

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.D-71 of 2023
Criminal Jail Appeal No.D-75 of 2023

Before:

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant: Saleem Raza alias Papu son of Muhammad Mithal Zardari, Through Mr. Abdullah Soomro, Advocate.

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

Date of hearing: 15.04.2026

Date of decision: 22.04.2026

JUDGMENT

Syed Fiaz ul Hassan Shah, J: Through above captioned both appeals arising out of same crime No.49 of 2022, the appellant Saleem Raza alias Papo has challenged the judgment dated 25.05.2023, passed by learned Additional Sessions Judge-V/Model Criminal Trial Court Shaheed Benazir Abad, in Sessions Case No.872 of 2022, Re: State vs. Saleem Raza @ Papo, bearing U/ss 9(1), 3(C) CNS (Amendment) Act 2022 PS 60th Mile, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant to suffer S.I for 10 (ten) years along with fine Rs.200,000/-. In case of default in payment of fine the accused shall undergo S.I for six months more. Benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The facts in brief necessary for disposal of instant Criminal Appeal are that on 05.12.2022 complainant SIP Lal Bux Mari of PS 60th Mile lodged the instant FIR stating therein that on 05.12.2022 he along with along with his subordinate staff everyone PC Dur Muhammad, PC Ali Akbar and DPC Amanullah duly uniformed with arms & ammunition, investigation bag, handcuffs and computerized scale in govt. mobile vide entry No.15 left PS for patrolling. After patrolling at different places when at about 1700 hours when they reached at road leading towards Keeria Village Mor, saw one person was standing eastern side of road having black shopper in his hand, who on seeing the police party tried to escape towards north but they

succeeded to apprehend him at the distance of 15 paces being suspect with their strategy with shopper. Due to non-availability of private mashirs complainant deputed PC Dur Muhammad and PC Ali Akbar as mashirs and enquired the name from accused who disclosed his name as Saleem Raza @ Papu S/o Muhammad Mithal Zardari originally R/o Village Bucheri and presently R/o Taj Colony Nawabshah. On body search of accused cash Rs.500/- in shape of 05 notes of Rs.100/- were recovered from his side pocket. The recovered shopper was opened and found 02 big and 06 small piece of chars which were weighed on computerized scale and it became 2500 grams. The whole chars was sealed for chemical examination and recovered cash was separately sealed. Police party had also taken the pictures of recovered case property through mobile phone and had arrested the accused in contravention under S. 9-1(3)(C) CNS Amendment Act and had prepared such mashirnama in presence of same mashirs and then complainant had brought the accused with case property at PS and had lodged the instant FIR against the accused.

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.2 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.2/A 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 P.W No.1 SIP Lal Bux (**complainant**) at Ex.03, who produced memo of arrest and recovery as Ex.03/A, departure and arrival entries of arrest and recovery as Ex.03/B, FIR as Ex.03/C, pictures of accused at the time of his arrest as Ex.03-D(i) to Ex.03-D(v), entry of FIR as Ex.03/E. PW No.2 PC Ali Akbar (**mashir & parcel deliverer**) at Ex.04, who produced memo of site inspection as Ex.04/A, attested copy of R.C at Ex.04/B, his departure and arrival entries as Ex.04/C. P.W No.03, SIP Manzoor Ali (**Investigation Officer**) at Ex.06, who produced attested carbon copy of entry of investigation as Ex.06/A, attested photocopy of entry of register No. 19 as Ex.06/B, attested

carbon copy of his departure and arrival entries of site inspection as Ex.06/C, CRO report of accused containing 03 leaves, original chemical examiner report as Ex.06/E. Learned DDPP for State given up one PW namely WHC Hakim Ali vide his statement at Ex.05 and closed the side of evidence of prosecution vide statement at Ex.07.

5. The statement of accused Under S. 342 of Cr.P.C was recorded vide Ex.8. He did not prefer to depose on oath, as required Under S. 340(2) of Cr.P.C or lead evidence of witnesses in defence. He totally denied the prosecution case and learned counsel for accused filed written statement Under S. 265-F(5) Cr.P.C along with its enclosure on behalf of accused.

6. Learned counsel for the appellant argued that the appellant/accused is innocent and has falsely been implicated in this case. He further argued that nothing was recovered from the possession of the appellant/accused and alleged recovery has been foisted upon the present accused. He further argued that no private witnesses have been associated as mashir in this case; therefore, there is violation of section 103 Cr.P.C. He further 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 hence, he prayed for justice.

7. Learned D.P.G for the State has submitted that the accused was arrested on the spot with recovery of 2500 grams chars. 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 considered the above arguments and perused the record.

