

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D-287 of 2019

BEFORE:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : Ehtisham ul Haq son of Noor Haq
Through Mr. Muhammad Naeem, Advocate

The State : Through Mr. Zulfiqar Ali Jatoi, Additional PG.

Date of hearing : 16.09.2025
Date of Judgment : 24.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – This criminal appeal has been preferred by the appellant Ehtisham Ul Haq against the judgment dated 02.12.2019 passed by the learned 1st Additional Sessions Judge/Special Judge for Control of Narcotic Substances Act, MCTC Ghotki, whereby the appellant was convicted for offence under Sections 6, 9(C) of the Control of Narcotic Substances Act, 1997, and sentenced to suffer rigorous imprisonment for life as Tazir along with a fine of Rs.300,000/- (Rupees Three Hundred Thousand), and in case of default in payment of fine, to suffer further simple imprisonment for six months more. The benefit of Section 382-B Cr.P.C extended to appellant. The co-accused Feroz Shah was acquitted and extended the benefit of doubt for lack of evidence against him.

2. The prosecution case, as briefly stated in the FIR, is that on 05.08.2019 at about 05:00 pm, complainant/Excise Inspector Qamaruddin Siyal was conducting checking at the Excise check post Sindh-Punjab border near Kamoon Shaheed, when he noticed a truck bearing registration number C-2897 coming from the Punjab side at high speed in a suspicious manner. Upon signaling, the truck was stopped and the driver, who disclosed his identity as Ehtisham-ul-Haq Yousifzai Pathan, was questioned. Mashirs EC Mukhtiar Ahmed and EC Kifayat were appointed for the search operation. During the bodily search of the accused, a driving license, national identity card, mobile phone, and cash of Rs. 5,000/- were recovered from his left flank pocket. Upon search of the truck, the complainant party found a spare tyre without air fitted in the truck. When the spare tyre was opened, they discovered packets wrapped in multi-colored plastic sheets, containing slabs of what appeared to be charas.

A total of 40 packets were found, each weighing 1 KG, making a total of 40 KG of charas. From each packet, 20 grams were separated for chemical analysis and sealed separately, while the remaining packets of charas were placed in two separate plastic sacks (20 packets in each sack) and sealed. From the dashboard of the truck, an original registration book in the name of Feroz Shah, was also recovered.

3. Following the recovery, a Mashirnama was prepared and attested by EC Mukhtiar Ahmed and EC Kifayat. The accused was arrested and taken to P.S Excise DIO Camp Ubauro along with the truck and the recovered material. The case was registered under Section 9(C) of the Control of Narcotic Substances Act, 1997, as Crime No. 04/2019 on 05.08.2019 at about 08:00 pm. After the usual investigation, report was submitted under Section 173 Cr.P.C against both accused Ehtisham ul Haq (driver) and Feroz Shah (owner) of the vehicle.

4. During the trial, the prosecution examined witnesses including Inspector Qamaruddin Siyal (complainant), EC Mukhtiar Ahmed (recovery witness), and other relevant witnesses to prove the charges against both accused persons. The chemical analysis report from the laboratory confirmed that the recovered substance was indeed charas. The trial court, after hearing both parties and examining the evidence, found that while the prosecution had successfully proved the case against Ehtisham ul Haq as the driver of the vehicle, it had failed to establish the conscious knowledge and involvement of Feroz Shah in the transportation of the narcotic substance. Consequently, the learned trial judge convicted Ehtisham ul Haq and acquitted Feroz Shah, extending him the benefit of doubt.

5. The learned counsel for the appellant has raised several contentions challenging the impugned judgment. The primary argument revolves around the assertion that the trial court has not properly assessed the evidence produced by the prosecution and has erroneously convicted the appellant. The counsel contends that it is settled law that the benefit of doubt should go in favor of the accused, but the trial court has ignored this fundamental principle and convicted the appellant despite the case being riddled with doubts and inconsistencies. The learned counsel has specifically argued that the trial judge miserably failed to appreciate and assess the evidence given by the prosecution against the appellant and convicted him illegally. It is contended that the trial court erred in

