

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Criminal Jail Appeal No. D-01 of 2022

Before:

*Mr. Justice Shamsuddin Abbasi,
Mr. Justice Ali Haider 'Ada'*

Appellants: 1. Abdullah S/o Hazoor Bux, Shahwani
2. Amanullah S/o Khalid Lehri,
through Mr. Abdul Hakeem Brohi, Advocate.

Respondent: The State, *through* Mr. Riaz Hussain Khoso,
Deputy Attorney General and Mr. Asif Hussain
Chandio, Special Public Prosecutor (Customs)

Date of Hearing: 27.08.2025.

Date of Decision: 10.09.2025.

J U D G M E N T

Ali Haider 'Ada':J . - Through the instant appeal, the appellants have called in question the judgment dated 20.01.2022, passed by the learned Special Judge (CNS), Jacobabad, in Special Case No.47 of 2020, titled The State v. Abdullah and another. The said case arose out of Crime No.01/2020, registered at Customs Check Post, Jacobabad, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997. The learned trial Court, after appraisal of the entire evidence and consideration of all aspects of the matter, convicted both the appellants and sentenced them to rigorous imprisonment for life with a fine of Rs.100,000/- each, and in default of payment of fine, they were directed to suffer further simple imprisonment for one year. However, the benefit of Section 382-B, Cr.P.C. was extended to them.

2. The nutshell of the prosecution case is that on 16.08.2020, within the jurisdiction of Customs Check Post, Jacobabad, the appellants were allegedly found engaged in trafficking of charas through a Hino truck bearing Registration No. TKY-640. Acting upon spy information, the police party intercepted the said vehicle and, upon search, recovered 560 kilograms of charas, each packet weighing one kilogram and bearing different markings. Thereafter, the recovered narcotics along with the vehicle were brought to the Customs Check Post, where, after completion

of necessary codal formalities, the FIR was lodged. After registration of the FIR, investigation was carried out, and on the very next day the case property was dispatched to the Chemical Laboratory at Karachi for analysis. The Investigating Officer also prepared the memo of place of incident and issued a letter to the Motor Registration Authority, Quetta, for verification of the registration particulars of the vehicle. Upon completion of the usual investigation, the challan was submitted and the case was sent up before the trial Court. The learned trial Court, after receiving the final report, took cognizance of the matter, supplied requisite documents to the appellants, and on 12.10.2020 framed a charge against them under Section 9(c) of the CNS Act, to which both the appellants pleaded not guilty and claimed to be tried.

3. Thereafter, the learned trial Court allowed the prosecution to lead its evidence. In this regard, Inspector Farooq Ahmed, the complainant of the case, was examined, who during his deposition produced and exhibited the notice under Section 171 of the Customs Act, memo of place of recovery, personal search of the accused, copy of FIR, inventory report, and the letter addressed to the Chemical Examiner. The prosecution then examined Muhammad Ayoob, a Customs Constable, and thereafter Inspector Ayaz Hussain, the Investigating Officer, who produced and exhibited the photographs of the vehicle's secret cavities, memo of recovery of the truck, memo of place of incident, letter issued to the Excise and Taxation/Motor Registration Authority, Quetta, for verification of the vehicle, the Chemical Examiner's report, as well as the examination report of the vehicle. Upon recording of these witnesses, the learned Special Prosecutor closed the prosecution side vide statement dated 02.06.2021.

4. Thereafter, the learned trial Court recorded the statements of the appellants/accused under Section 342, Cr.P.C, wherein they professed innocence and pleaded for acquittal. After hearing the parties through their respective learned counsel, the learned trial Court proceeded to deliver the impugned judgment, which has now been assailed through the present appeal.

5. Learned counsel for the appellants argued that although a huge quantity of narcotics was shown to have been recovered, the learned trial Court failed to consider the material contradictions brought on record

during cross-examination of prosecution witnesses. He further contended that the entire case of the prosecution rests solely upon the testimony of official witnesses, yet the trial Court did not properly appreciate this aspect and proceeded to convict the appellants. Learned counsel also submitted that, as per jail roll, the appellants have already served a sentence, including remissions, amounting to eleven years, which aspect ought to be considered.

