of the accused is otherwise substantiated. This legal position has been upheld by the Honourable Supreme Court and ruled the procedural irregularities should not overwrite the dispensation of justice. Reference is placed on case of *Ismail v. the state* reported in 2010 SCMR 27, the apex court has held as under:-

...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 approached of the Court should be dynamic and pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusion while deciding such type of the 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.

13. The fundamental obligation of the prosecution in narcotics cases is to establish an unbroken chain of custody, ensuring that each stop in the recovery, handling, and examination of the seized substances is accounted for. In the present case, the prosecution successfully discharged this burden by producing documentary evidence and the testimonies of relevant witnesses, corroborating that the narcotics substance was lawfully seized and subsequently examined by the chemical laboratory incharge.

14. In order to prove the case, prosecution had examined all the material witnesses placed all the material documents showing that chain of custody. They examined SIP Shakeel Ahmed (PW-1), who produced entry of departure No.11, memo of arrest and recovery and FIR (Ex.05/A to 5/C. Inspection report of the crime scene at Ex.6/A has been produced by PC Najeebullah (PW-2), who acted mashir, SIP Ghulam Muhammad Dahri who was Investigating Officer has produced all relevant entries bearing Nos. 16,17,18,27,49 and 31, he also produced criminal record (CRO) of the appellant/accused and the chemical examination report (Ex.7/A to 7/I). WHC Mukhtar Ahmed Rajput (PW-4), the custodian of Malkhana, produced entry No.16(Ex.8/A) and in the last carrier of the case property PW-5 PC Shahid Ali also examined. Thus the prosecution by producing above evidence successfully discharged their burden. No material contradiction has been noted in their cross examinations by this Court after carefully scanning the same. All material prosecution witnesses withstood cross examination without deviation from their initial statements. Reliance is placed on in the case of Zafar v. The State reported in 2008 SCMR page 1254:-

“...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 successfully to bring home the guilt of the appellant to the hilt by placing ocular account, recovery of

narcotics material, the Chemical Examiner Report G.I, 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 their same is unexceptionable.

15. The chemical examiner report Ex.7/A, confirming the presence of charas, which was sent to chemical examiner by the prosecution within 72 hours in compliance with the statutory requirement of rule 4(2) of CNS Act, 1997. The rule 4(2) is reproduced as under for the ready reference:-

“4(2) Samples may be dispatched for analysis under the cover of a Test memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked “Secret Drug Sample/Test memorandum”.

16. The counsel for the appellant has strongly contended that the testimony of police official cannot be relied upon in view of section 103 Cr.P.C. This argument of the appellant counsel has no force as the applicability of section 103 Cr.P.C in the narcotics cases has been excluded in view of Section 25 of the Control of Narcotics Substances Act. The Section of 25 of the Control of Narcotics Substances Act is as under: -

“25. Mode of making searches and arrest....The provisions of the Code of Criminal Procedure, 1898, except those of section 103, Cr.P.C shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20,21,22 and 23 to all warrants issued and arrest searches made under these sections”.

17. In the case of Zafar v. the State reported in 2008 SCMR 1254, the Honourable Supreme Court has held as under:-

“.....It would mean that applicability of section 103, Cr.P.C in the narcotics cases has been excluded and non-inclusion of any private witness is not a serious defect to vitiate the conviction. Reference in this context can be placed on the cases of Muhammad Shah and others v. the State PLD 1984 SC 278, State v. Muhammad Amin 1999 SCMR 1367, Fida Jan v. the State 2001 SCMR 36 and Rasool Bakhsh v. the State 2005 SCMR 731.

18. Prosecution's witnesses being members of the raiding party are natural witnesses and their testimony cannot be discarded merely on the ground that they are the employees of police force.

19. The Honourable Supreme Court in plethora of cases had held that testimony of police official cannot be discarded solely on the ground of them being law enforcement personnel. Additionally, the precedent set in *Shabir Hussain v. the State*, 2021 SCMR 198 affirms that the absence of private witnesses does not ipso facto discredit the prosecution's case. The relevant portion of the judgment mentioned supra is reproduced hereinunder:-

"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".

20. The other aspect of the case is that under section 29 of the Control of Narcotics Substances Act, 1997 once the prosecution has discharged his burden of proving the case against accused, then its upon accused to prove his innocence. Section 29 of Control of Narcotics Substances, Act, 1997 is reproduced hereinunder:-

"29. Presumption from possession of illicit articles---in trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of---

(a) any narcotics drug, psychotropic substance or controlled substance;

(b) any cannabis, coca or opium poppy plant growing on any land which he has cultivated;

(c) any apparatus specially designed or any group of utensils specially adapted for the production or manufacture of any narcotic drug, psychotropic substance or controlled substances; or

(d) any materials which have undergone any process towards the production or manufacture of narcotics drug, psychotropic substance or controlled substance or any residue left of the materials from which a narcotic drug, psychotropic substance or controlled substance has been produced or manufactured, for the possession of which he fails to account satisfactorily.

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 he 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”.

21. The appellant has failed to demonstrate any animosity or ill will towards the prosecution witnesses. In absence of any established enmity or plausible motive for false implication, this serves as significant circumstance supporting the case against the accused. *This legal position has been affirmed in the case of Sallahuddin v. the State reported in 2010 SCMR 1962 by the Honourable Supreme Court.*

“No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reasons....”

22. The Apex Court has repeatedly emphasized that the gravity of the narcotics menace poses a significant threat to the safety and stability of society. It is deeply concerning to observe that the prevalence of drug-related offences is steadily increasing, with the proceeds of such illicit activities often fueling other dangerous operations, including terrorism. When the prosecution has successfully established its case, unnecessary

technicalities must not be permitted to undermine the very purpose of the law on controlled substances.

23. We after careful analysis of the entire prosecution evidence, including the incident's occurrence in broad daylight, the recovery of the narcotics, the proper handling of the seized samples, the Chemical Examiner's Report, and the consistent statements of the prosecution witnesses, leaves no room to reach any conclusion other than that which has been determined by the learned Court below.

24. For the reasons discussed above, this Appeal is devoid of merits and is accordingly DISMISSED.

25. Above are the reasons of our short order dated 11th February, 2025 by which we had dismissed the appeal.

JUDGE

JUDGE