

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.440 of 2025
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Appellant	Rehmatullah son of Sathi Khan through Mr. Naeemullah Bhutto, Advocate.
Respondent	The State through Mr. Habib Ahmed, Special Prosecutor, ANF.
Date of hearing	<u>20.10.2026</u>
Date of Judgment	<u>27.10.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Rehmatullah son of Sathi Khan, appellant, has called into question the validity of the judgment dated 12.06.2025, penned down by the learned Special Court No.I (Control of Narcotic Substances) Karachi, in Special Case No.96 of 2024 (FIR No.42 of 2024) registered at Police Station ANF-MACHS Korangi, Karachi, for offences under Sections 6/9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 as amended by the Amendment Act, 2022, through which he was convicted and sentenced rigorous imprisonment for 10 years alongwith fine of Rs.200,000/- and to suffer simple imprisonment for a further period of six months more 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 24.06.2024 complainant Inspector Umer Sana received secret information through his superiors that a notorious drug dealer, Gul Khan, intended to have narcotics delivered to his specific customer through his agent, Rehmatullah, at about 11:30 pm beneath Mehmoodabad Bridge, Karachi, on a motorcycle bearing registration No.HDT-7752. Acting upon such information, a raiding party comprising Inspector Umer Sana, PC Asadullah, PC Mehboob Ali, PC Fakhar and driver HC Tahir Usman was constituted, which accompanied by the informer departed from P.S. in an official mobile at about 10:30 pm pursuant to Roznamcha Entry No.12 and reached the

indicated place at about 11:00 pm where they commenced surveillance and checking. It was about 11:30 pm the raiding party spotted a person approaching from the direction of Iqra University on a motorcycle bearing registration No.HDT-7752, who was stopped on the pointation of informer. The complainant requested private persons present at the spot to act as mashirs of the recovery proceedings, however, they declined, therefore, he associated PC Mehboob Ali and PC Asadullah as mashirs and in their presence the apprehended person disclosed his name as Rehmatullah son of Sathi Khan, resident of Machi Gulab, District Jacobabad. Upon further inquiry, he disclosed about availability of narcotics in a blue coloured shopper hanging on the handle of his motorcycle and handed over the same to complainant, who checked the same and found to contain three packets of charas wrapped in yellow tape, which were opened and weighed separately, two packets were found to contain 1000 grams of charas each while the third contained 900 grams making the total weight 2900 grams. The complainant arrested him and sealed the recovered narcotics at the spot in presence of the mashirs and thereafter returned to P.S. along with the accused and the recovered property and lodged FIR 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 was sent up to face the trial.

4. Upon being formally charged, the appellant pleaded not guilty and claimed trial. At trial, the prosecution has examined as many as four witnesses namely, complainant Inspector Umer Sana as PW.1 at Ex.3, PW.2 PC Mehboob Ali appeared at Ex.4, PW.3 ASI Ashbeel Victor (Malkhana Moharrir) at Ex.5 and PW.4 PC Syed Fakhar Abbas Jaffri at Ex.6. All of them have exhibited relevant documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its case vide statement at Ex.7. In his statement recorded under Section 342, Cr.P.C. the appellant has denied the allegations imputed upon him by the prosecution, professed his innocence and claimed false implication by stating that he had gone to Mehmoodabad along with his father and daughter, Laraib Fatima, to purchase biryani when two to four persons took him and his daughter in a vehicle to P.S., left his father and falsely implicated him in the present case. He, however, neither opted to appear on oath under 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 evaluating the evidence brought on record, found the prosecution case proved against the appellant beyond reasonable doubt and thus convicted and sentenced the appellant 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 with malafide intention and ulterior motives as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that the impugned judgment is contrary to law and the evidence on record as the prosecution has failed to establish the charge against the appellant beyond reasonable doubt. It is also submitted that the prosecution witnesses are police officials and in absence of independent corroboration their testimonies required cautious scrutiny. He has submitted that material discrepancies existed in the prosecution evidence regarding the date of occurrence, preparation of the memo of arrest and recovery and deposit of the recovered property in Malkhana, which cast serious doubt upon the prosecution version. It is argued that omission of date and time of occurrence from the FIR and the subsequent explanation regarding the incorrect date mentioned in the recovery memo could not be brushed aside without proper scrutiny. He has further questioned the safe custody and integrity of the alleged narcotics and the sample parcels arguing that the prosecution was required to establish an unbroken chain of custody from the time of recovery until receipt by the chemical examiner. He has maintained that the chemical examination report in the absence of satisfactory proof of the safe custody and safe transmission of the samples could not by itself conclusively connect the appellant with the alleged recovery. Lastly, submitted that the appellant has been falsely implicated and that the prosecution has failed to exclude the possibility of his innocence. He, therefore, prayed for acceptance of the appeal, setting aside of the impugned judgment and acquittal of the appellant by extending him the benefit of doubt.

