

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANA**

Cr. Jail Appeal No. D-86 of 2019

**Present:**

Mr. Justice Amjad Ali Sahito,  
Mr. Justice Jan Ali Junejo,

Appellants	Mehmood Ahmed s/o Qadir Bux Brohi and Aamir s/o Mehmood Ahmed Brohi, Through Mr. Abdul Hakeem Brohi, (called absent)
The State	Through Mr. Muhammad Noonari, D.P.G.
Date of hearing	08-05-2025
Date of judgment	08-05-2025

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

**Amjad Ali Sahito, J.-** Through this Criminal Appeal, the appellant has challenged the judgment dated 03.04.2019, passed by learned 1st Additional Sessions Judge/MCTC, Kambar in Special Case No. 28 of 2016, arising out of Crime No. 07/2016, registered at P.S Excise D.I.O, Larkana, for the offence under sections 6,8,9 C.N.S.A, whereby the appellants were found guilty of offence for transporting heroine powder weighing 21 K.Gs in bedford truck NO.C-1722/Kohat punishable U/S 9 (c) CNSA and convicted in terms of section 265-H(ii) Cr.P.C and sentenced to life imprisonment and to pay fine of RS.5,00,000/- each and in case of non-payment of fine each of them, both will undergo simple imprisonment of five years more. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The gist of prosecution case is that on 06-8-2016 Inspector Faqeer Ali Shah Excise & Narcotics Control ERS, DIO Larkana camp lodged FIR against the appellants/accused stated that pursuant to spy information received by AETO Qurban Ali Shaikh regarding transportation of heroine through truck he, accompanied by Inspector Ali Gohar Sahto, Excise constable Aijaz Ali & others left Excise P.S in a police mobile NO.GS-523-B vide Roznamcha entry NO.4 and proceeded towards the pointed place viz Wagan to Nasirabad Indus highway near Sim drain where they reached, saw and got stopped a Bedford truck NO,C-1722 Kohat and found two persons sitting in its cabin and out of them one person who was driving the vehicle upon interrogation

disclosed his name as Mehmood Ahmed S/O Qadir Bux Brohi and P.S Copy of CNIC & cash of RS.5000/- was recovered from his possession and another person who was sitting beside him disclosed his name as Aamir S/O Mehmood Ahmed Brohi and cash of RS.2000/- was recovered from his possession and thereafter they noticed a secret cavity at the back of driving seat and when opened they found therein 21 white coloured plastic containing heroine powder which was weighed to be 21 K.Gs, 200 grams powder was separated from each plastic bag and also sealed separately for chemical report in the presence of witnesses & mashirs namely Inspector Ali Gohar & Excise constable Aijaz Ali and thereafter the Police party drove them both along with recovered heroine at P.S and he lodged FIR against them under CNSA, 1997 as a complainant on behalf of state.

3. After completion of the usual investigation, the investigation officer submitted a report under Section 173 Cr.P.C before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

4. The formal charge against present appellants/accused was framed, to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case, examined Inspector Faqeer Ali Shah, Excise P.S DIO Larkana Complainant cum I.O (PW-01 Exh-05 Dated; 13-9-2018, who tendered in evidence original mashirnama of arrest, body search & recovery of heroine & cash, departure Entry NO.4 dated; 06-8-2016 3:30 pm arrival entry NO.05 dated; 6-8-2016, original FIR bearing crime NO.07/2016 & original Chemical Examiner report bearing NO. 3287 Dated; 24-08-2016, at Exh-5/A to 05/E, Inspector Ali Gohar Sahto, Excise P.S DIO Larkana (PW-02 Exh-06, dated: 13-9-2018), Excise constable Inam Ali Abbasi (PW-03 Exh-07 Dated; 01-04-2019) who tendered in evidence attested official receipt Dated; 08-08-2016 in respect of receipt of parcels of case property viz heroine purportedly issued by Receiving clerk Sub-Laboratory Sukkur at Rohri. Thereafter the learned DDPP for State closed prosecution evidence side vide statement dated: 01.04.2019 at Exh-08.

6. Statements of the both accused were recorded on 02-04-2019 in terms of section 342 Cr.P.C at Exh-11 wherein they denied the prosecution evidence but they neither examined themselves on oath

U/S 340 (2) Cr.P.C nor examined any witness in defense and also failed to create any dent in prosecution evidence.

7. Statements of the both accused were recorded on 02.04.2019 in terms of section 342 Cr.P.C at Exh-11, wherein they denied the prosecution evidence but they neither examined themselves on oath U/S 340 (2) Cr.P.C nor examined any witness in defense and also failed to create any dent in prosecution evidence.

8. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellants/accused vide **Judgment dated 03.04.2019**, which they have impugned before this Court by preferring instant Criminal Appeal.

