

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 289 of 2023

Before:

Acting Chief Justice Zafar Ahmed Rajput  
Justice Miran Muhammad Shah

**Appellant** : Abdul Hameed S/o Mohammad Sadique,  
Through Mr. G.M. Korai, Advocate.

**Respondent** : The State, through Mr. Habib Ahmed,  
Special Prosecutor, ANF.

**Date of hearing** : 17.09.2025

**Date of judgment** : 10.10.2025

## J U D G M E N T

**MIRAN MUHAMMAD SHAH, J.** Through this Criminal Appeal, appellant, Abdul Hameed son of Mohammad Sadique has assailed the judgment, dated 15.05.2023, passed by the learned Special Court-II, (CNS), Karachi, in Special Case No.12 of 2020, arising out of F.I.R No. 02 of 2020, registered at Police Station ANF-Clifton, Karachi, under sections 9-C, read with Sections 14/15 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. 2,00,000/-, (*Rupees Two Hundred Thousand only*), in case of default thereof, he should suffer R.I. for two (2) years more. He was; however, extended benefit of Section 382-B, CrPC.

2. It is alleged that, on 15.01.2020 at 1430 hours, police party of P.S. ANF-Clifton, Karachi, headed by SI Qamar Deen, arrested the appellant from a VIGO bearing Registration No. KS-7491, at main Hub River Road near Zalzal Hotel, Karachi on being found in possession of 40 packets of Charas, each weighing 1200 grams, total 48 kilograms; for that he was booked in the aforesaid FIR. During interrogation appellant disclosed the name of his accomplice as Mohammad Ali alias Haji Khan son of Mohammad Zai. After usual investigation, police submitted the charge-sheet under Section 173, CrPC

against him. Having been supplied requisite documents as provided under section 265-C, CrPC, the Trial Court framed a formal charge against him, to which he pleaded not guilty and claimed to be tried.

3. To prove its case, prosecution examined **PW-1**, Inspector Mohammad Hassan Khoharo, *malkhana incharge*, at Ex.6, who produced attested photocopy of Register No. 19 and two roznamcha entries at Ex. 6/A to 6/C respectively; **PW-2**, PC Amir Khan, *parcel carrier*, at Ex.7, who produced roznamcha entry at Ex.7/A; **PW-3**, PC Ameer Hamza, *mashir of arrest and recovery*, at Ex.8, who produced memo of arrest and recovery at Ex.8/A and **PW-4**, SI Qamar Deen, *complainant / I.O* at Ex.9, who produced departure entry No.07, arrival entry No. 11, entry No. 12 for handing over the case property to malkhana incharge, FIR, letter addressed to Chemical Examiner, Examiner's Report (2 folios), two letters addressed to Incharge CPLC, letter addressed to Incharge CRO, letter written by Khalid Khan for seeking criminal record of appellant, four letters written by Khaliduddin for seeking criminal record and for family tree, ground checking, CDR of appellant, two letters addressed to Excise Department, reply of Excise Department alongwith hard copy retrieved from computer regarding vehicle, reply of SSP ACLC, CPLC, copy of FIRs (two folios), attested copy addressed to Daud Showroom Quetta, unserved envelope which returned, inspection report of double cabin vehicle and photographs of inspection at Exh. 9/A to 9/U-10, respectively. The statement of appellant under section 342, CrPC was recorded at Ex. 11, wherein he denied the allegations against him and claimed to be innocent. 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 SPP for ANF convicted the appellant and sentenced him as mentioned above, vide impugned judgment.

4. We have heard the learned counsel for the appellant and Special Prosecutor, ANF and scanned the material available on record with their assistance.

5. Learned counsel for the appellant has *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 provisions of section 103, Cr.P.C and convicted the appellant without examining the independent witnesses; that there are material contradictions in the depositions 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 over sighting 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.

6. Conversely, learned Special Prosecutor, ANF while supporting the impugned Judgment has maintained that the prosecution has proved its case against the appellant beyond any doubt; that prosecution has produced

convincing 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, hence, the instant appeal is liable to be dismissed.

