

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.524 of 2022

Appellant : *Amir Muhammad Iqbal Patni*, through
Mr. Inamullah Khan, Advocate

The State : Through Ms. Firdous Faridi, Special
Prosecutor Customs and Ms. Wajiha
Mehdi, Assistant Attorney General

Date of hearing: 05.08.2026

Date of Judgment: 17.08.2026

JUDGMENT

Omar Sial, J.: On 05.03.2018 at about 10:30 p.m., Amir Iqbal Patni and his wife Rahila Amir were at the Karachi Airport, preparing to catch Emirates Airlines flight EK-603 for the Maldives via Dubai. The Customs staff posted at the Airport stopped the couple to check their luggage. 5 kilograms of heroin were found in each of the two bags they carried. An aggregate of 10 kilograms was thus recovered. The couple told the Customs officers that there were two other bags with heroin in them that were lying in their apartment, which were to be smuggled out in a subsequent attempt. Amir Patni led the Customs to his apartment, from where two bags were recovered and taken to the Airport. The bags were opened at the Airport, and another 5 kilograms each were found inside. The total recovery of heroin from four bags was thus 20 kilograms. The couple was arrested and revealed the names of three accomplices, i.e., Sadia Azad, Amir Yaqoob, and Shahid Ramzan. F.I.R. No. DEC-03/2018 was registered under sections 6, 7, and 8 of the Control of Narcotic Substances Act, 1997, at the Office of the Deputy Collector of Customs, Jinnah International Airport, Karachi.

2. Apart from the Patni couple, Sadia Azad and Amir Yaqoob were subsequently arrested, whereas Shahid Ramzan was declared an absconder. All the arrested accused pleaded not guilty and claimed to be tried. At the trial, the prosecution examined: **PW-1 P.O. Touseef Ahmed** (the complainant), **PW-2 S.P.O. Mohammad Naeem Sher** (witness to the arrest and recovery), **PW-3 S.P.O. Samina Perveen** (witness to the recovery of two suitcases from the Patni residence), **PW-4 Jayanti Lal** (travel agent), **PW-5 P.O. Touseef Ahmed** (the complainant - recalled), **PW-6 P.O. Asfand Yar Khan** (investigating officer), **PW-7 S.P.S. Khayyam Ali Soomro** (Shift In Charge at the Airport), **PW-8 P.O. Arif Ali Jumani** (Warehouse In Charge).

3. In their respective section 342 Cr.P.C. statements, the accused professed innocence and denied any involvement with the recovered heroin. On 10.08.2022, the learned Special Court No. II (CNS) at Karachi sentenced Rahila Amir to six years' imprisonment and her husband Amir Patni to life imprisonment. The remaining two accused were acquitted. This appeal has been filed only by Amir Patni, as his wife, Rahila Amir, completed her sentence and did not file an appeal.

4. The learned counsel for the appellant has argued that the second recovery is not documented and that two accused were released. He has, however, laid great stress on the issue of remissions. He says that if the remissions granted to Amir Patni are taken into account, he too has completed his sentence and hence should be released. The learned Special Prosecutor, Customs, on the other hand, has supported the trial court judgment. We have listened to the counsels, and our observations and findings are as follows.

5. Although not argued in depth by the appellant's learned counsel and emphasis having been laid on the remissions awarded, we feel that we would not have done justice to our duties if we did not analyze and re-appraise the entire evidence.

