

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D-81 of 2022

Before;

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Muhammad Aslam son of Dur Muhammad,
Through Mr. Sanaullah Khoso, Advocate.

The State: Mr. Altaf Hussain Khokhar, D.P.G.

Date of hearing: 06.05.2026

Date of decision: 20.05.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J: The appellant has challenged Judgment dated 07.06.2022 (impugned Judgment) passed by learned Ist Additional Sessions Judge, Kotri (trial Court) in Special Case No.15 of 2022, Re: State vs. Muhammad Aslam, bearing U/ss 9-C of Control of Narcotics Substance Act, 1997 (CNS) PS Jamshoro, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer R.I for the period already undergone by him during custody. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts are that on 27-02-2022 at 1430 hours complainant ASI Ghulam Abbas Panhwar caused an FIR registered at P.S Jamshoro, stating therein that he along with staff every one namely HC Ameer Bux, PC Ali Gul, DPC Sarang Khan duly armed with arms and ammunitions having investigation kit bag in Official Vehicle No.SPF-713 left P.S vide roznamcha entry No.7 at 1240 hours for patrolling within remits. During patrolling they were checking small and big vehicles at Jamshoro Fly Over when at about 1400 hours a person was coming towards Hyderabad side on motorcycle, who was stopped and the complainant party conducted physical search and during search, they recovered one parcel wrapped in white cloth parcel containing Heroin from inside the shirt. From side pocket of

gameez, police recovered cash amount Rs.4700/ in different denominations with one original CNIC and service card in the name of accused. The heroin was weighed with the help of weighing scale along with cloth, which became 1-KG and 10-grams. The motorcycle CD-70 was also taken into possession by the police. On inquiry about name parentages, the accused disclosed his name as Muhammad Aslam S/o Dur Muhammad by caste Abbasi R/o Gulu Siyal, Taluka Gambat, District Khairpur Mir`s, police constable Jail Police, Central Jail Khairpur Mir`s. the recovered Heroin was sealed at once for Chemical Examiner and prepared such memorandum of arrest and recovery in presence of official mashirs.. Thereafter, the arrested accused and recovered property were brought at P.S, where complainant lodged FIR.

3. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.3 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.3/A, to which in compliance of section 265-E Cr.P.C.

4. At the trial, the evidence of prosecution recorded in compliance of section 265-F Cr.P.C, wherein prosecution examined:

PW-1 ASI Ghulam Abbas at Ex.4, who produced departure entry No.7, memorandum of arrest and recovery, arrival entry No.10 and FIR at Ex.4/A to 4/D respectively.

P.W-2 H.C Ameer Bux at Ex.5.

P.W-3 P.C Illahi Bux at Ex.6, who produced entry No.22 at Ex.6/A.

P.W-4 SIP Sheral Khan at Ex.7, who produced letter dated 3-3-2022, entry No.46, Photostat copy of letter dated 4-3-2022, arrival entry No.20, departure entry No.33, memorandum of place of incident, arrival entry No.40, Chemical Report, CRO of accused and letter dated 28-03-2022 addressed to ETO Khairpur Mir`s at Ex.7/A to 7/J respectively.

P.W-5 H.C Buxial Khan at Ex.8.

5. Thereafter learned DDPP closed the side in evidence of prosecution vide statement at Ex.8. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.10. The accused during his statement has denied the case of prosecution as false case and stated that the police have falsely implicated him. However, he has not examined on oath, but led defence witness namely Gul Hassan who has been examined at Ex.11.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case. He further contended that the mashir has admitted that the place of incident is thickly populated area. He further contended that the complainant admitted that all the documentation had been prepared at P.S. He further contended that the mashir of arrest and recovery has stated that his signature was obtained on the memorandum at P.S. The gross weight of heroin is shown in Chemical Report as 01 kg and 44 gm while its net weight has been shown as 01 kg and 10 gm. The mashir of arrest and recovery stated that they had weighed the recovered contraband substance on steel scale. He further contended that the private persons of District Hala firstly apprehended the accused and then his custody was handed over to police of PS Jamshoro. He urged that register-XIX was not produced and no permission obtained for photocopy as per police rules and as per prescribed proforma must be eight columns; that the alleged place of incident is commercial thickly populated area and police has not given any explanation for non-joining independent witness; that no private witnesses have been associated as Mashir in this case; that the complainant has deposed in cross examination that the place of arrest is very thickly populated area and he admitted that there is no private mashir shown in the arrest and recovery proceedings therefore, there is violation of section 103 Cr.P.C. He lastly argued that there are several contradictions, lacunas, and legal infirmities in the evidence of prosecution witnesses but the learned trial Court did not consider the same. He further contended that the accused and one Mst. Samina Baloch had left their house and wanted to marry with each other hence, the father of lady got implicated the present

accused. He prayed that impugned judgment may be set-aside and the appellant may be acquitted.