believing the evidence of prosecution witnesses who are interested parties and highly doubtful witnesses. The counsel argues that undue weight has been given to the prosecution witnesses while the statement recorded by the accused under Section 342 Cr.P.C has been totally ignored by the learned trial judge, which constitutes a grave miscarriage of justice. A significant contention raised is the differential treatment accorded to the co-accused, where the trial court acquitted Feroz Shah on the benefit of doubt but convicted the appellant illegally despite both being involved in the same transaction. The counsel argues that this is a case where the prosecution has miserably failed to bring home the charge against the appellant, and the case is not free from doubt; hence, the benefit of doubt should be extended to the appellant. The learned counsel has further argued that the impugned judgment is not based on the correct appraisal of evidence and is founded on presumptions and assumptions rather than concrete proof. Specifically, it is contended that the prosecution has totally failed to bring any evidence before the court that the appellant was the driver of the truck. The prosecution has also failed to prove that the spare tyre belonged to the property of the accused/appellant or that any tax token was recovered from the accused/appellant. Another significant argument relates to the absence of public witnesses despite the fact that the surrounding area is a thickly populated area on the national highway. The counsel contends that the prosecution has totally failed to produce any witness other than public servants, which raises serious questions about the credibility of the recovery. Additionally, no photographs were produced to show that the appellant was present at the time of recovery of charas, which further weakens the prosecution case. The counsel has highlighted a crucial procedural irregularity in that the complainant of the offense was also the investigating officer and in charge of the Malkhana at the Excise police station. This dual role of the complainant makes the entire story doubtful, and the prosecution has totally failed to prove the case against the accused/appellant on this ground alone, making the accused entitled to acquittal from the charge. The learned counsel has emphasized that the investigating officer, who was also the complainant, made no effort to trace who was the owner of the recovered charas, from where the accused/appellant had purchased it, and where it was packed. This failure in investigation makes the case of the prosecution doubtful and undermines its credibility. A crucial argument advanced is that the accused/appellant does not hold any Heavy Transport Vehicle (HTV) license, which makes the entire story doubtful and proves that the investigation is totally false and fabricated. The counsel argues that without

proper licensing, the appellant could not have been driving such a heavy vehicle, which contradicts the entire prosecution case. The counsel has also pointed out that another mashir cited by the prosecution was not brought to the witness box, and therefore, the prosecution has failed to prove the case against the appellant/accused without any shadow of doubt. This omission in examining all available witnesses raises questions about the completeness and reliability of the prosecution evidence. Perhaps most significantly, the counsel has argued that the trial court failed to consider that the accused person is a disabled person who is not able to drive the vehicle because his right leg has fractures in five different places. The counsel contends that the trial court did not provide a fair trial to the accused/appellant, which is a guaranteed right under the Constitution.

6. The learned counsel has extensively relied upon various judgments of the superior courts, including *Para Din and others v. The State* (2016 SCMR 806), *Abdul Hameed v. The State* (2016 SCMR 707), *Mst. Nasreen Bibi v. The State* (2014 SCMR 1603), *Fareed Ullah v. The State* (2013 SCMR 302), *Amanat Ali and 2 Others v. The State* (2008 SCMR 991), and several other precedents to support the contentions. The counsel argues that the trial court did not apply its judicial mind and ignored these binding precedents of the superior courts, which is a fundamental error that warrants interference by this appellate court.

7. The learned Additional Prosecutor General, while defending the impugned judgment, has argued that the trial court has correctly appreciated the evidence and has rightly convicted the appellant based on cogent and reliable evidence. The State counsel contends that the prosecution has successfully proved all the essential ingredients of the offense under Section 9(C) of the Control of Narcotic Substances Act, 1997, beyond any reasonable doubt. The learned Additional PG has emphasized that the recovery of 40 KG of charas from the spare tyre of the truck being driven by the appellant is well-established through the testimony of reliable witnesses. The complainant Inspector Qamaruddin Siyal and the recovery witness EC Mukhtiar Ahmed have given consistent and corroborative testimony regarding all material aspects of the recovery, and their statements have remained unshaken during cross-examination. Regarding the appellant's claim of physical disability, the State counsel has argued that the appellant has failed to produce any medical evidence to substantiate his claim of having a fractured leg that would prevent him from driving. The burden was upon the appellant to prove his alternative version,

