

IN THE HIGH COURT OF SINDH AT KARACHI

**PRESENT:-**  
**Mr. Justice Shamsuddin Abbasi**  
**Mr. Justice Miran Muhammad Shah**  
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**Criminal Appeal No.423 of 2025**

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| Appellant        | Waqas son of Nisar Ahmed.<br>Through Mr. Muhammad Immad Qamar,<br>Advocate. |
| Respondent       | The State through Mr. Habib Ahmed, Special<br>Prosecutor ANF.               |
| Date of Hearing  | <b><u>16.10.2026</u></b>                                                    |
| Date of Judgment | <b><u>21.10.2026</u></b>                                                    |

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

**Shamsuddin Abbasi, J.-** Waqas son of Nisar Ahmed, appellant, alongwith two others namely, Muhammad Adil son of Tariq Mehmood and Yasir Khan son of Nazeer Gul was tried by the learned Special Court No.II (CNS), Karachi, in Special Case No.62 of 2022 (FIR No. 18 of 2022) registered at Police Station ANF, Clifton, Karachi, for offences under Sections 6 and 9(c) read with Sections 14 and 15 of the Control of Narcotic Substances Act, 1997. By a judgment dated 29.05.2025 the learned trial Court acquitted co-accused, Muhammad Adil and Yasir Khan of the charge, however, convicted the appellant under Section 9(c) of the Act, 1997 and sentenced him to imprisonment for life alongwith a fine of Rs.800,000/- with a further sentence of eight (08) months' simple imprisonment in lieu of fine, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to the appellant.

2. Briefly stated the prosecution case as unfolded in FIR is that on 25.05.2022 complainant Inspector Zahid Ali received secret information through his superiors that drug smugglers namely, Hannan of Kuchlak, Quetta and Doctor Barkat of Turbat have transported substantial quantity of narcotics to Karachi through their agent Adil and concealed the same in thick bushes near Muhammad Aloo Goth, Mubarak Village, Karachi, for onward distribution in the city during the night and their agent Waqas is present near the concealed narcotics to keep watch over the consignment. Acting upon such information, the complainant accompanied by ASI Ali Asghar, PC Asif Ali, PC Maqbool Ahmed, PC Naveed Abbas and other ANF personnel

departed from P.S. at about 2:00 pm and reached the identified location at about 3:30 pm and apprehended the appellant and at his pointation recovered 84 packets of charas weighing 100 kilograms, one packet of heroin weighing 900 grams and one packet of methamphetamine (ice) weighing 1100 grams, which were concealed in bags and a shopping bag lying among the bushes. The complainant effected the arrest of appellant and seized the recovered narcotics in presence of ASI Ali Asghar and PC Asif Ali, who are cited as mashirs of the recovery proceedings. The ANF team thereafter returned to P.S. alongwith appellant and the seized narcotics whereupon FIR No.18 of 2022 was registered on behalf of the State.

3. Following registration of FIR, the investigation was undertaken and upon its completion, the challan was submitted before the Court of competent jurisdiction, whereby the appellant and co-accused Muhammad Adil and Yasir Khan were sent up to face trial whereas the principal accused Abdul Hannan and Doctor Barkat, were shown as absconders under Section 512, Cr.P.C.