6. Conversely, the learned Deputy Attorney General assisted by the learned Special Public Prosecutor for Customs supported the impugned judgment and submitted that a huge quantity of contraband was recovered from the secret cavities of the truck driven by the appellants, who were the driver and co-driver, and thus fully responsible. It was argued that such a vast recovery could not possibly have been foisted upon them. They further contended that minor discrepancies in the testimony of witnesses are immaterial when the ocular account is supported by documentary evidence as the chemical examiner's report, which is positive in nature. It was also argued that the mere fact that the recovery was effected in the presence of customs officials is not a valid ground for acquittal, as functionaries of law are as good witnesses as private persons. Furthermore, in narcotics cases, independent witnesses often avoid coming forward against smugglers due to societal pressures; hence, the learned trial Court rightly appreciated the evidence and convicted the appellants.

7. Heard the arguments advanced by learned counsel for the parties and perused the material available on the record with due care and caution under judicial scrutiny.

8. According to the prosecution, 560 kilograms of charas were recovered from the secret cavities of the vehicle in question. The case of the prosecution is that the Customs authorities, having received spy information regarding transportation of a huge quantity of narcotics through the pointed vehicle, signaled the truck to stop; however, instead of complying, the driver accelerated and attempted to flee. The truck was thereafter chased and eventually intercepted, whereupon it was noticed that the fuel tank was unusually large in size. Upon further inspection at the Check Post, it was discovered that the back portion of the truck had

been welded. After removal of the welding, 560 packets of charas, each weighing one kilogram and of foreign origin, were recovered. Upon completion of codal formalities, the case was sent up for trial, and after recording the prosecution evidence, the appellants were convicted. As per jail roll, the appellants were arrested on 16.08.2020, and by 06.01.2025, they have served substantive sentence of four years, four months, and twenty days. Now advertent to the case of co-appellant Amanullah, it is significant to observe that he did not take any specific plea that he had no knowledge of the contraband recovered from the vehicle; rather, the record shows that he was acting in full support of his co-appellant Abdullah, the driver. As regards the role of Abdullah, being the driver of the vehicle, he was admittedly in charge of and in control over it. Hence, whatever articles were lying in the vehicle were within his custody and control, thereby constituting possession in the eyes of law.

9. In the above circumstances, the prosecution successfully discharged its primary burden, thereby shifting the onus upon the appellants within the contemplation of Section 29 of the Control of Narcotic Substances Act, 1997. Such statutory presumption required the appellants to create a reasonable doubt in the prosecution case and to establish, at least to the extent of probability, that they were falsely implicated or that the huge quantity of narcotics was foisted upon them. However, the appellants have miserably failed to discharge such burden. There is no denial of the fact that an enormous quantity of narcotics comprising foreign origin charas was recovered from the secret cavities of the vehicle. No convincing explanation or material was brought on record by the defence to demonstrate how it was possible that the driver or his co-driver, had no knowledge of such a massive consignment of narcotics. It is, therefore, clear that the prosecution case rests on proper appraisal of evidence supported by cogent reasoning. No material irregularity, illegality, or misappreciation of evidence has been pointed out. Reliance is placed upon the case of *Muhammad Noor v. The State reported in (2010 SCMR 927)*, wherein the Hon'ble Court observed as under:

8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the

case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:--

The next point raised by the learned counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Code. The learned counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned counsel is without force on the face of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable."

10. It is well settled that in cases involving narcotics, once the prosecution proves the salient features of recovery, safe custody, and chemical examination, unnecessary technicalities should not be allowed to defeat the very purpose of the law. The risk of narcotics is one of the gravest challenges faced by this country, as proceeds from narcotics trade are often utilized in anti-state and terrorist activities, apart from severely damaging the fabric of society. Thus, when the prosecution establishes recovery of a huge consignment of contraband from the possession and control of the accused, and when no plausible defence is available, conviction must follow. In this context, support is drawn from the case of *Zain Ali vs The State 2023 SCMR 1669*, as held that:

9. The menace of drugs has taken alarming dimensions in this country partly because of the ineffective and lackadaisical enforcement of the laws and procedures and cavalier manner in which the agencies and at times Courts of the country address a problem of such serious dimensions. Studies based on conferences and seminars have very often shown that the menace is deep rooted. This menace 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 narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and 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 learned High Court. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the appellant has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

11. There is nothing on record, nor was anything suggested during cross-examination, to indicate that the prosecution witnesses had any motive, bias, or enmity against the appellants which could have led to their false implication. In this regard, references may be made to the judgment of the Hon'ble Supreme Court in *Muhammad Azam v. The State (PLD 1996 SC 67)*, *Muhammad Hanif v. The State (2003 SCMR 1237)*, *Riaz Ahmad v. The State (2004 SCMR 988)*, *Naseer Ahmad v. The State (2003 SCMR 1361)*, and *Zafar v. The State (2008 SCMR 1254)*.

