

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

Cr. Appeal No. D-41 of 2019

Present:

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

Appellant	Shafi Mohammad son of Dost Mohammad Brohi, Through Mr. Safdar Ali Ghouri, advocate
The State	Through Mr. Aitbar Ali Bullo, D.P.G for the State
Date of hearing	27-05-2025
Date of judgment	27-05-2025

J U D G M E N T

Amjad Ali Sahito, J.- Through this Criminal Appeal, the appellant has challenged the judgment dated 24.05.2019, passed by learned I-Additional Sessions Judge (MCTC), Jacobabad in C.N.S. Case No.52/2017, arising out of Crime No. 01/2017, registered at Excise P.S Jacobabad, for the offence under sections 9(c), C.N.S.A, 1997, whereby the appellant was found guilty of committing an offence punishable U/S 9(C) CNS Act, 1997. Since the accused was first as well as young offender and he was not previously involved in like nature of case, therefore, by taking lenient view and after taking guidance from the case of Ghulam Murtaza and another versus the State, **PLD-2009-Lahore-362 supported by the case of Ameer Zeb versus The State (PLD-2012-SC-380)**, he was convicted u/s 265-H(ii) Cr.P.C. for the offence punishable U/S 9(c) Control of Narcotics Substance Act, 1997 and sentenced to undergo for rigorous imprisonment for life and fine of Rs.1,00,000/- (one lac rupees) and in case of failure to deposit fine amount, he shall further undergo S.I. for one year. The accused was extended benefit of Section 382-B Cr.P.C.

2. The gist of prosecution case as per FIR lodged by the complainant Inspector Muhammad Iqbal Arbani are that on 25.07.2017, a Excise police party Jacobabad headed by him arrested the above named accused Shafi Muhammad Brohi at Excise check post near Agriculture College situated at Shikarpur road Jacobabad and recovered from the cabin of Truck bearing registration No.TKW-825-Quetta 60 Kilograms

charas in shape of slabs lying in two white colour plastic bags/Bachkas wrapped in covering cloth of the Truck. The complainant prepared such memo of arrest and recovery at spot and then lodged such FIR against the accused on behalf of State. It is further alleged by the complainant that on 26.7.2017 again on spy information he also recovered 316 Kilograms of charas in shape of slabs concealed in secret cavity of said Truck and prepared another memo at spot.

2. 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.

3. The formal charge against present appellant/accused was framed, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case, examined P.W-1/ complainant Muhammad Iqbal Arbani as Ex.4, who produced rosnamcha entries, memo of arrest and recovery, FIR, memo of inspection of wardhat, attested copy of letters addressed to Incharge Chemical Laboratory Rohri, attested copy of R.Cs, another memo of recovery of charas from secret cavity of Truck, verification letter of vehicle and Chemical Examiner's reports at Ex.4-A to 4-R, PW-2/mashir Excise Constable Sikander Ali at Ex.5. Thereafter learned DDPP for the State closed the side of prosecution vide statement at Ex.6.

5. The statement of accused u/s 342 Cr.P.C was recorded at Exh.07, wherein he denied the prosecution allegations leveled against him by pleading his innocence. He further deposed that they have released the actual culprit and police got down him from van and demanded illegal gratification and on refusal they falsely involved him in this case hence he prayed for justice. However, neither the accused intended to examine him on oath nor examined any witness in his defence. However, the appellant/accused has not examined himself on oath nor examined any witness in his defence.

6. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellant/accused vide **Judgment dated 24.05.2019**, which he has impugned before this Court by preferring instant Criminal Appeal.

7. Learned counsel for the appellant submits that the appellant is innocent and he has 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 appellant; that all the P,Ws are Police officials and no independent person has been cited as witness; that there are material contradictions in the evidence of the P.Ws. He further contended that no independent person was cited as witness. There are material contradictions in the evidence of PWs, which creates doubt in the prosecution case. He has further contended that the sample was not taken from each slab, but the substance sent to Chemical Examiner was found totally different to one recovered in the case and that complainant in this case has also investigated the case hence the accused has been deprived of its right of fair investigation. He further contended that the accused is not owner of the Truck but he is only driver and he was not aware of anything available in the truck. He has lastly prayed for acquittal of the appellant/accused.

8. Learned counsel for the appellant, further submits that the appellant is only bread earner of his family members and submits that if acquittal is not possible then he does not wish to contest this appeal and leave the appellant at the mercy of the Court. He states that if this Court while maintaining the conviction reduces the sentence to one he has already undergone.

9. 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 the prosecution examined two witnesses, who have supported the prosecution case through their oral and documentary evidence with regard to recovery of 60 and 316 Kilograms of charas from his possession, therefore, appellant/accused may be convicted.

10. We have heard the learned counsel for the appellant, learned D.P.G for the State and have gone through the evidence with his assistance.

3. The case of prosecution is that on the tip of information, the complainant arrested the appellant and recovered from the cabin of Truck bearing registration No.TKW-825-Quetta 60 Kilograms charas in shape of slabs lying in two white colour plastic bags/Bachkas wrapped

in covering cloth of the Truck. The complainant prepared such memo of arrest and recovery at spot and then lodged such FIR against the accused on behalf of State. It is further alleged by the complainant that on 26.7.2017 again on spy information he also recovered 316 Kilograms of charas in shape of slabs concealed in secret cavity of said Truck and prepared another memo at spot.

11. 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 27.07.2017 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 on 23.08.2017.

12. 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.”

13. As regards the last contention of learned counsel for the appellant is that the appellant is only bread earner of his 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.”

14. 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 appellant has strongly pleaded reduction in sentence while pleading that the appellant is the only bread earner of his family members. In the case in hand the appellant, who is in jail for last eight years, the family of the appellant, per him, is passing miserable life due to confinement of the appellant in jail. The position, being so, would be nothing but a misery where the parents of appellant have suffered too for act of the appellant, the peculiar facts and circumstances, so pleaded by the counsel for the appellant, 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 appellant from jail authorities is received. The appellant is first offender and has no previous criminal record/history in his credit. Besides, the appellant's claim himself to be only male member of the family and has served major portion of his sentence, therefore, it is appropriate that appellant may be given an opportunity to improve himself as a law abiding citizen so also being bread earner of his family provide him basic necessity in a good manner.

15. Considering the above facts and circumstances of the case, the Jail Roll was called from the concerned jail, which reflects that the appellant has also physically served 07 years, 09 months and 11 days and earned remission of 13 years, 10 months and 09 days upto 24.04.2025, as such, including remission the appellant has remained in custody for about **Twenty one years, 07 months and 20 days**. In such circumstances, in our humble view, it would serve both the purposes of deterrence and reformation, if the sentence, awarded to appellant, is reduced to one already undergone by him.

16. Accordingly, the sentence of the appellant is altered and reduced to the period which he has already undergone, which include the period he was 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 appellant if he is not required in any other custody case.

17. Criminal Appeal stands disposed of.

JUDGE

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