4. Upon indictment, the appellant and co-accused pleaded not guilty to the charged offence and claimed trial. At trial, the prosecution has examined ASI Asghar Ali as PW.1 at Ex.19 (one of the mashirs of memo of arrest and recovery), complainant Inspector Zahid Ali as PW.2 at Ex.20, PC Faridullah Khan as PW.3 at Ex.23, ASI Usama Azam as PW.4 at Ex.24, Inspector Anjum Shakeel as PW.5 at Ex.26 (second investigating officer), Inspector Muhammad Hassan Khoharo (Malkhana Incharge) as PW.6 at Ex.27, Dr. Abdul Saleem Qadeer (Chemical Examiner) as PW.7 at Ex.28 and Dr. Amir Ahmed (Principal Scientific Officer at PCSIR Laboratory) as PW.8 at Ex.29. All of them have exhibited relevant documents in their respective evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement at Ex.30. In their statements under Section 342, Cr.P.C. the appellant and co-accused have denied the allegations imputed upon them by the prosecution, professed their innocence and claimed false implication. The appellant specifically pleaded that he was taken away by the Rangers from his house prior to the occurrence and he was not present at the place of recovery at the relevant time. In support of this plea, he has produced a copy of call detail record (CDR) of his mobile phone at Ex.31/A. He, however, neither opted to appear on oath in terms of Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. Upon culmination of the trial, the learned trial Court after hearing the learned counsel for the parties and appraising the evidence brought on record acquitted co-accused Muhammad Adil and Yasir Khan by extending them the benefit of doubt, however, found the prosecution case established against the appellant, convicted and sentenced him in the manner set out in para-1 (supra), which necessitated the filing of the listed appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case due to mala fide intentions and ulterior motives despite having no concern whatsoever with the alleged offence and has been victim of the circumstances. It is next submitted that the learned trial Court while recording conviction has failed to properly appreciate the material deficiencies in the prosecution case particularly the absence of any reliable evidence establishing the appellant's conscious possession of the alleged narcotics. It is also submitted that even according to the prosecution's own version the alleged narcotics were concealed in wild bushes and were neither recovered from the person of the appellant nor from any place under his exclusive control. He has maintained that mere presence of the appellant in the vicinity of the place of recovery, even if accepted, could not establish that he had conscious knowledge of the presence of the narcotics or exercised control over the same. According to him, the prosecution has failed to establish any circumstances from which the appellant's alleged connection with the concealed consignment could reasonably be inferred much less proved beyond a reasonable doubt. The learned counsel has argued that despite the alleged availability of prior information regarding the presence of the accused and the narcotics, no independent person has been associated to witness the arrest and recovery proceedings. He submits that the absence of independent corroboration assumes significance in the peculiar circumstances of the case, where the alleged recovery was effected from an open and accessible place rather than from the appellant's person or from any place under his exclusive control. It is further contended that the prosecution has failed to establish any reliable or tangible nexus between the appellant and the alleged narcotics consignment. In this regard, the learned counsel has pointed out that no CDR or any other electronic evidence has been collected to substantiate the prosecution's allegation that the appellant was in contact with the alleged drug smugglers or their purported agent in connection with the transportation, concealment or distribution of the narcotics. He has argued that in absence

of such evidence or any other independent material connecting the appellant with the consignment, the allegation that he had been entrusted with the task of keeping watch over the concealed narcotics remains a mere assertion unsupported by reliable corroborative evidence. He has also maintained that the statutory presumptions available under the Control of Narcotic Substances Act, 1997, cannot be invoked in a vacuum or used to cure a fundamental deficiency in the prosecution case. According to him, the prosecution was first required to establish through reliable and legally admissible evidence the foundational facts necessary to attribute conscious possession of the alleged narcotics to the appellant. He submits that where the recovery is allegedly effected from an open and accessible place and the prosecution fails to establish the appellant's conscious knowledge of the recovered substance, the mere proximity of the appellant to the place of recovery cannot constitute sufficient proof of possession or criminal liability. The learned counsel has lastly contended that the learned trial Court has failed to appreciate these material aspects in their proper perspective and did not apply the settled principles governing the appreciation of evidence in narcotics cases. He has also questioned the sustainability of the appellant's conviction in the context of the benefit of doubt extended to co-accused contending that the prosecution evidence did not establish the appellant's guilt beyond a reasonable doubt. On these grounds, he has prayed that the impugned judgment may be set aside and the appellant may be acquitted of the charge. In support of his submissions, he has placed reliance on the cases of *Muhammad Shahid v The State* (2022 P.Cr.L.J. 1492) and *Ali and others v The State* (2024 MLD 1247).