12. Upon reappraisal of the evidence, we are of the considered view that the appellants cannot be exonerated from the liability of transporting charas, as the Hon'ble Supreme Court in *Ghulam Qadir v. The State (PLD 2006 SC 61)* has categorically held that the driver of a vehicle is responsible for the contraband found therein. The prosecution case primarily rests upon the statements of official witnesses, who, being functionaries of the State, had no apparent reason or motive to falsely implicate the appellants. It is hardly conceivable that such a huge quantity of contraband could be foisted upon the accused merely to fabricate a charge, particularly in the absence of any animus or enmity. The witnesses, while deposing before the Court, remained consistent and confidence-inspiring throughout. Reliance is placed on the case of *Mushtaq Ahmad v. The State and another (2020 SCMR 474)*, wherein the Hon'ble Supreme Court of Pakistan was pleased to hold as under:--

"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring".

13. In another case of *Shabbir Hussain v. The State (2021 SCMR 198)*, the Honourable Supreme Court of Pakistan has observed as under:-

"Mehmood-ul-Hassan Inspector (PW-3) joined by Mumtaz Bibi Lady Constable (PW-4) in the witness box furnished details of the arrest and recovery. We have gone through their statements to find them in a comfortable and confident unison on all the salient aspects of the raid as well as details collateral therewith. Learned counsel for the petitioner has not been able to point out any substantial or major variation or contradiction in their statements that may possibly justify to exclude their testimony from consideration. On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status. Similarly, forensic report is sufficiently detailed to conclusively establish narcotic character of the contraband. The argument is otherwise not available to the petitioner as he never disputed the nature of substance being attributed to him nor attempted to summon the chemical analyst to vindicate his position. A challenge illusory as well as hyper-technical is beside the mark in the face of "proof beyond doubt" sufficient to prove the charge to the hilt. Petition fails. Leave declined."

14. The record reflects that the complainant reiterated the same facts as narrated in the FIR. He was subjected to cross-examination by the defence; however, nothing adverse to the prosecution case could be elicited from his testimony. The complainant gave a consistent account regarding his arrival at the spot, the manner in which the vehicle was signaled to stop, and the mode of recovery effected therefrom. To corroborate his version, the statement of the recovery witness was also recorded. He too was cross-examined on material aspects of the case but remained steadfast and consistent with the account furnished by the complainant. The manner in which the complainant had left the Police Station, as well as the procedure adopted during recovery, stood duly supported by the marginal witness. The Investigating Officer deposed that upon receipt of the FIR, he proceeded to the place of occurrence. He further deposed that he took possession of the same along with the truck through a recovery memo duly attested by the marginal witnesses. The Investigating Officer also prepared the site plan at the instance of the complainant and recorded the statements of the witnesses under the law. He was cross-examined on all material aspects, yet nothing detrimental to the prosecution case could be

brought on record. The case property was duly dispatched to the Chemical Laboratory within the prescribed time, and the report received therefrom confirmed that the recovered substance was narcotics. From the overall circumstances, it stands established that the prosecution successfully proved the charge against the accused beyond reasonable doubt. In this regard, reliance could be placed on *Liaquat Ali and another vs The State 2022 SCMR 1097*, wherein the Apex Court has held that:

So far as the argument of the learned counsel for the petitioner that the contraband charas, its safe custody and safe transmission is not established is concerned, the learned High Court has very ably dealt with this issue in paragraphs 18 and 19 of the impugned judgment while holding that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse and the time is consumed beyond 72 hours, it would automatically become instrumental to discard the prosecution case in all manners. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997. These Rules cannot in any manner frustrate the salient features of the prosecution case which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. If the series of acts which ultimately resulted into recovery of contraband narcotic are juxtaposed with the violation of the Rules due to one reason or the other as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features. The transportation of drugs either inside the country or sending it abroad has become a menace against morality, decency, public order, law and order situation which indirectly intrudes upon the sovereignty of the country. If this practice is allowed to continue it will squarely hamper the very purpose of the law on the subject and would squarely bring bad name for the country in the eyes of international community."

