

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No. D-55 of 2023

(Imdad Ganwas V. The State)

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Appellant:

Imdad Ganwas

Nemo

Respondent:

The State

Through Mr. Ali Anwar Kandhro,

Additional Prosecutor General.

Date of Hearing: 07.10.2025

Date of Judgment: 07.10.2025

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J U D G M E N T

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NISAR AHMED BHANBHRO, J. Through the instant Appeal, the Appellant Imdad Ganwas has challenged the judgment dated 20.06.2023 delivered by the Court of learned Sessions Judge/Special Judge for CNSA Kamber-Shahdadkot at Kamber wherein he was convicted and awarded sentence to suffer imprisonment for four years with fine of Rs.10,000/- and in case of default in payment of fine, to further undergo SI for three months.

2. The facts of prosecution case as portrayed in FIR are that on 12.03.2023 at about 1600 hours, at Nasirabad-Badeh road near Mondar Wah situated in Deh and Taluka Nasirabad, appellant was arrested by police party of P.S Nasirabad headed by SIP Muhammad Hanif, who recovered 3000 grams charas from his possession beside cash amount of Rs.200/- in presence of mashirs LNC Aijaz and LNC Mujahid Hussain.

3. A formal charge was framed against the appellant at Ex.3, to which he pleaded not guilty and claimed to be tried vide his plea.

4. The prosecution, in order to prove its case examined PW complainant SIP Muhammad Hanif at Ex.4, PW-2 mashir LNC Aijaz at Ex.5, PW-3 I.O/SIP Mansoor Ali at Ex.6, PW-4 WASI Ali Akbar at Ex.7, and PW-5 PC Muhammad Saleem at Ex.8. Thereafter, learned prosecutor for the State closed the side of prosecution evidence.

5. After closure of the prosecution side, statement of appellant was recorded under section 342, Cr.P.C at Ex.10, in which he denied the accusation, however he neither examined himself on oath, nor led any evidence in defence.

6. The learned trial framed following points for determination:

1. *Whether on 12.03.2023 at about 1600 hours, at Nasirabd-Badeh road near Mondar Wah situated in and Taluka Nasirabad, you were arrested by police party of P.S Nasirabad by SIP Muhammad Hanif, who recovered 3000 grams charas from your possession beside cash amount of Rs.200/- in presence of mashirs LNC Aijaz and LNC Mujahid Hussain, as alleged by prosecution?*
2. *What offence, if any, the accused has committed?*

7. Learned Trial Court after hearing Learned Counsel for Defence and Learned Prosecutor for defence, convicted the appellant as aforementioned.

8. Scanning of the record revealed that instant appeal was filed by the appellant through his Counsel Mr Shahid Ali solangi. The appeal was admitted for regular hearing vide order dated 26.07.2023. On 01.11.2023 Mr. Abdul Rasheed Soomro Learned Counsel filed power on behalf of appellant and sought time to prepare brief. On 24.11.2023 Mr Abdul Waheed Khushik filed vakalatnama on behalf of the appellant. Since November 2023 none of the above named Learned Counsels made appearance to assist this Court. Learned Additional Prosecutor General filed an application dated 03.10.2025

under section 439 CrPC seeking enhancement of sentence, which was objected by the office as not maintainable. Prosecution raised objection on the sustainability of the conviction on the ground that it was awarded under the repealed law. Learned Counsel for the Appellants chose to remain absent despite of repeated notices for dates of hearing by office, the absence of Learned Counsel for the appellant is seemingly calculated to avoid the judicial process and keep this appeal pending so that the appellant on completion of four years' conviction period gets released. It is by now well settled that an appellant or a respondent, though endowed with right of opportunity of hearing, nonetheless, cannot hold the process of law in abeyance to a point of time of his own choice and his case can be decided even in his absence if the default is deliberate; as is reflected in the case in hand.

