

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

Cr. Appeal No. D-15 of 2019

Present:

Mr. Justice Amjad Ali Sahito,
Mr. Justice Jan Ali Junejo,

Appellants	Hassan Khan s/o Muhammad Essa Kakar Pathan Through Mr. Abdul Baqi Jan Kakar Muhammad Daud s/o Sher Muhammad Kakar Pathan Through Mr. Safdar Ali Ghouri, advocate
The State	Through Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing	13-05-2025
Date of judgment	13-05-2025

J U D G M E N T

Amjad Ali Sahito, J.- Through this Criminal Appeal, the appellants have challenged the judgment dated 09.03.2019, passed by learned Special Judge for CNSA, Jacobabad in Special Case No. 08 of 2018, arising out of Crime No. 14/2018, registered at P.S Saddar, Jacobabad, for the offence under sections 9(c), C.N.S.A, 1997, whereby the appellants were convicted and sentenced to undergo R.I for life and to pay fine of Rs.100,000/- each. In case of default in payment of fine, they shall further undergo for the period of one year S.I. The benefit of Section 382-B Cr.P.C was extended to the accused persons.

2. The gist of prosecution case as per FIR lodged by complainant SIP Ishtiaq Ahmad on 27.02.2018 are that; on the same date from 1300 to 1530 hours, he alongwith his subordinate staff at Police Picket Shambay Shah, deh Badal Wah Jacobabad found the accused persons Hassan Khan and Muhammad Daud in possession/transporting 90 K.G charas in the shape of 180 slabs lying in the secret cavities of a Honda Civic Car bearing engine No.18As 1000618, Chassis No. NFBFD 16789R117966. It is further stated by the complainant in FIR that; original CNIC No. 54302-7636836-5, Police service car, one driving license book, one mobile phone touch of Q Company LT-700 Pro, two notes of Rs.500/500, total Rs. 1000/- were

recovered from accused Hassan Khan, while original CNIC No.56302-7980970-1, mobile phone Q company of white colour and one note of Rs.500/- were also recovered from possession of other accused Muhammad Daud. Thereafter, complainant separated 250 grams charas from each slab, total 45 KG separated & sealed for Chemical Analysis and remaining charas was sealed separately. Such memo of arrest/recovery was prepared on spot. Thereafter, the accused and case property were brought at PS Saddar Jacobabad, where the complainant lodged the cited above FIR, and after completing usual investigation, the accused persons were challaned.

3. After completion of the usual investigation, the investigation officer submitted a report under Section 173 Cr.P.C before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

4. The formal charge against present appellants/accused was framed, to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case, examined PW.1, complainant SIP Ishtiaq Ahmad at Exh.06. He produced memo of arrest/recovery as Ex.6/A, DD entries (one sheet) as Ex.6/B, FIR as Ex.6/C, photo-graphs of secret cavities of the car at Ex.6/D. PW.2 ASI Noordin has been examined at Ex.7. He produced mashirnama of inspection of place of incident at Ex.7/A. PW.3, I/O SIP Shabeer Ahmad has been examined at Ex.8. He produced mashirnama of inspection of car at Ex.8/A, carbon copy of RC at Ex.8/B and report of Chemical Examiner at Ex.8/C. PW.4, WHC Ghulam Murtaza has been examined at Ex.9. PW.5, WPC Abdul Ghani has been examined at Ex.10. He produced attested copies of DD entries (one sheet) at Ex.10/A. Learned defence counsel for the accused put question to WPC Abdul Ghani in writing at Ex.11 'Are you paid by I.O any TA DA regarding transportation from Jacobabad to Rohri' but this Court vide order dated 05.12.2018 dis-allowed being irrelevant at this stage. Thereafter, learned I/c DPP for the State has closed the side on behalf of prosecution vide statement at Exh.12.

6. The statements of accused persons Hassan Khan and Muhammad Daud u/s 342 Cr.P.C were recorded at Exh.13 and 14 respectively, wherein they denied the prosecution allegations leveled against them by pleading their innocence and accused Hassan Khan further stated that he has no concern with the car, he is unable to drive, he has no concern or relation with co accused, actually charas was not

recovered from him, he will give his statement on oath and wants to examine his mother Mst. Khiyal Bibi in defence, while accused Muhammad Daud stated that he is innocent and has no relation with co accused, actually oen day prior to alleged incident he was arrested by the complainant party from Al-Hikmat Coach when he was travelling from Quetta to Sukkur alongwith spare parts articles which were snatched, as he intervened with police because they snatched cash amount from accused Hassan, hence has been falsely involved in this case, he was not in car, however, accused Muhammad Daud has not examined himself on oath and refused to examine any witness in his defence.

7. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellants/accused vide **Judgment dated 09.03.2019**, which they have impugned before this Court by preferring instant Criminal Appeal.

8. Both learned counsel for the appellants submit that the appellants are innocent and they have falsely been implicated in this case; that the impugned judgment is unwarranted under the law and facts; that the trial court has mis-appreciated the evidence which has resulted in the wrong conviction of the appellants; that the learned trial court has failed to appreciate the alleged recovery was not effected from vehicle at the pointation of the appellants nor the prosecution has discharge the burden of knowledge regarding the conscious possession of the narcotic substances; that all the PWs are Police officials and no independent person has been cited as witness. They further submit that there is no role of appellant/accused Muhammad Daud who was shown sitting in the car and he has no concern with the car and recovered charas; that there are material contradictions in the evidence of the P.Ws. There is nothing on record that samples were taken from each slab were sent to Chemical examination and the report of Chemical Examiner does not mention the protocols of the test applied as per Rule 6 of the CNS (Government Analysis) Rules 2001, therefore, the report of Chemical Examiner is unreliable, therefore, reasonable doubt created in the prosecution case. They prayed for acquittal of the appellants/accused.