7. On the other hand, learned D.P.G for the State supported the impugned judgment by submitting that the accused was arrested on the spot with a huge quantity of recovery of 1-KG and 10 grams heroin. Section 103 Cr.P.C is not applicable in cases of recovery of narcotics. He further argued that all the prosecution witnesses have supported the case and produced all the relevant record; therefore, appeal may be dismissed.

8. We have heard the counsel for the parties and perused the record.

9. We have noted the material contradictions in Prosecution Evidence. The complainant himself admitted that all documentation was prepared at the police station which undermined the credibility of the foundational document of narcotic recovery proceedings. It is mandatory to prepare Memorandum of Recovery spontaneously at the crime scene without slightest delay which had not been done in the present case. The evidence of the PW-1 who is the author of the Memorandum of Recovery, has negated factum that the said foundational document Exh.4/B was prepared at crime scene instead admission made by author that it was prepared at the Police Station. Further, the admission of PW-2 HC Ameer Bux who was the Mashir (eye witness), he in his cross-examination deposed that he signed the Memorandum of Recovery Exh.4/B at Police Station. The evidence of PW-2 being important signee of document of arrest and recovery confirmed that his signatures were obtained at the police station, not at the place of incident, further weakening the prosecution's case.

10. Tergiversate of the prosecution breached safe custody. PW-3 PC Illahi Bux deposed that ASI Ghulam Abbas handed over the case property to deposit in the malkhan on 27.02.2022 at 14.40 hours. Conversely, attested copy of Register No.XIX produced by said PW-3 at Exh.6/A, it is clearly mentioned that the case property was deposited by SIP Sher Ali Khoso on 01.03.2022 in Malkhan (Official

Storeroom of Police) and there is no explanation from the prosecution side regarding considerable delay of three (03) days and no explanation or valid justification has been given by the prosecution as where the case property was kept lying during such interval period, and therefore, safe custody of case property have been breached and the prosecution failed to discharge the onus of burden as required under the law.

11. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the *Malkhana* under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody.

12. There are other serious nature discrepancies. The PW-1 deposed that the contraband was weighed on digital scale while the PW-2 also deposed contradictory that the contraband was weighed on Steel Scale which is neither precise nor reliable for narcotics measurement. The chemical examiner's report shows gross weight of heroin as 1 kg 44 gm, while net weight is 1 kg 10 gm. Even the PW-1 admitted during cross-examination that the cloth packet containing contraband was not separately weighed. Such unexplained variation raises serious doubts about the integrity of the recovered substance. The contention of learned counsel for the Appellant that firstly they had apprehended at Hala and later handed him over to police of PS Jamshoro carries weight as the entire proceedings were prepared and signed at the police station as admitted by PW-1 and PW-2.

Evidence of DW-1 reveals that the Appellant and one (unknown) girl was planning to marry and on 23rd February 2022 both had stayed a night at the residence of DW-1. The defense has successfully demonstrated that the appellant had personal enmity, arising from his relationship with Mst. Samina Baloch. The possibility of malafide intent by the complainant cannot be ruled out.

13. We find that the sanctity of the chain of custody is inextricably linked with meticulous maintenance of Register No. XIX, as mandated under Rule 22.70 of the Police Rules, 1934, and judicially settled by the Hon'ble Supreme Court in *State vs. Zulfiqar* (2022 SCMR 1529), wherein it was held that any missing link between safe custody at the police station (Malkhana/Storeroom) and safe transmission to the chemical laboratory, or discrepancies vitiates the evidentiary value of the Chemical Examiner's report. The prosecution evidence suffers from material contradictions, lacunas, and legal infirmities. The Prosecution has failed to discharge the onus of burden and violated the doctrine of safe custody. There are reasonable doubts in the story of prosecution, and the benefit of doubt must therefore go to the Appellant /accused.

14. In view of the above findings, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The impugned judgment is hereby set aside. The appellant/accused is acquitted of the charge. He shall be released forthwith if not required in any other case.

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