9. Mr. Ali Nawer Kandhro Learned Additional Prosecutor General contended that accusation of recovery of 3000 grams of Charas was proved against the appellant beyond reasonable doubt. He argued that the Learned Trial Court inflicted sentence of four years to the appellant, which was outside the remit of law after amendment act No XX of 2022, which provided a sentence of nine years and fourteen years for the said quantity of charas. He prayed for issuance of show cause notice to the appellant for enhancement of sentence.

10. Heard Arguments. Perused material available on record.

11. Appellant was arrested on 12.03.2023 and allegedly 3000 grams contraband material viz. Charas was recovered from his possession. Learned Trial Court found appellant guilty of the offence, hence convicted and sentenced him to suffer R.I for four years and pay fine of Rs 10,000 only.

12. Admittedly, Section 9 of the Control of Narcotics Substance Act, 1997 (CNS Act) was amended through Act No XX of 2022 which was assented to by the President on 02.09.2022 and published in Official Gazette on 06.09.2022. The offence of narcotics substances committed after 06.09.2022 was triable under the provisions of amended Act No XX of 2022.

13. Section 9 of the CNS, Act 1997 prior to amendment envisaged a punishment of death or imprisonment for life or imprisonment for a term which may extend to fourteen years and fine upto One million rupees, if the quantity of narcotic substances exceeded one kilogram. It further provided that if the quantity of narcotic drug, psychotropic substance or controlled substance exceeded ten kilograms, the minimum quantum of sentence was imprisonment for life.

14. The provisions of old law conferred discretion to the Trial Court to award sentence upto fourteen years’ term to an offender accused of an offence punishable under section 9 of the CNS Act if the quantity of narcotics substances was less than ten kilograms, however in case the recovery exceeded Ten Kilograms the minimum sentence was imprisonment for life.

15. The Amendment Act XX of 2022 introduced a sentencing policy, wherein the legislature in its wisdom provided a minimum and maximum sentence for quantity of different Narcotic substances. Learned Trial Court convicted the appellant under the provisions of old law, which was not in existence at the time of commission of crime and stood substituted through section 6 of the Amendment Act XX of 2022, which read as under:

6. Substitution of section 9, Act XXV of 1997. In the said Act for section 9, the following shall be substituted, namely:

9. Punishment for contravention of Sections 6, 7 and 8: (1) *Whoever contravenes the provisions of section 6, 7 and 8 regarding narcotic drugs shall be punished with punishment as given in column (3) of the Table below with regard to offence committed as mentioned in column (2) thereof, namely:*

TABLE

s. No.	Offence		Punishment
	Type of Narcotics	Quantity	
(1)	(2)		(3)
1	Bhang

2	Post or poppy straw
3	Charas	(a) Upto 499 grams	imprisonment which may extend to five years but shall not be. less than ten months along-with fine which may be upto Forty thousand rupees.
		(b) 500 grams to 999 grams	imprisonment which may extend to nine years but shall not be. less than five years along-with fine which may be upto Eighty thousand rupees but not less than Forty thousand rupees.
		(c) 1000 grams to 4999 grams	imprisonment which may extend to fourteen years but shall not be. less than nine years along-with fine which may be upto four hundred thousand rupees but not less than Eighty thousand rupees.
		(d)
		(e)

16. Perusal of above provision of law made it clear, that in case during trial the offence for recovery of quantity of charas in between 1000 grams and 4999 grams was established, the minimum punishment provided under the law was nine years with a maximum of fourteen years and fine of rupees eighty thousand to four hundred thousand rupees. Court cannot inflict a punishment which was outside the remit of law.