7. Conversely, the learned Special Prosecutor ANF while opposing the appeal has contended that the prosecution has established the appellant's involvement in the commission of offence through reliable evidence adduced by the prosecution witnesses, who have consistently supported the prosecution case. It is next submitted that the narcotics were recovered at the appellant's pointation while he was present at the spot to keep watch over the concealed consignment and mere fact that the recovery was effected from wild bushes did not by itself negate his conscious knowledge. It is also submitted that absence of CDR is not fatal to the prosecution case as the appellant's guilt has to be assessed on the basis of the entire evidence available on record. According to him, the defence has failed to identify any material contradiction or legal infirmity sufficient to discredit the recovery

proceedings or the positive chemical examination reports. He, therefore, prayed for dismissal of appeal and maintaining conviction and sentence awarded to the appellant.

8. We have heard the learned counsel for the appellant and the learned Special Prosecutor ANF and have carefully examined the evidence available on record in the light of the submissions advanced by the respective sides.

9. The principal contention advanced by the learned counsel for the appellant is that the narcotics were allegedly recovered from wild bushes situated at an open place rather than from the physical possession of the appellant or any place under his exclusive control. He has, therefore, argued that the prosecution has failed to establish the appellant's conscious and exclusive possession of the recovered substance. He has further maintained that the investigating agency neither collected CDR nor secured any other electronic evidence to establish communication between the appellant and the alleged drug smugglers or any other person so as to demonstrate his nexus with the recovered narcotics. We have given anxious consideration to these submissions, however, in our considered view, the same cannot be appreciated in isolation or separated from the prosecution evidence as a whole. The question of conscious possession must be determined by evaluating the totality of the incriminating circumstances brought on record, their cumulative effect and the extent to which they connect the appellant with the recovered contrabands. Likewise, mere absence of CDR or other electronic evidence does not by itself render the prosecution case doubtful where the charge is otherwise sought to be established through reliable and confidence inspiring evidence. The question arises is whether the evidence available on record, assessed in its entirety and in accordance with the settled principles of criminal jurisprudence establishes the appellant's culpability beyond reasonable doubt.

10. It is an established principle of criminal jurisprudence that mere presence at or near a place where narcotics are recovered does not by itself establish conscious possession. Equally, however, the absence of physical recovery from the person of an accused or the fact that the contraband was found at an open place does not invariably exclude the possibility of conscious or constructive possession. The decisive question is whether the evidence establishes that the accused knowingly exercised custody,

dominion or control over the recovered substance. The concept of possession under the Control of Narcotic Substances Act, 1997, is not confined to possession of narcotics physically carried on the person, it may also be established through reliable circumstantial evidence demonstrating the accused's conscious connection with the contraband. The statutory presumption under Section 29 of the Act, 1997, however, cannot dispense with the prosecution's obligation to establish the foundational fact of possession through legally admissible evidence.

11. Examined against the aforesaid principles, the prosecution case is not confined to the appellant's mere presence in the vicinity of the recovered narcotics. According to the prosecution witnesses, the complainant has received specific information that a substantial consignment of narcotics has been concealed in the bushes near Muhammad Aloo Goth, Mubarak Village, Karachi, and that the appellant was present there to keep watch over it. Acting upon that information, the ANF team proceeded to the identified place, apprehended the appellant and recovered the narcotics at his pointation. The recovery consisted of 84 packets of charas weighing 100 kilograms, one packet of heroin weighing 900 grams and one packet of methamphetamine weighing 1100 grams. The complainant and the recovery witness while appearing before the learned trial Court have supported the prosecution version regarding the apprehension of the appellant and the recovery proceedings. They were subjected to cross-examination by the defence but nothing has been extracted favouring the appellant. The significance of these circumstances lies not merely in the quantity or location of the recovered narcotics, but in the specific role attributed to the appellant in connection with the concealed consignment. If found reliable, the evidence that the appellant was keeping watch over the narcotics and that the recovery was effected at his pointation constitutes a connecting circumstance linking him with the recovered contraband rather than merely establishing his presence near the place of recovery. The defence has failed to extract through cross-examination any material contradiction or inconsistency suggesting that the alleged pointation was fabricated or that the appellant was falsely implicated in the role of guarding the narcotics consignment. In these circumstances, mere fact that no narcotics were recovered from the appellant's exclusive possession cannot by itself be regarded as sufficient to negate his conscious connection with the recovered contraband particularly when the prosecution

evidence establishes his specific role in guarding the concealed consignment and identifying the place of recovery.