15. The Apex Court in the case of *Shamsher Ahmad and another v. The State and others (2022 SCMR 1931)* has held that:

"While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim

premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction."

The Apex Court in case titled *Kashif Amir v. The State (PLD 2010 Supreme Court 1052)* was pleased to hold that:

"Further, when a person is driving the vehicle, he is Incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor v. The State (2010 SCMR 927). Similarly, in the case of Nadir Khan v. State (1988 SCMR 1899) this court has observed that knowledge and awareness would be attributed to the Incharge of the vehicle."

16. As regards the defence plea raised by the appellants that they have been falsely implicated and that the contraband was foisted upon them, the record reflects otherwise. The appellants were apprehended at the spot, and from the secret cavities of the truck admittedly driven by one of them, a huge quantity of narcotics, packed in 560 packets, was recovered. The recovery was duly proved by the complainant/Investigating Officer and corroborated by the mashir/witness. Thus, it cannot reasonably be presumed that the appellants were unaware of the contraband hidden in the vehicle. Furthermore, the contention that the co-accused were merely travelling as conductor cannot be sustained. A truck is not a public transport vehicle wherein ordinarily board or travel; rather, it is meant exclusively for the carriage of goods. In the present case, the co-appellant, who was acting as conductor, as it is difficult to believe that the conductor, being in close association with the driver and present throughout the journey, would remain completely oblivious to the presence of such a huge quantity of narcotics hidden in the vehicle under their joint charge and control. Whilst in this case, evidence of the official witnesses remained straightforward, consistent, and confidence-inspiring, despite lengthy cross-examination, and nothing adverse could be elicited to create doubt about their credibility. No circumstance has been brought on record to suggest mala fide or false implication of the appellants in relation to such a massive recovery of narcotics. In this regard, reliance is placed on *Naveed Akhtar v. The State (2022 SCMR 1784)*.

17. It is by now a well-settled proposition of law that the testimony of police officials is as good as that of any private witness, unless it is

established that such officials were actuated by mala fides or had some animus against the accused. Reluctance of the general public to appear as witnesses in narcotics cases is a judicially recognized reality, and there exists no legal bar to placing reliance upon the statements of official witnesses, provided their testimony remains consistent and confidence-inspiring and withstands the test of cross-examination. Reliance is placed on *Faisal Shahzad v. The State* (2022 SCMR 905), wherein the Hon'ble Supreme Court of Pakistan reiterated this principle. Further in case of *Ajab Khan vs The State* 2022 SCMR 317, wherein held that:

The report of the Forensic Science Laboratory confirmed that all nineteen samples were subjected to chemical and instrumental analysis and each was found to contain narcotic substance. There was nothing on record to suggest that the safe custody or chain of custody of the samples had been compromised at any stage. In these circumstances, the Hon'ble Supreme Court dismissed the petition for leave to appeal, maintained the conviction and sentence of the accused, and further observed that in the absence of any apparent reason to falsely implicate the accused in possession of narcotics, the prosecution case stood proved. Reliance is placed on Shabbir Hussain v. The State (2021 SCMR 198).

18. For the foregoing reasons and discussion, it is evident that the prosecution has successfully established its case against the appellants through cogent, confidence-inspiring, and reliable evidence. The recovery of a huge quantity of narcotics from the vehicle admittedly driven by one of the appellants, coupled with the consistent and trustworthy testimony of the official witnesses, the positive report of the Forensic Science Laboratory, and the absence of any material suggesting mala fides or false implication, leave no room for doubt regarding the guilt of the appellants. In light of the above discussion, we find no illegality, irregularity, or misappreciation of evidence in the impugned judgment passed by the learned trial Court. Accordingly, the instant Criminal Jail appeal, being devoid of merit, is dismissed. The conviction and sentence awarded to the appellants through the impugned judgment are maintained.

JUDGE

JUDGE