9. We have observed that the prosecution has presented contradictory evidence regarding the case property. It is a settled principle that the prosecution must prove its case by corroborating the evidence with foundational documents such as the Memorandum of Recovery, FIR, Register No. XIX, Chemical Laboratory Certificate, and

others. In the present matter, PW-1 produced Ex.3/A (Memorandum of Recovery), wherein the description of the case property records that two big pieces and six small pieces of charas were recovered, out of which two big pieces and four small pieces were wrapped in golden-colored material embossed with the words "2022 Sher Sindh." This description was confirmed by the Raiding Officer, PW-1 SIP Lal Bux, who testified: ***"The recovered shopper was opened and found 02 big and 06 small pieces of charas, from which two big and 04 small pieces were having golden stamps and the words 2022-2023 Sher-e-Sindh were embossed on it."***

10. However, during cross-examination, PW-1 contradicted the prosecution's case and created a material inconsistency. He admitted: ***"It is correct to suggest that in the mashirnama of arrest and recovery, the color of charas is not mentioned; (voluntarily says) generally the charas is in one color which is black. It is correct to suggest that there are 07 small pieces and 02 big pieces available in the case property produced before the Court; (voluntarily says) it might be broken by the chemical examiner during chemical analysis."***

11. This contradiction is significant, as the fact of 07 small pieces were not mentioned in the Memorandum of Recovery (Ex.3/A). The inconsistency between the documentary record and the oral testimony of PW-1 undermines the credibility of the prosecution's case raises serious doubts about the safe custody and identification of the case property. The evidence of Mashir/eye-witness of recovery, PW-2 (LPC Ali Akbar), during cross-examination, admitted: ***"It is correct to suggest that the 09 pieces of charas are produced before the Court as case property."*** This admission further weakened the prosecution's case, as it conflicted with his examination-in-chief wherein he had deposed that the case property consisted of only 8 pieces of charas. The inconsistency between his initial statement and his later admission created a material contradiction regarding the description of the recovered property.

12. Similarly, the Chemical Analysis Certificate (Ex.6/E) records that the property received at the laboratory comprised one sealed cloth

parcel containing two big and six small black and brown pieces labeled “2022–2023 Sher Sindh.” We have noted material discrepancies between the description of the case property as recorded in Ex.3/A (Memorandum of Recovery), Ex.6/E (Chemical Analysis Certificate), and the property produced before the Trial Court. According to Ex.3/A, the recovery consisted of two big and six small pieces, with two big and four small pieces bearing the label “2022–2023 Sher Sindh.” However, the property sent to the laboratory contained two big and six small pieces with that description, thereby contradicting the memorandum which mentioned only four small labeled pieces.

13. These contradictions between the foundational documents, the laboratory record, and the oral testimony of prosecution witnesses cast serious doubt on the integrity of the case property and undermine the prosecution’s claim of safe custody and proper identification. Moreover, at the time of the alleged recovery, the handling of case property was not carried out in accordance with the settled principles laid down in *Ameer Zeb v. The State* (PLD 2012 SC 380). Instead of sealing each piece of charas separately, all pieces were sealed together in a single packet. Neither the two larger pieces nor the six smaller pieces were weighed individually, nor were they sealed separately. This lapse was further confirmed during evidence when PW-1, SIP Lal Bux, admitted: *“The pieces of charas were weighed and it became 2500 grams. The whole charas was sealed for chemical examination.”* Such admission undermines the prosecution’s case and demonstrates a clear breach of the duty of safe custody. Mere recovery or the perceived propriety of the raiding police party’s conduct cannot cure this defect, as strict compliance with legal obligations regarding safe custody and safe transmission is indispensable in narcotics cases.

14. Moreover, the testimony of SIP Lal Bux has further weakened the case by admitting in cross-examination that: ***“It is correct to suggest that only one piece of charas is wrapped with golden pani. It is correct to suggest that it is not mentioned in the mashirnama that pieces of charas are wrapped with any pani of golden color.”*** This is again contradictory to **Ex.3/A**, the foundational document. **PW-1** further claimed that vide entry No. 23 (**Ex.3/B**) at

18:30 hours, he handed over the property to **SIP Manzoor Ali Bhangwar (I.O.)**, while **PW-3 (I.O.)** deposed he received it vide entry No. 24 (**Ex.6/A**) at 18:50 hours. There is no explanation for this 20-minute interval. Furthermore, **PW-3** deposed that the property was kept in the **Malkhana** (Register No. 19, **Ex.6/B**) and handed over to **WHC Hakim Ali Sahito**; however, the prosecution failed to examine the said WHC to prove safe custody. Instead, the prosecution gave up **WHC Hakim Ali Sahito** vide statement **Ex.5**. Therefore, it has not been proved that the property remained in official custody or was handled safely until chemical analysis. Under such circumstances, we are fortified with the case of **Ikramullah & ors vs. the State (2015 SCMR-1003)**, it was held that;

“the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit”.

15. The discussion involved a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

16. In case of **Faheem Ahmed Farooq vs.The State (2008 SCMR-1572)**, it is held that: *“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.”*

17. In view of the facts and reasons discussed above, the impugned judgment could not be sustained, it is set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant is in custody, he be released forthwith if, no more required in other case/crime.

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