12. The contention of the learned counsel for the appellant that the prosecution is bound to produce CDR to establish communication between the appellant and the alleged smugglers or any other person is not tenable as an absolute proposition of law. No doubt, CDR, if available and duly proved, may provide corroborative evidence of communication or association, however, its absence does not by itself discredit otherwise reliable direct or circumstantial evidence. The prosecution is required to establish the appellant's connection with the recovered narcotics through trustworthy evidence, but such connection need not necessarily be proved through any particular technological means. Thus, where the evidence regarding the appellant's role in keeping watch over the narcotics consignment, his pointation and the recovery proceedings is found reliable, then mere absence of CDR or any other electronic evidence is not sufficient to render the prosecution case doubtful. Conversely, if the evidence produced by the prosecution fails to establish the requisite nexus between the appellant and the recovered contraband, the absence of such corroborative material may assume significance. In these circumstances, the appellant's culpability in the present case must be determined on the basis of the credibility and cumulative effect of the evidence brought on record rather than merely on the availability or non-availability of CDR evidence. The learned counsel for the appellant has placed reliance on the cases of *Ali and others v The State* (2024 MLD 1247) and *Muhammad Shahid v The State* (2022 P.Cr.L.J. 1492). We have considered the authorities cited on behalf of the appellant. The principles governing conscious possession, as discussed in the case *Ali and others* cannot be disputed nevertheless the factual setting in which those principles were applied must be distinguished from the case before us. In *Ali and others* case the prosecution attributed separate recoveries to different accused persons travelling in the same vehicle and sought to make each accused liable for the aggregate quantity recovered from the others. The Court has emphasized that joint possession of the entire consignment could not be presumed merely because the accused were travelling together or knew of the narcotics separately recovered from their co-accused. In the case in hand, the prosecution has attributed to the appellant specific role of keeping watch over a consignment concealed at an identified location and alleges that the recovery was effected at his

pointation. Thus, the question here is not whether the appellant should be held jointly liable for narcotics independently recovered from other accused, but whether the evidence establishes his own conscious connection with the particular consignment concealed in wild bushes. In our humble view, the case of *Ali and others* does not lay down an inflexible rule that narcotics recovered from an open place or from a location not exclusively owned by an accused can never constitute proof of possession. Its governing principle is that possession must be established by evidence and cannot be presumed from mere presence or knowledge alone. That principle has been kept in view while examining the evidence in the present case. The another case law relied upon by the learned counsel reported as 2022 P.Cr.L.J. 1492, the proposition for which it has been cited must likewise be considered in the context of its factual and evidentiary setting and cannot be treated as laying down a universal rule irrespective of the circumstances of the particular prosecution. Neither of the cited authorities, therefore, dispenses with the duty of this Court to independently assess the evidence on record and determine the merits of the present case in the light of its own facts and circumstances.

13. We are mindful of the settled principle of law that the testimony of official witnesses cannot be discarded merely on account of their association with a law enforcement agency or on the ground that no private person was associated with the recovery proceedings. In the case of *Zain Ali v. The State* (2023 SCMR 1669), the Hon'ble Supreme Court has reiterated that the testimony of police and other law enforcement officials is to be assessed on the same standard as that of any other witness and there is no legal requirement that their evidence must invariably be corroborated by an independent witness before it can be acted upon. The reluctance of members of the general public to associate themselves with such proceedings is a judicially recognized reality and mere absence of private witnesses does not render the prosecution evidence doubtful. The presumption of honesty applies to official witnesses as much as it does to other persons and their testimony cannot be viewed with suspicion in the absence of cogent reasons warranting such an approach. The decisive consideration is whether their evidence when scrutinized in its entirety is consistent, confidence inspiring and reliable on material particulars. In the case in hand, the complainant and the recovery witness have supported the prosecution version concerning the recovery proceedings, and the defence

has failed to elicit any material contradiction or discrepancy through cross-examination that could discredit their testimony on any essential aspect of the occurrence. No material has been brought on record to suggest that either witness had any previous enmity, ill will or personal animosity towards the appellant so as to furnish a plausible reason for his false implication. Their official status by itself therefore furnishes no lawful ground for rejecting their evidence, which must be assessed on its intrinsic worth and in conjunction with the other evidence available on record.