7. In contra, the learned Special Prosecutor for ANF, while opposing the appeal has supported the impugned judgment and contended that the prosecution has successfully proved the charge against the appellant through consistent and confidence inspiring evidence of the complainant and

other prosecution witnesses. It is next submitted that 2900 grams of charas has been recovered from the appellant's possession, the recovery proceedings are duly documented and the chemical examination report confirmed the nature of the recovered substance. He maintained that the alleged discrepancies regarding the date and time of occurrence are adequately explained and did not undermine the prosecution case particularly when the witnesses have consistently corroborated the recovery and the safe custody and safe transmission of the sealed sample parcels. He has argued that the learned trial Court has rightly appreciated the evidence and lawfully convicted and sentenced the appellant and prayed for dismissal of appeal.

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

9. The prosecution case rests primarily upon the testimony of complainant Inspector Umer Sana, who appeared as PW.1 and mashir PC Mehboob (PW.2). Both of them have consistently supported the prosecution version regarding the interception of the appellant while riding motorcycle No.HDT-7752 and the recovery of three packets of charas weighing 2900 grams from a blue coloured shopper hanging on its handle. Their evidence further establishes that the recovered substance was sealed at the spot and the memo of arrest and recovery was prepared in presence of mashirs. Although both witnesses belonged to the raiding party, their official status, by itself, does not render their testimony unreliable or legally unacceptable. It is well settled that the evidence of a police official is to be assessed by the same standards of credibility as that of any other witness, and a conviction may lawfully rest upon such testimony where it is found trustworthy and is not rendered doubtful by any material contradiction or inherent improbability. In the case in hand, no material circumstance has been brought to our notice which would justify discarding the consistent account furnished by the complainant and the mashir regarding the recovery.

10. The objection that no private person has been joined with the recovery proceedings is equally devoid of merit. According to the complainant, private persons present at the place of occurrence were requested to act as mashirs

but declined to participate whereupon members of the raiding party were associated for that purpose. The law does not prescribe that the testimony of official witnesses must invariably be corroborated by an independent private witness before it can be acted upon. The absence of private witnesses, therefore, cannot by itself invalidate the recovery particularly when the official witnesses have furnished a consistent account of the occurrence. The defence has not demonstrated any specific circumstance establishing that the recovery was fabricated or that the witnesses had any reason to falsely implicate the appellant. The objection, therefore, is devoid of legal force and does not undermine the credibility of the prosecution evidence or furnish any valid ground for its rejection.

11. We have also examined the discrepancy concerning the date of occurrence and the omission of its date and time from the relevant column at the top of the FIR. The prosecution witnesses maintained that the occurrence took place at about 11:30 pm on 24.06.2024 whereas the memo of arrest and recovery bears the date 25.06.2024 and the FIR records the time of recovery as 11:30 pm on 25.06.2024. The complainant attributed this discrepancy to an inadvertent mistake while PW.3 ASI Ashbeel Victor has explained that he had inadvertently omitted the relevant particulars while recording the FIR, however, a bare perusal of FIR reveals that the time of recovery is recorded as 11:30 pm on 25.06.2024 notwithstanding the omission of the date and time of occurrence from the relevant column. The prosecution account further shows that the raiding party returned to P.S. at about 1:30 am under Roznamcha entry No.14 and that the recovered property was handed over to the Malkhana Moharrir on 25.06.2024. Thus, the dates reflected in the relevant proceedings are not necessarily inconsistent with the prosecution's version that the occurrence took place at 11:30 pm. on 24.06.2024 shortly before midnight. It is a matter of common understanding that after the alleged recovery the complainant would have required reasonable time to complete the necessary formalities including the arrest of appellant, weighing and sealing of the recovered narcotic substance and preparation of the relevant documents. Such proceedings could reasonably have taken more than half an hour in which event the date would naturally have changed from 24.06.2024 to 25.06.2024. Therefore, mere difference in dates when examined in the context of the time of occurrence and the procedural formalities required to be completed thereafter does not by itself establish any material contradiction or cast doubt upon the prosecution case. The omission of the date and time from the FIR is

an irregularity which deserves scrutiny, however, in the absence of any demonstrated prejudice to the defence or any other material circumstance indicating fabrication of the recovery, it does not, by itself, discredit the entire prosecution case. We are, therefore, not persuaded to treat this discrepancy as sufficient to displace the otherwise consistent evidence regarding the recovery.