17. Learned Trial Court while rendering its findings on point 1 held that the prosecution proved its case against the accused beyond shadow of reasonable doubt and in findings on point No 2 concluded as under:

Point No 2

In view of my findings and discussion on Point No 1, I am of the considered opinion that prosecution has successfully proved the charge against accused beyond any shadow of doubt. Accused Imdad Ganwas has been found in possession of 3000 grams charas, therefore, charge under section 9(c) of CNS, Act has been proved against him. I hereby convict accused Imdad son of Muhammad Ibrahim by caste Ganwas under section 245(ii) CrPC but as regards quantum of sentence and for the mitigating circumstances discussed above, I sentence him to suffer 04 years (R.I) and 10,000 (Rupees Ten Thousand only) is imposed upon him as fine and in case of default, convict will undergo SI for three months. The benefit of section 382 – B CrPC is extended to the accused.

18. The amendment in the CNS, Act 1997 through Act No XX of 2022 came into force on 06.09.2022, the date of its publication in official Gazette. The alleged offence was committed on 12.03.2023, thus accused was tried under the amended law and the lowest mandated sentence for possessing contraband charas of quantity in between 1000 grams and 4999 grams under the amended law is imprisonment for nine years and fine of rupees eighty thousand. Learned Trial Court determined that the prosecution had proved the case beyond shadow reasonable of doubt and by taking lenient view awarded conviction of four years' imprisonment and fine of Rs 10,000 which was not tenable under the law. Learned Trial Court had no option but to maintain the quantum of sentence in between nine years and fourteen years with a fine of rupees eighty thousand to four hundred thousand rupees.

19. When law provided alternative punishments for an offence, whether the minimum or maximum prescribed sentence, or any sentence in between, is to be imposed. The Court seized with the matter may keep under consideration factors that include the facts of the case, the age of the accused at the time when he committed the crime, past and subsequent conduct for which reports could be called from concerned jail where the accused is detained and then award him a lesser punishment being mitigating

circumstances, but cannot award a conviction which militated the statutory provisions.

20. This view finds support from the dictum laid down by Honorable Supreme Court of Pakistan in the case of State Through Regional Director ANF Peshawar Versus Sohail Khan reported as 2019 S C M R 1288, wherein it is held that:

3. The respondent by his own choice has found it convenient to stay away; his absence is seemingly calculated to avoid the process of law and certainly cannot stand in impediment to the disposal of this appeal; he has been found guilty of possessing contraband, in excess of ten kilograms; evidence of recovery and forensic report is inexorably pointed upon his culpability and thus in circumstances he was liable to be sentenced to imprisonment for life; magnanimity shown by the Courts below being outside the remit of law merits recall. Appeal is allowed, impugned judgments to the extent of quantum of sentence are set aside. He is sentenced to Imprisonment for life however, the amount of fine is kept intact along side attending consequences. Non-bailable warrants of arrest shall issue to bring the respondent before the law so as to serve out sentence inflicted upon him.

21. As far as the request of the Learned Additional Prosecutor General for enhancement of the sentence is concerned, it is not tenable at this stage, for the reason that the convict has preferred the appeal against the conviction. Impugned judgment has to undergo the test of re-appraisal of evidence. Had the conviction attained finality a case for consideration under section 439 CrPC would have been made out. Since, this Court was did not undertake the re-appraisal of evidence, therefore, finding qua guilt or innocence of the appellant may prejudice the case of either side.

22. For the discussion made herein above, we are of the considered view that the impugned judgment did not commend well with the law, as accused was convicted and sentenced under the law that did not hold field, thus is open to exception, warranting interference by this Court. Consequently; this appeal is allowed. The impugned judgment dated 20.06.2023 is set aside and the case is remanded back to the Learned Trial Court to re-write the judgment after providing an opportunity of hearing to the prosecution and defence on

the basis of the evidence available on record within a period of two months from today.

23. The appellant shall be treated as under trial prisoner, Learned Trial Court on receipt of the copy of the judgment shall issue production order of the appellant for a date to be fixed.

Office is directed to send copy of the judgment to Officer In charge Central Prison and Correctional Facility Larkana where the appellant is in detention for information.

JUDGE

JUDGE

Abid Qazi

Approved for reporting

07.10.2025