14. The positive reports of the chemical examiner establish the nature of the substances subjected to analysis, however, such reports must be considered in conjunction with the evidence establishing the identity, safe custody and transmission of the samples as well as the appellant's connection with the recovered consignment. A chemical examination report standing alone does not establish the factum of recovery from or conscious possession by the accused. Nevertheless, where the recovery witnesses credibly establish the recovery, the evidence on record satisfactorily connects the samples with the seized substance and the chain of custody is shown to have remained intact, the scientific evidence provides material corroboration to the prosecution case. In *Zain Ali's* case (supra), the Hon'ble Supreme Court while examining a challenge to the safe custody and transmission of narcotic samples emphasized the importance of evaluating the evidence collectively including the recovery proceedings, the sealing and dispatch of the samples, the chemical examiner's reports and the production of the case property rather than allowing an objection concerning an individual procedural aspect to overshadow the substance of the prosecution case. The Hon'ble Court also reiterated with reference to *Liaquat Ali v. The State* (2022 SCMR 1097) that the Control of Narcotic Substances (Government Analysts) Rules, 2001 are directory in nature and that a procedural lapse does not by itself automatically result in the rejection of the prosecution case. This principle, however, does not dispense with the prosecution's obligation to establish the identity and integrity of the samples through the evidence available on record. In the case in hand, the evidence concerning recovery, the chemical examination reports and the remaining incriminating circumstances must accordingly be examined conjointly. Likewise, the absence of CDR is not by itself fatal to the prosecution case where such evidence is not indispensable to the proof of the charge and the other reliable evidence sufficiently establishes the appellant's conscious

connection with the recovered consignment. The evidentiary value of the prosecution case must therefore be determined on the strength of the material actually brought on record and not by isolating any single circumstance from the evidence as a whole.

15. It is equally well settled that minor discrepancies or inconsistencies on insignificant matters do not affect the prosecution case, which do not affect the core of the prosecution case, cannot be made the basis for discarding otherwise reliable evidence. As explained by the Hon'ble Supreme Court in *Zain Ali's* (supra), the Court must assess whether the testimony read as a whole bears the ring of truth and whether the discrepancies highlighted by the defence are of such a nature as to undermine the essential prosecution version. Applying this principle to the facts of the present case, we find that the objections raised by the defence regarding the place of recovery and the absence of CDR evidence do not in themselves demolish the prosecution case. These objections have been examined in the context of the evidence as a whole and the defence has failed to demonstrate how either circumstance materially undermines the credibility of the recovery witnesses or negates the appellant's connection with the concealed narcotics. The quantity of narcotics involved is also a relevant circumstance to be considered alongside the other evidence, although the magnitude of recovery cannot, by itself, substitute for proof of the charge. Equally, the absence of any demonstrated motive for false implication is a relevant consideration in assessing the credibility of the prosecution witnesses. We are conscious that the burden of proving the charge rests upon the prosecution and that the absence of enmity cannot cure a material defect in its evidence. Nevertheless, where the prosecution witnesses remain consistent on the essential features of the occurrence, their testimony withstands cross-examination and the remaining evidence lends support to their account. Mere conjectures or objections concerning insignificant matters are not sufficient to create a reasonable doubt. In the case in hand, the defence has failed to identify any material contradiction, inherent improbability or evidentiary infirmity that would render the prosecution evidence unworthy of reliance. The learned trial Court has, therefore, not committed any material misreading or non-reading of evidence while convicting the appellant.

16. For the foregoing reasons and upon an independent appraisal of the evidence available on record, we are satisfied that the prosecution has

established the charge against the appellant beyond reasonable doubt. The defence has failed to point out any material misreading or non-reading of evidence, misapplication of law or any other legal infirmity warranting interference by this Court. The findings recorded by the learned trial Court are supported by the evidence on record and disclose no illegality or material irregularity calling for interference. Consequently, finding no merit in the appeal, the same is dismissed and the impugned judgment of conviction and sentence is maintained.

JUDGE

JUDGE

*Naeem /PA*