which he has failed to discharge. The State counsel contends that mere assertions without supporting evidence cannot be given credence, especially when the prosecution has established the appellant's role as the driver through positive evidence. The learned Additional PG has further argued that the chemical analysis report has positively confirmed that the recovered substance was charas, and the chain of custody has been properly maintained. The samples were sealed in the presence of mashirs and sent to the laboratory following proper procedure, and the report is uncontested. Addressing the argument regarding the absence of public witnesses, the State counsel has contended that under the Control of Narcotic Substances Act, 1997, the requirement of Section 103 Cr.P.C regarding public witnesses is not applicable, and the recovery witnessed by official witnesses is sufficient to prove the charge. The reliability and credibility of the official witnesses cannot be doubted merely because they are government servants. The State counsel has also argued that the differential treatment of co-accused Feroz Shah is justified because the prosecution could not establish his conscious knowledge or active participation in the transportation of narcotics. The acquittal of Feroz Shah does not in any way affect the case against the appellant, who was caught red-handed driving the vehicle containing the contraband substance. He relied upon cases of *Ghazi Khan Pathan and another V. The State* (2025 SCMR 1351) and *Muhammad Kashif V. The State* (2025 YLR 1877).

8. Having meticulously examined the entire record, considered the submissions of both sides, and carefully analyzed the evidence produced during the trial, this Court finds that each contention raised by the learned counsel for the appellant lacks merit and substance. The impugned judgment demonstrates sound judicial reasoning and proper application of well-established legal principles governing narcotic offenses. The conviction of the appellant is fully supported by cogent, reliable, and unimpeachable evidence on record.

9. The learned counsel's assertion that the trial court failed to properly assess the prosecution evidence is fundamentally misconceived and devoid of merit. The prosecution successfully established its case through the consistent and corroborative testimony of reliable witnesses who remained unshaken during extensive cross-examination. Inspector Qamaruddin Siyal, the complainant, provided a detailed and coherent account of the entire incident from the initial spotting of the suspicious vehicle to the eventual recovery of contraband substance. His testimony finds complete corroboration in the

statement of EC Mukhtiar Ahmed, who was present as mashir during the entire operation and witnessed all material aspects of the recovery.

10. The Honorable Supreme Court of Pakistan in *Kashif Amir v. The State* (PLD 2010 SC 1052) has conclusively established the principle that "it is well-settled that a person who is on driving seat of the vehicle shall be held responsible for transportation of the narcotics, having knowledge of the same, as no condition or qualification has been made in Section 9(b) of CNS Act that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is in charge 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."

11. This principle has been consistently applied and reaffirmed in numerous subsequent judgments, including *Muhammad Noor v. The State* (2010 SCMR 927), where the Supreme Court held that "when a person is driving the vehicle, he is in charge 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."

12. The appellant's counsel's reliance on the principle of benefit of doubt is misplaced and demonstrates a fundamental misunderstanding of its application in criminal jurisprudence. The benefit of doubt is extended to an accused only when there exists reasonable doubt regarding his guilt after careful examination of all evidence. In the present case, the prosecution has established the appellant's guilt beyond any reasonable doubt through unimpeachable evidence. The Supreme Court in *Ismaeel v. The State* (2010 SCMR 27) has categorically held that "in the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be overlooked in the larger interest of the country, if the case stands otherwise proved. The approach of the Court should be dynamic and pragmatic in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of cases."

13. The Court further observed in the same judgment that "the Court should consider the entire material as a whole and if it is convinced that the case is proved then conviction should be recorded notwithstanding procedural defects." This principle has been consistently followed in case of *Munawar Hussain* (1993 SCMR 785) and numerous other precedents.

14. The appellant's challenge to the credibility of prosecution witnesses on the ground that they are "interested and doubtful" is entirely without substance. The law is well-settled that official witnesses cannot be discarded merely because of their official status. The Supreme Court in *Noor Muhammad v. The State* (2015 PCrLJ 30) has held that "officials were also good witnesses like others, and their evidence belonged to Anti-Narcotics Force, by itself could not be considered valid reason to discard their statements." Moreover, the prosecution witnesses had no personal enmity or motive to falsely implicate the appellant. The recovery was made during routine checking at a designated checkpoint, and the witnesses have provided consistent testimony throughout the proceedings. In *Hussain Shah and others v. The State* (PLD 2020 Supreme Court 132), the Supreme Court observed that "the prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature."