6. An area we have closely scrutinized is that of safe custody and transmission of the seized narcotics. Pakistan Customs has an uncanny ability to unnecessarily convolute its own cases, and this one is no different. It has taken us considerable time and effort to understand and simplify the process followed by Customs in exercising its stop, search, recover and arrest procedures. The record reflects as follows:

- (i) The Patni couple took their bags through the Airport Security Force's scanning machine, without any narcotics being discovered on or about 9:00 p.m. on March 5, 2018. Then, the two bags were submitted for checking at the Customs counter, and it was there that 5 kilograms were discovered in each of the two bags.
- (ii) Three samples each were taken by Tauseef from each of the 5 kilograms – *"I had withdrawn three samples of 10 grams each from one polythene bag and three samples of 10 grams each from the other polythene bag."*
- (iii) Tauseef testified that he then sealed the envelopes containing the samples and also sealed the two bags which had the remaining portion of the narcotics in them. The memorandum of recovery was made at 10:45 p.m. on March 5, 2018.
- (iv) After the recovery and sealing, as detailed above, Tauseef and PW-3 S.P.O. Samina Perveen along with Patni departed from the airport to Patni's home at around 11:00 p.m. on March 5, 2018 from where another two bags were recovered, but not opened, at around 11:30 p.m. The bags were brought back to the airport at 1:30 a.m. on March 6, 2018.
- (v) Yet again, the two bags were found to contain nothing when they were put through the ASF's scanning machine. Yet again, the Customs, however, found 5

kilograms of heroin from each bag. Tauseef followed the same procedure as he had in the first recovery, i.e., 3 samples of 10 grams each were taken from the heroin and sealed. The remaining heroin was sealed in the same suitcases from which it was recovered. Memorandum of recovery was made at 3:00 a.m. on March 6, 2018.

- (vi) In the early hours of March 6, 2018, Customs had twelve sealed envelopes containing representative samples and four sealed suitcases which had the remaining heroin.
- (vii) For reasons best known to Tauseef, even though he claimed to have taken a total of twelve samples, he sent only four for chemical analysis to NIH Islamabad. The cover letter of such dispatch shows that the dispatch was made on March 8, 2018. The samples were sent through a courier company. The receipt of the courier was not produced at the trial, let alone a person from TCS being examined to corroborate Tauseef's claim that he had couriered the samples to Islamabad.
- (viii) Tauseef claimed that it was March 14, 2018, the four bags (ostensibly locked and sealed with 5 kilograms minus 30 grams heroin in each) were sent by him to the State Warehouse.
- (ix) Contrary to what Tauseef told the Court, PW-2 S.P.O. Mohammad Naeem Sher, the witness to the recovery, said that Tauseef had taken 5g and not 10 grams as samples from each of the two bags which had been caught first. He was consistent with the 10-gram samples taken from the remaining two bags, as claimed by Tauseef. This witness, i.e., Sher, acknowledged that the investigating officer had not recorded his section 161 Cr.P.C. statement. In fact, he said that he had never met the investigating officer of the case. No explanation was

given for this lapse. Malafide of the Customs was reflected when Naeem Sher was confronted with a section 161 Cr.P.C. statement that he had ostensibly recorded. Naeem in Court categorically denied that it was his statement reduced into writing.

- (x) Malafide of the Customs was reflected at trial when after testifying as detailed in the preceding paragraph, PW-2 S.P.O. Mohammad Naeem Sher stated in his cross-examination – *“The recovered heroin packets were lying in the DC office when I was there. The samples were not available at that time because they had not been withdrawn. Samples were withdrawn when the team came back along with the two other suitcases.”* This statement contradicted what Tauseef had testified and what Sher himself stated in his examination-in-chief.
- (xi) Malafide of the Customs was further reflected when, contrary to what Tauseef told the court, PW-2 S.P.O. Mohammad Naeem Sher testified that when Tauseef had gone to recover the two bags from Patni's home, PW-3 S.P.O. Samina Perveen (witness to the recovery of two suitcases from the Patni residence) was at the airport with Sher. As mentioned above, Tauseef claimed that Sameena was with him and that Sameena had also acted as a witness in the recovery of the two bags. Sher apparently realized the mistake he had made in his testimony and seems to have covered it up by subsequently stating that Sameena might have gone with Tauseef but that he did not know where she was.
- (xii) Malafide of the Customs was further reflected when PW-3 S.P.O. Samina Perveen (witness to the recovery of two suitcases from the Patni residence) testified that she had gone to recover the two bags from the Patni home, not with Tauseef (as claimed by Tauseef) but with another

