

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Appeal No. 165 of 2024****Present Before:****Justice Zafar Ahmed Rajput****Justice Miran Muhammad Shah**

Appellant : Abdul Nasir S/o Muhammad Essa,
Through Mr. Muhammad Naseeruddin,
Advocate.

Respondent : The State
Through Mr. Mumtaz Ali Shah,
Asstt. Prosecutor General, Sindh.

Date of hearing : 19.08.2025.

Date of judgment : 19.08.2025.

J U D G M E N T

MIRAN MUHAMMAD SHAH, J. Through this Criminal Appeal, appellant, Abdul Nasir son of Muhammad Essa ha assailed the judgment, dated 22.02.2024, passed by the learned IVth Additional Sessions Judge / Special Judge (CNS), Malir Karachi, in Sessions Case No.2165 of 2023, arisen out of F.I.R No. 50 of 2023, registered at Police Station Ibrahim Hyder, Karachi, under sections 6, 9 (i), 3(e) of the Control of Narcotic Substances Act, 1997, ("Act of 1997"), whereby he was convicted under Section 265-H(ii), Cr.P.C and sentenced to suffer Imprisonment for life with fine of Rs. 10,00,000/-, (Rupees Ten lacs only), in case of default thereof, he should suffer S.I. for six (6) months more. He was; however, extended benefit of Section 382-B of Criminal Procedure Code, 1898.

2. It is alleged that, on 09.02.2023 at 0130 hours, police party of P.S. Ibrahim Hyderi, headed by SIP Muhammad Younus jatt, apprehended the appellant from a rear seat of rickshaw No.D-

18/15449 Sazgar, at main Rehri Road, Colombo City, Samandri Kinara (sea side), Ibrahim Hyderi, Karachi and recovered 40 packets of Charas wrapped in blue color wrappers, bearing Maxwell house on each plastic packet, weighing one kilogram each packet total weight 40 kilograms of forty packets, cash amount 5200/- only, under a memo of arrest and recovery prepared in presence of mashirs PC Rashid Ali and PC Sheraz; for that he was booked in the aforesaid FIR.

3. During interrogation appellant disclosed the names of his accomplice as Jaleel Ahmed and Muhammad Tariq. After usual investigation, police submitted the charge-sheet under Section 173, Cr.P.C. against him. Having been supplied requisite documents as provided under section 265-C, Cr. P.C., the Trial Court framed a formal charge against the accused, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined four witnesses. **PW-1** SIP Muhammad Younus jatt, complainant, at Ex.3, who produced departure entry No.48, memo of arrest and recovery, FIR, entry No. 53, entry No. 22/2023 of register No. 19, memo of place of incident at Ex. 3/A to 3/F respectively; **PW-2**, PC Rashid Ali, mashir, at Ex.4; **PW-3**, SIP Zakir Hussain, I.O., at Ex.5, who produced entries Nos.2, 9, 14 & 17 respectively, CRO of accused, CDR of cell phone number given by accused, site sketch, letter to ETO, Civic Center, Karachi, vehicle (rickshaw) registration detail, letter to incharge, Chemical Examiner, Karachi, receipt of Chemical Examiner and Chemical Examiner report, at Ex.5/A to 5/K respectively; and **PW-4** Head Mohrar WHC- Muhammad Faisal, at Ex.6, who during evidence verified Extract from Register No. XIX at Ex. 3/E.

5. The statement of appellant under section 342, Cr. P.C. was recorded at Ex. 8, wherein he denied the allegations against him and claimed to be innocent. He deposed that nothing was recovered from his possession. He was passenger of the rickshaw. Police has arrested him and made him sit in the police mobile then brought at Police Station along with rickshaw. He, however, neither examined himself on oath, nor even led any evidence in his defence. The Trial Court after hearing the learning counsel for the appellant as well as ADPP for the State convicted the appellant and sentenced him as mentioned above, vide impugned judgment.

6. We have heard the learned counsel for the appellant and APG, Sindh and scanned the material available on record with their assistance.