15. The appellant's contention that his statement under Section 342 Cr.P.C was ignored is factually incorrect. The trial court duly considered the appellant's statement but found his denial and claim of false implication to be without merit in light of overwhelming prosecution evidence. The Supreme Court in *Muhammad Arshad v. The State* (2007 SCMR 1378) has held that "chemical examiner's report regarding Charas and Opium were sufficient to prove that the substance recovered from the accused was Charas which can be used to cause intoxication; the prosecution had discharged its initial onus while proving that substance was recovered from him whereas the petitioner had failed to discharge its burden in terms of Section 29(d) of CNSA." The appellant's argument regarding differential treatment vis-à-vis co-accused Feroz Shah demonstrates a complete misunderstanding of the legal principles governing individual culpability in narcotic cases. The acquittal of Feroz Shah was based on the prosecution's failure to establish his conscious knowledge or active participation in the transportation of narcotics, which is entirely different from the appellant's case who was caught driving the vehicle containing contraband.

16. In *Mst. Jameela & another v. The State* (PLD 2012 SC 369), the Supreme Court clearly distinguished between drivers and passengers, holding that "the law of the subject is quite settled that mere presence of a passenger in a vehicle cannot be treated as sufficient to saddle him with the responsibility of possession of narcotic substance recovered from the vehicle unless the

prosecution establishes through independent evidence that such passenger was conscious and aware of availability of narcotic substance in the vehicle."

17. This principle was further elaborated in *Hussain Shah and others v. The State* (supra), where the Court held regarding a cleaner/helper that "no evidence worth its name had been brought on the record to establish that the said appellant was conscious about availability of narcotic substance in a secret cavity of the relevant vehicle in which he was traveling along with its driver."

18. The appellant's contention that he did not possess an HTV license and therefore could not have been driving the truck is factually unsupported and legally irrelevant. The prosecution established through positive evidence that a driving license was recovered from the appellant's person, and he was found driving the vehicle at the time of interception. The mere assertion that it was not an HTV license, without supporting evidence, cannot be accepted. The Supreme Court has consistently held that the person found driving a vehicle containing narcotics is presumed to have conscious knowledge of its contents. In *Nadir Khan v. The State* (1988 SCMR 1899), the Court observed that "knowledge and awareness would be attributed to the in charge of the vehicle."

19. The appellant's claim of physical disability preventing him from driving is completely unsupported by any medical evidence. Despite claiming that his right leg had fractures in five different places, the appellant failed to produce any medical certificate, hospital records, or doctor's testimony to substantiate this assertion. Under Article 121 of the Qanun-e-Shahadat Order, 1984, the burden of proving an alternative version lies upon the accused, which the appellant has miserably failed to discharge. The Court in *Ameer Zeb v. The State* (PLD 2012 Supreme Court 380) has held that "the initial onus to prove the offence and recovery of narcotic substance from the accused person is always on the prosecution and once the prosecution has discharged that onus to the satisfaction of the Court is only then that the onus shifts to the accused person to establish falsity of the prosecution's allegation against him."

20. The appellant's objection to the absence of public witnesses is legally misconceived. Section 25 of the Control of Narcotic Substances Act, 1997, specifically excludes the application of Section 103 Cr.P.C, which requires search in the presence of two independent witnesses. The Supreme Court in *Fida Jan v. The State* (2001 SCMR 36) has held that "provisions of Section 20 Control of Narcotics Substance Act, 1997, were directory in nature,

therefore, its non-compliance could not be considered a strong ground for holding that the trial of the accused was bad in the eye of law." This principle has been consistently reaffirmed in *The State v. Abdali Shah* (2009 SCMR 291), where the Court held that "even the provisions of sections 20 to 22 of CNSA being directory, non-compliance thereof would not be a ground for holding the trial/conviction bad in the eyes of law."