official named Wasay Malik. She also said that the bags were brought to them by two small girls in the house and that no document was prepared or signed on the spot. Apart from the fact that Wasay Malik did not testify and that Tauseef had remained silent about the two little girls giving him the bags, both recovery witnesses giving evidence contrary to what Tauseef said at trial sheds a negative light on Tauseef himself and adversely impacts his testimony. Although PW-3 S.P.O. Samina Perveen was said to be an integral part of the recovery, etc. at the airport, she testified that *"it is a fact that no heroin was recovered in my presence."* Like in the case of PW-2 S.P.O. Mohammad Naeem Sher, Sameena's section 161 Cr.P.C. statement was also not recorded by the investigating officer.

- (xiii) The investigating officer, PW-6 P.O. Asfand Yar Khan, stated that the time period that Naeem Sher says he was present at the airport was outside his duty hours. He further acknowledged that he had never seen the case property. He admitted that he did not know who the warehouse in-charge was, nor had he examined him. He could not show any document in court to show that he had even visited the warehouse. At the trial, Arif Jumani claimed to be the state warehouse in-charge. In his cross-examination, however, he admitted that he was not in charge of the warehouse but that he was one of the four officers posted at the warehouse, with another officer being in charge. His statement was never recorded, and in fact the investigating officer had confirmed in his testimony that Arif was not in charge. He further told the court that according to his investigation, the case property was lying in the customs detention room at the airport till March 14, 2018. He claimed that Samina Perveen was one of the officers in the detention room (denied by Sameena). He then said that he had never

seen the case property lying at the airport. It is pertinent to note that Asfand was entrusted with the investigation on March 8, 2018. It seems extremely odd that he, being the investigation officer, did not even bother to go to the airport for six days to see the case property and take it in his custody. The Customs faux pas continued.

- (xiv) The bags produced in court, which Tauseef had claimed he had locked and sealed the remaining property in, were produced in court in an unsealed and unlocked condition. No explanation was given as to who unsealed them. The property had earlier remained in the customs detention room at the airport from March 6, 2018 to March 14, 2018. No one witness claimed to take responsibility for its safekeeping, although they admitted that several shifts of staff changed during a day.
- (xv) The case is riddled with contradictions, discrepancies and legal lacunas. We have, however, not delved deeper, as based on the observations made above, we have come to the conclusion that safe custody and transmission was not proved in the least. We are, however, constrained to comment that we are surprised that this aspect of safe custody and transmission completely escaped the eye of the trial court.

7. To summarise the above:

- (a) Safe custody and transmission of the case property could not be proved. It is now well settled that if there is a break in the chain of safe custody and transmission, a conviction cannot be sustained. In this case, it is not one break, but the entire chain is splintered. Reference may be made to **Sarfaraz Ahmed vs The State (2024 SCMR 1571)**, **Asif Ali vs. The State (2024 SCMR 1408)**, **Said**

Wazir vs. The State (2023 SCMR 1144), Javed Iqbal vs. The State (2023 SCMR 139).

(b) The witnesses contradict each other in material ways. Some of the witnesses appear to be dishonest and may have given false testimonies. Malafide of certain witnesses appears to float on the surface of the record.

(c) Section 161 Cr.P.C. statements of important witnesses were not recorded by the investigating officer. No cogent reason was given for this lapse. The Honorable Supreme Court has held in a number of cases that the evidentiary value of delayed statements without a plausible reason will reduce their evidentiary value to zero. Reference in this regard may be made to **Sajid Hussain alias Jogi vs The State (PLD 2021 SC 898)**, **Noor Mohammad vs The State and another (2020 SCMR 1049)**, **Abdul Khaliq vs The State (1996 SCMR 1049)**.

Conclusion

8. The prosecution failed to prove its case beyond reasonable doubt. The appeal is allowed and the appellant acquitted of the charge. He may be released if not required in any other custody case.

JUDGE

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