9. Learned counsel for the appellants, further submitted that the appellants are only bread earner of their family members and submits that if acquittal is not possible then he does not wish to contest this appeal and leave the appellants at the mercy of the Court. He

states that if this Court while maintaining the conviction reduces the sentence to one they have already undergone.

10. Conversely, learned D.P.G for the State while supporting the impugned judgment, has argued that prosecution has proved its case against the appellant; that both the accused were found in possession/transporting charas in Honda Civic car. Defence witness has not supported the defence plea taken by accused Hassan Khan. The photographs of secret cavities in car were taken by both the complainant and I/O. The secret cavities in car were opened and huge quantity of 90 K.G charas was recovered. The I/O has also seen said secret cavities in the car. Section 25 of the Control of Narcotic Substance Act, 1997 has excluded applicability of Section 103 Cr.P.C in narcotic cases. The prosecution witnesses have fully supported the prosecution case, except some minor contradictions which are due to passage of time hence the same has not importance; he therefore, prayed that the appeal may be dismissed.

11. We have heard the learned counsel for the appellants, learned D.P.G for the State and have gone through the evidence with their assistance.

12. The case of prosecution is that on the tip of information, the complainant arrested the appellants and recovered 90 K.G charas in the shape of 180 slabs lying in the secret cavities of a Honda Civic Car bearing engine No.18As 1000618, Chassis No. NFBFD 16789R117966. After re-examining evidence as well as record, we have observed that the complainant furnished his testimony as to the recovery of Narcotics (**charas**), and the investigation steps taken thereafter, he sent case property viz charas on 01.03.2018 to the chemical Examiner for its examination and report and after completion of investigation he submitted charge sheet and thereafter the report of chemical examiner regarding case property was received.

13. Needless to note that, for the Chemical Examiner's Report to have real probative value, the sanctity of the chain of custody is absolutely imperative. It is prosecution's responsibility that such chain of custody must be safe and secure because the report of the Chemical Examiner carries critical importance under the Act, 1997, and the proof of chain of custody can only ensure the reaching of recovered material to the office of the Chemical Examiner. We are fortified in this regard by the Judgment of the Honourable Supreme Court in the cases reported

as ***The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039)***, as well as, a more recent Judgment in ***Criminal Appeal No.184 of 2020***, titled Mst. Sakina Ramzan v. The State, wherein it was held as under:

“The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.”

14. As regards the last contention of learned counsel for the appellants is that the appellants are only bread earner of their family members, therefore, sentence may be reduced into the period already undergone and requested for departure from case of ***‘Ghulam Murtaza and another v. The State’ [PLD 2009 Lahore 362]***, while placing reliance on the case of ***‘The State v. Mujahid Naseem Lodhi’ [PLD 2017 SC 671]***, wherein it is held that;

“In a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure.”

15. From the above case law the Hon’ble Supreme Court of Pakistan has held that from departure of case of ***‘Ghulam Murtaza and another v. The State’ [PLD 2009 Lahore 362]*** in a particular cases may depart from the sentencing policy but have to give the reasons. Let’s see whether there has been any justification to depart from *normal* sentencing policy. Learned counsel for the appellants has strongly pleaded reduction in sentence while pleading that the

appellants are the only bread earner of their family members. In the case in hand the appellants, who are in jail for last seven years, the family of the appellants, per him, is passing miserable life due to confinement of the appellants in jail. The position, being so, would be nothing but a misery where the parents of appellants have suffered too for act of the appellants, the peculiar facts and circumstances, so pleaded by the counsel for the appellants, having gone unchallenged by prosecution may well be taken into consideration for departing from the normal practice. No complaint in respect of the conduct of appellants from jail authorities is received. The appellants are first offenders and have no previous criminal record/history in his credit. Besides, the appellants' claim himself to be only male members of the family and have served major portion of his sentence, therefore, it is appropriate that appellants may be given an opportunity to improve himself as a law abiding citizen so also being bread earner of their family provide them basic necessity in a good manner.

16. Considering the above facts and circumstances of the case, the Jail Roll was called from the concerned jail, which reflects that the appellant have also physically served 07 years, one month and 27 days and earned remission of 14 years, 05 months and 26 days upto 14.04.2025, as such, including remission the appellants have remained in custody for about **Twenty one years, seven months and 23 days**. In such circumstances, in our humble view, it would serve both the purposes of deterrence and reformation, if the sentence, awarded to appellants, is reduced to one already undergone by them.

17. Accordingly, the sentence of the appellants is altered and reduced to the period which they have already undergone, which include the period they were to undergo in lieu of fine. Consequently, instant Criminal Appeal is **dismissed** but with modification that the sentence including fine amount is reduced to one as already undergone. In view of above position, office is directed to issue release writ for the appellants if they are not required in any other custody case.

18. Criminal Appeal stands disposed of along.

JUDGE

JUDGE

Abdul Salam/P.A