7. It appears from the statements of PWs that, on 15.01.2020, at main Hub River Road, near Zalzal Hotel, Karachi, police party on spy information arrested the appellant from a VIGO bearing Registration No. KS-7491, and recovered 40 packets of charas wrapped in yellow solution tape, each weighing 1200/1200 grams, total weight 48 kilograms, from the secret cavity of the said vehicle. **PW-4**, SI Qamar Deen, *complainant / I.O.*, separated 10/10 grams charas from each packet and sealed the same for chemical analysis. The prosecution, in this regard, has based its case on the testimony of ocular account furnished by **PW-3** PC Ameer Hamza (Ex.08) and **PW-4** SI Qamar Deen (Ex.09), who arrested the appellant red handed along with alleged charas, which was taken into possession vide recovery memo (Ex.8/A). As per deposition of *malkhana incharge*, **PW-1** Inspector Mohammad Hassan Khoharo, the recovered charas was entered on the day of recovery in relevant Register No. 19 (Ex. 6/A) and kept in *malkhana* in safe custody. The sample drawn from recovered charas sent to chemical examiner on very next day, and no question challenging the safe custody of recovered charas and safe transmission of the sealed samples has been put to PWs by the defence counsel. All four PWs were put at lengthy cross-examination by the defence 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.

8. From the evidence on record, it is transpired that no procedural infirmity was committed by the ANF officials while recovering huge quantity of Charas. Timely, recovery is made at the pointation of the appellant and the weighing of the quantity was made at the spot. Once the appellant along with the vehicle and the recovered narcotics was brought to the police station where FIR was lodged. The recovered charas was deposited in the Malkhana. The sealed parcel sent to Chemical Examiner for analysis, who has observed relevant rules and protocols for analyzing the same and furnished a positive report.

9. It further appears that 48 kilograms charas has been recovered from the appellant. It is difficult to believe that such a huge quantity of narcotics can be foisted upon a person. The evidence brought before the Trial Court is confidence inspiring. No doubt, all the PWs are police officials, but their evidence being confidence inspiring is liable to be accepted in the light of the dictum laid down by the Apex Court in the case of Muhammad Hanif v. The State (2003 SCMR 1237) whereby it has been held that the police officials are equally good witnesses and could be relied if their testimony remains unshattered during cross examination. It has also been held in the case of Liaquat Ali and another v. The State (2022 SCMR 1097) that:

*"This Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioners in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remains un-shattered during cross-examination."*

10. The defence plea taken by the appellant is that he was picked up on the way, when he was coming from Quetta to Karachi, however no further evidence or further elaborated facts have been narrated by the defence counsel while in cross-examining of the Investigation Officer nor any proof of such movement has been produced by the appellant in his statement. In fact, the appellant in his statement has only deposed against the ANF officials for impleading him in this case but again no enmity of any sort, as to why ANF official would implicate him in a false case, was deposed by him. The argument that the complainant has acted also as the Investigating Officer carries no weight. There is plethora of case law, wherein this point has been deliberated in favour of prosecution. Reliance in this regard may be placed on the case of Zafar v. the State (2008 SCMR 1254), wherein the Apex Court has observed, as under

*“11. So far as the objection of the learned counsel for the appellant that the Investigating Officer is the complainant and the witness of the occurrence and recovery, the matter has been dealt with by this Court in the case of State through Advocate-General Sindh v. Bashir and others PLD 1997 SC 408, wherein it is observed that a Police Officer is not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an Investigating Officer, so long as it does not in any way prejudice the accused person. Though the Investigating Officer and other prosecution witnesses are employees of A.N.F., they had no animosity or rancor against the appellant to plant such a huge quantity of narcotic material upon him. The defence has not produced any such evidence to establish animosity qua the prosecution D witnesses. All the prosecution witnesses have deposed in line to support the prosecution case. The witnesses have passed the test of lengthy cross-examination but the defence failed to make any dent in the prosecution story or to extract any material contradiction fatal to the prosecution case. The prosecution has been successful to bring home the guilt of the appellant to the hilt by placing ocular account, recovery of narcotic material, the Chemical Examiner report G.1, Exh.P.3. The learned*

*counsel for the appellant has not been able to point out any error of law in the impugned judgment and the same is unexceptionable."*

11. It may be observed that the menace of drugs is increasing day by day due to various reasons, which is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in anti-state/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of charas, separating the samples from each packet in a prescribed manner, sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the Trial Court.

12. In view of the above facts and discussion, 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.

**JUDGE**

**ACTING CHIEF JUSTICE**