9. Learned counsel for the appellants submits that the appellants are innocent and they have falsely been implicated in this case; that the complainant Faqeer Ali Shah arrested them on 04.08.2016, snatched cash of RS.96,000/- from them and also confined them and thereafter on their demand for the return of amount he implicated them in this case as prior to the incident he had recovered 08 mound and 20 KGs heroin from different accused and that compliance of section 103 Cr.P.C has not been made and prosecution failed to prove the case. He further argued that the complainant & mashir contradicted each other on the point of resumption of their respective duty at the P.S, location of excise P.S and presence of private persons at the spot, hence their evidence is not trustworthy; that there are material contradictions in the evidence of both the prosecution witnesses which created doubt in the prosecution case and it is a well settled law that if a single circumstance creates doubt, its benefit goes to the accused, but the learned trial court did not consider the same. Lastly prayed for the acquittal of the accused

10. Learned counsel for the appellants, further submitted that the appellants only bread earner of their family members and submits that if acquittal is not possible then he does not wish to contest this appeal and leave the appellants at the mercy of the Court. He states that if this Court while maintaining the conviction reduces the sentence to one they have already undergone.

11. Conversely, learned D.P.G for the State while supporting the impugned judgment, has argued that prosecution has proved its case against the appellant; that the Excise Police party, headed by Inspector Fakeer Ali Shah recovered 21 K.Gs of

heroin powder from the secret cavity at the back of driving seat of Bedford truck bearing NO.C-1722 kohat which was being driven by accused Mehmood Ahmed Brohi and that accused Aamir Brohi, who is his son was sitting beside him and thus they both were arrested red-handed; that police officials have no enmity to foist such heroin powder upon the appellants; that the recovered heroin powder was sent to the Chemical Examiner; he therefore, prayed that the appeal may be dismissed.

12. We have heard the learned counsel for the appellants and learned D.P.G for the State and have gone through the evidence with their assistance.

13. The case of prosecution is that on the tip of information, the complainant arrested the appellants and recovered 21 K.Gs and 200 grams powder from the truck driven by them.

14. After re-examining evidence as well as record, we have observed that the complainant who is also investigation officer furnished his testimony as to the recovery of Narcotics (**heroin powder**), and the investigation steps taken thereafter, he sent case property viz heroine powder on 08.08.2016 to the chemical Examiner for its examination and report and after completion of investigation he submitted charge sheet and thereafter the report of chemical examiner regarding case property was received.

15. Needless to note that, for the Chemical Examiner's Report to have real probative value, the sanctity of the chain of custody is absolutely imperative. It is prosecution's responsibility that such chain of custody must be safe and secure because the report of the Chemical Examiner carries critical importance under the Act, 1997, and the proof of chain of custody can only ensure the reaching of recovered material to the office of the Chemical Examiner. We are fortified in this regard by the Judgment of the Honourable Supreme Court in the cases reported as ***The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039)***, as well as, a more recent Judgment ***in Criminal Appeal No.184 of 2020***, titled Mst. Sakina Ramzan v. The State, wherein it was held as under:

*"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law*

*enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.”*

16. As regards the last contention of learned counsel for the appellants is that the appellants are only bread earner of their family members, therefore, sentence may be reduced into the period already undergone and requested for departure from case of **‘Ghulam Murtaza and another v. The State’ [PLD 2009 Lahore 362]**, while placing reliance on the case of **‘The State v. Mujahid Naseem Lodhi’ [PLD 2017 SC 671]**, wherein it is held that;

“In a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure.”

17. From the above case law the Hon’ble Supreme Court of Pakistan has held that from departure of case of **‘Ghulam Murtaza and another v. The State’ [PLD 2009 Lahore 362]** in a particular cases may depart from the sentencing policy but have to give the reasons. Let’s see whether there has been any justification to depart from *normal* sentencing policy. Learned counsel for the appellants has strongly pleaded reduction in sentence while pleading that the appellants are the only bread earner of their family members. In the case in hand the appellants, who are in jail for last eight years, nine months and 02 days, the family of the appellants, per him, is passing miserable life due to confinement of the appellants in jail. The position, being so, would be nothing but a misery where the parents of appellants have suffered too for act of the appellants, the peculiar facts and circumstances, so pleaded by the counsel for the appellants, having

gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. No complaint in respect of the conduct of appellants from jail authorities is received. The appellants are first offenders and have no previous criminal record/history in his credit. Besides, the appellants' claim himself to be only male members of the family and have served major portion of his sentence, therefore, it is appropriate that appellants may be given an opportunity to improve himself as a law abiding citizen so also being bread earner of their family provide them basic necessity in a good manner.

18. Considering the above facts and circumstances of the case, the Jail Roll was called from the concerned jail, which reflects that the appellant have also physically served 08 years, nine months and 02 days and earned remission of 15 years 02 months and 15 days upto 08.05.2025, as such, including remission the appellants have remained in custody for about **Twenty three years, 11 months months and 17 days**. In such circumstances, in our humble view, it would serve both the purposes of deterrence and reformation, if the sentence, awarded to appellants, is reduced to one already undergone by them. Accordingly, the sentence of the appellants is altered and reduced to the period which they have already undergone, which include the period they were to undergo in lieu of fine. Consequently, instant Criminal Appeal is **dismissed** but with modification that the sentence including fine amount is reduced to one as already undergone. In view of above position, office is directed to issue release writ for the appellants if they are not required in any other custody case.

19. Criminal Appeal stands disposed of along.

**JUDGE**

**JUDGE**