12. The next objection concerns the safe custody and safe transmission of the samples for chemical examination. In this regard, the prosecution has examined PW.3 ASI Ashbeel Victor (Malkhana Moharrir) and PW.4 PC Syed Fakhar Abbas Jaffri. The Malkhana Moharrir has testified that on 25.06.2024 he received three sealed sample parcels and one sealed parcel containing the remaining case property, made entry No.342 in Register No.XIX and retained the property in the Malkhana. He has further deposed that on 26.06.2024 he handed over the three sealed sample parcels to PW.4 PC Fakhar Abbas along with the road certificate for delivery to the chemical examiner. This witness has further testified that he received the parcels, proceeded to the Sindh Government Laboratory under departure Roznamcha entry No.5 at 10:00 am, deposited the samples there and returned to P.S. at about 3:15 pm under entry No.10 after obtaining the receipt. Both witnesses have maintained that the samples remained intact and were not tampered with during the relevant period. This piece of evidence read alongside the malkhana entry, road certificate, sample receipt and chemical examination report provides a coherent account of the safe custody and safe transmission of the samples to the officer of chemical examiner. The chemical examination report, available at Ex.3/G, confirms that the three sealed sample parcels each weighing 10 grams were received by the laboratory on 26.06.2024 under Memo No.949 and that their contents tested positive for charas. No specific material has been pointed in the evidence discussed before us which establishes that the seals were broken, the samples were substituted or the parcels examined by the laboratory were different from those dispatched for analysis. In these circumstances, the objection regarding the chain of custody does not establish a reasonable doubt sufficient to discredit the chemical examination report.

13. It is a settled proposition of law that a chemical examination report cannot independently establish the appellant's possession of the narcotic substance, the prosecution must first prove the recovery and then establish a

reliable link between the recovered substance and the samples examined. In the case in hand, the testimony of PW.1 complainant Inspector Umer Sana and mashir PW.2 PC Mehboob Ali establishes the recovery while the evidence of Malkhana Moharrir PW.3 ASI Ashbeel Victor and PW.4 PC Fakhar Abbas explains the subsequent custody and transmission of the samples. The chemical examination report confirms the nature of the substance contained in the sample parcels. This piece of evidence considered together supports the prosecution case. The minor discrepancy in the date recorded in the recovery memo when assessed in the context of the stated time of occurrence and the subsequent entries does not negate the recovery or break the evidentiary link established by the prosecution.

14. We have further considered the appellant's explanation recorded under Section 342, Cr.P.C. wherein he claimed that he had gone to Mehmoodabad with his father and daughter to purchase biryani and was subsequently taken to P.S. and falsely implicated in this case. The appellant is entitled to have his defence assessed fairly and independently of any weakness in his own evidence. Nevertheless, his explanation remains unsupported by any evidence identifying the persons allegedly responsible for his apprehension or otherwise substantiating the asserted false implication. Mere failure of an accused to enter the witness box or produce defence evidence cannot cure a deficiency in the prosecution case, equally, however, an unsubstantiated plea of false implication cannot displace reliable prosecution evidence that independently establishes guilt. In the case in hand, the prosecution evidence concerning the recovery and the subsequent handling of the samples stands on its own footing and is not rendered doubtful merely because denial of the appellant.

15. The cumulative effect of the evidence establishes that the appellant was apprehended at the place and time as projected by the prosecution, that 2900 grams of charas were recovered from the shopper hanging on the handle of his motorcycle and that the recovered substance was subjected to chemical examination through a chain of custody supported by the testimony of the relevant witnesses and the documentary record. The discrepancies highlighted by the defence have been examined individually and collectively, but none in the circumstances of this case has been shown to undermine the essential prosecution case or create a reasonable doubt concerning the recovery and identity of the narcotic substance. The benefit of doubt is

undoubtedly a valuable right of an accused, but it must arise from a reasonable and legally sustainable doubt founded upon the evidence rather than from a mere possibility or an isolated discrepancy having no material bearing upon the prosecution case. We are satisfied that the learned trial Court has properly appreciated the material evidence and that its conclusion regarding the appellant's guilt calls for no interference.

16. As regards the quantum of sentence, the learned trial Court has sentenced the appellant to ten (10) years' rigorous imprisonment and imposed a fine of Rs.200,000/- with a further six (06) months' simple imprisonment in default of payment of fine besides extending the benefit of Section 382-B, Cr.P.C. We have considered the nature and gravity of the offence, the quantity of charas proved to have been recovered from the appellant and the applicable statutory provisions. The conviction recorded by the learned trial Court does not call for interference nor has any infirmity been demonstrated warranting its reversal. Nevertheless, the determination of an appropriate sentence requires due consideration of the circumstances peculiar to the convict. In the case in hand, the appellant's young age and the fact that he is the sole breadwinner of his family constitute mitigating circumstances which justify a measured reduction in the substantive term of imprisonment without undermining the seriousness of the offence or the deterrent purpose of punishment. Accordingly, while maintaining the conviction and the fine imposed by the learned trial Court, we reduce the substantive sentence of rigorous imprisonment from ten (10) years to nine (09) years. The sentence of simple imprisonment in default of payment of fine is also reduced from six (06) months to one (01) month. The benefit of Section 382-B, Cr.P.C. as extended by the learned trial Court shall remain intact.

17. Subject to foregoing modification in the sentence, this Criminal Appeal No.440 of 2025 stands disposed of.

JUDGE

JUDGE