21. The absence of photographs or video recording does not create any legal infirmity in the prosecution case. While such evidence would have been additional corroboration, it is not mandatory under the CNS Act. The recovery has been established through oral testimony of reliable witnesses, which is sufficient in law to sustain a conviction. The Supreme Court has consistently held that in narcotic cases, the focus should be on the substance of evidence rather than procedural technicalities. The appellant's objection to the complainant also being the investigating officer and in-charge of Malkhana does not create any fatal defect in the prosecution case. The law does not prohibit a police officer from performing multiple roles in the investigation of a case. What matters is the reliability and credibility of the evidence, which has been established through proper corroboration and remained unshaken during cross-examination.

22. The appellant's criticism of the investigation for not tracing the source or destination of narcotics does not affect the validity of the conviction. The Supreme Court in 2022 SCMR 1784 *Naveed Akhtar v. State* has held that "in cases under section 9(c) of the Control of Narcotic Substances Act, 1997, it is duty of the prosecution to establish each and every step from the stage of recovery, but failure to trace source does not render the case doubtful when recovery is otherwise proved."

23. The prosecution's decision not to examine Additional Inspector Nihal Khan is within its prerogative and does not render the case doubtful. The Supreme Court has consistently held that the prosecution has the discretion to choose its witnesses, and the quality of evidence is more important than quantity. The case has been proved through the testimony of other reliable witnesses who were present during the entire operation.

24. The chain of custody has been properly maintained throughout the proceedings. The recovered substance was sealed at the spot in the presence of mashirs, properly labeled, and forwarded to the Chemical Laboratory following

established procedure. The chemical analysis report positively confirmed that the substance was charas, and this report remains uncontested. The Supreme Court in various judgments has held that proper sealing and chemical analysis are sufficient to maintain the chain of custody.

25. The application of Section 29 of the Control of Narcotic Substances Act, 1997, creates a presumption in favor of the prosecution once the recovery is established. However, this does not absolve the prosecution of its initial burden to prove recovery. In the present case, the prosecution has successfully discharged this initial burden through cogent evidence. The Supreme Court in *Muhammad Imran v. The State* (2011 SCMR 1954) has clarified that "section 29 of C.N.S.A., 1997 cast a duty upon the Court to presume in trial under the Act that the accused has committed the offence under the Act unless contrary is proved. However, firstly, the prosecution has to establish the fact that the narcotic drugs were secured from the possession of the accused."

26. The appellant's reliance on various Supreme Court judgments is misplaced as the facts and circumstances of those cases are distinguishable from the present case. In *Para Din and others v. The State* (2016 SCMR 806), the Court dealt with consolidated samples from multiple packets, which is not the situation in the present case where proper samples were extracted from each packet. Similarly, other cited cases deal with different factual matrices and legal issues that are not applicable to the present circumstances. The chemical analysis report from the Chemical Laboratory Rohri has positively confirmed that the recovered substance was charas weighing 40 KG. This report remains uncontested and provides conclusive proof of the nature and quantity of the contraband substance. The Supreme Court has consistently held that chemical examiner's reports are sufficient to prove the nature of the recovered substance.

27. The appellant's position as the driver of the vehicle creates a strong presumption of conscious knowledge regarding the contents of the vehicle. The contraband was recovered from the spare tyre of the truck, which was under the appellant's exclusive control and possession. The Supreme Court has repeatedly held that a driver cannot escape responsibility for contraband found in his vehicle unless he proves otherwise.

28. After careful analysis of all evidence and consideration of legal precedents, we are of candid opinion that the prosecution has successfully established all essential ingredients of the offense under Section 9(C) of the

Control of Narcotic Substances Act, 1997. The appellant was found in exclusive possession of 40 KG of charas while driving the vehicle, the chemical analysis confirmed the nature of the substance, and the recovery was proved through reliable witnesses.

29. The trial court's judgment is based on proper appreciation of evidence, correct application of legal principles, and sound reasoning. The conviction is fully justified and requires no interference from this appellate court. The appellant has failed to point out any material illegality, irregularity, or misreading of evidence that would warrant setting aside the conviction.

30. The appeal is accordingly dismissed, and the conviction and sentence awarded by the learned trial court are hereby maintained and confirmed. The appellant shall serve out the remaining period of his sentence as directed by the trial court, with the benefit of Section 382-B Cr.P.C already extended continuing to apply.

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