7. Learned counsel for the appellant *inter alia* contended that the prosecution has failed to prove the recovery of alleged narcotic drug, yet the Trial Court recorded conviction assigning the reasons, which are contrary to the evidence available on record; that the learned Trial Court has failed to see the facts that without examination of independent witnesses, the conviction is not according to law and the learned Trial Court ignored the mandatory provision of 103 Cr.P.C and convicted the appellant without examining the independent witnesses; that there are material contradictions in the statement of the witnesses, which have made the recovery of alleged narcotic drug highly doubtful, but the Trial Court failed to appreciate such aspect of the case; that prosecution has failed to prove safe custody of the case property and its safe transmission to Chemical Examiner; that the Chemical Examiner has not observed the protocols for conducting test;

as such, his report is not in accordance with the guidelines enunciated by the Apex Court in number of cases, and the Trial Court by overlooking the above important aspects of the case has erred in law by holding the appellant guilty of the offence on the basis of defective report of Chemical Examiner; that the alleged recovery of Charas from the possession of the appellant is doubtful and despite prior information, the complainant failed to associate any private person to witness search and recovery; the benefit thereof should be extended to him; hence, the impugned Judgment is liable to be set aside.

8. Conversely, learned APG while supporting the impugned Judgment has maintained that the prosecution has proved its case against the appellant beyond any doubt; that prosecution has produced evidence to establish safe custody and safe transmission of the case property; that the Chemical Examiner has observed the requisite protocol in examination of case property; that the impugned Judgment is based on proper appreciation of evidence on record.

9. It appears from the statements of PWs that, on 09.02.2023, at main Rehri road, Colombo City, Samandri Kinara (sea side), Ibrahim Hyderi, Karachi, police party on secret information apprehended the appellant from a rickshaw No. D-18/15449 Sazgar, and recovered 40 packets of Charas wrapped in blue colour wrappers, bearing Maxwell house on each plastic packet, weighing one kilogram each packet total weight 40 kilograms of forty packets, from the rear seat of said rickshaw. In this regard, the prosecution based its case on the testimony of ocular account furnished by **PW-1** SIP Muhammad Younus Jatt (Ex.03) and **PW-2** PC Rashid Ali (Ex.04), who arrested the appellant red handed along with alleged narcotic drug, which was

taken into possession vide recovery memo (Ex.3/B). Both the PWs were put at lengthy cross-examination but they remained firm to their depositions and nothing came out to suggest that the appellant was falsely implicated by them or they have any animosity with him.

10. On reassessment of evidence of PWs, it is observed that prosecution had taken all required necessary steps to ensure the safe and timely custody of the recovered material, which ultimately through report of Chemical Examiner (Ex.5-K) was confirmed as Charas. The recovered Charas was sealed at the spot, handed over to PW-4 HC Muhammad Faisal, Head Mohrar (Ex.06), who incorporated this fact in Register No. XIX (Ex.3/E) and kept the contraband in the Malkhana. He has affirmed the fact of safe custody of the case property before Trial Court as well. PW-3, I.O. SIP Zakir Hussain (Ex.05) delivered the sealed parcel to the office of Chemical Examiner and he himself received the FSL report (Ex.05/K) from the Office of Chemical Examiner. He was also cross-examined by the defence counsel but nothing came on record to challenge the safe transmission of the case property to the Chemical Examiner. Hence, the evidence of P.Ws. has remained unshattered on the points of arrest and recovery of Charas from appellant and its safe custody in Malkhana and safe transmission to the office of Chemical Examiner.

11. As regards the contention of learned counsel for the appellant regarding non-association of a private witness(es) is concerned, it is a settled proposition that the testimonies of the official witness are required to be treated in the same manner as the testimony of any other witness, unless some enmity with the witness is proved. In a case of *Zain Ali v. The State* (2023 SCMR 1669), it has been observed that

“This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact that there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed, in such regard. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.” In this context Section 25 of the Act, 1997 being relevant is reproduced hereunder:

“25. Mode of making searches and arrest. The provisions of the Code of Criminal Procedure, 1898, except those of section 103, shall, mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these sections.”

Needless to mention that Section 103, Cr.P.C is excluded for the offences falling under the Act of 1997 by the Section 25 *ibid*. In this respect, reliance is placed on the case of *Abdul Rasheed vs. The State* (2009 SCMR 306), wherein the Apex Court has observed as under: -

*“So far as the arguments regarding non-association of public witness at the time of raid by the raiding party is concerned, suffice it to observe that application of provision of Section 103, Cr.P.C. has been excluded under section 25 of the Act, as laid down by this Court in *Fida Jan vs. The State* (2001 SCMR 36). The prosecution witness being member of party were the natural witness and their testimony cannot be discarded merely on the ground that they were the employees of the police force. Reference in this context may be made to *Muhammad Azeem vs. the State* (PLD 1996 SC 67); *Muhammad Hanif vs. The State* (2003 SCMR 1237); *Riaz Ahmed vs. The State* (2004 SCMR 988); and *Naseer Ahmed vs. The State* (2004 SCMR 1361).”*

12. As regards the next contention of learned counsel for the appellant regarding applying of protocols by the Chemical Examiner, it may be observed that Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 requires reference to the protocols applied for the test or analysis as per Form-II. We have scanned the Chemical Examiner's report (Ex.05/K) and are of the opinion that the same significantly meets the rudiments of Rule 6 and Form-II. It reflects from perusal of the Ex.05/K that it bears reference of letter through which sample was deposited, date of receiving sample, name of official, who deposited the sample, the condition of the seals on the packet, description of article in the parcel, gross and net weight of Charas, physical examination, fast blue B salt test, TLC test, and the result of the examination. It further appears that the Chemical Examiner has followed the analysis protocols which are in line with the United Nations Office on Drug and Crime (UNODC) Guidelines of 2009. We are, therefore, of the view that the Chemical Examiner's report qualifies to meet the required standards and it is in consonance with Form-II referred to in Rule 6 (ibid). In the case of *Shafaullah Khan vs. The State* (2021 SCMR 2005), the Apex Court has held that the report of Chemical Analysis must contain (i) the test applied (ii) the protocols applied to carry out tests (iii) the result of the tests. Ex.6/H bears aforesaid all three requisites. Hence, the contention of learned counsel for the appellant is contrary to record.

13. As regards to the contention of learned Counsel for the appellant that there are contradictions and discrepancies in the evidence of prosecution witnesses and raised many technical objections, however, these do not cast doubt on the guilt of the appellant in the judicial mind

of this Court. Instead, these discrepancies are found to be trivial and can be overlooked, especially when the factum of recovery, the chain of safe custody, and the secure transmission of contraband are proven beyond doubt. It cannot lose the sight of the fact that police officials routinely conduct the process of recovery of narcotic substances. Overtime, recollections of exact things, this does imply that witness did not provide truthful testimony, rather it shows the fallibility of memory and the routine nature of such proceedings. By now, it is well settled that prosecution witnesses are not to be expected to provide statements with mathematical precision, but to provide truthful testimony to the best of their recollection. Minor discrepancies or inconsistencies in testimony should be disregarded as long as the core facts remain consistent. It follows that parrot like narration of facts with mathematical precision is not required, nor necessarily trustworthy. As held by the Apex Court in *Aqil v. The State* (2023 SCMR 831), parrot like statements are discredited by the Courts. It is a normal course of human conduct that minor discrepancies may occur while narrating a particular incident. In appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Apex Court in *Shamsher Ahmed & another v. The State & others* (2022 SCMR 1931) unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case, rather they should be ignored. The accused cannot claim a premium for such minor discrepancies, and attaching too much importance to such insignificant inconsistencies would destabilize the purpose of criminal administration of justice, which is not solely intended for acquittal based on minor discrepancies.

14. In view of the above discussed facts and circumstances of the case, we have found that the prosecution has proved its case against the appellant beyond any reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence in shape of ocular and documentary evidence corroborated by the report of Chemical Examiner. Therefore, the impugned judgment does not suffer from any illegality or infirmity calling for interference of this Court in its appellate jurisdiction. Consequently, instant appeal is dismissed by maintaining the conviction and sentence awarded to appellant.

15. Above are the reasons of our short order dated **19.08.2025**, whereby the instant appeal was dismissed.

JUDGE

JUDGE