

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Criminal Jail Appeal No.111 of 2025

(Ali Murtaza v. the State)

Criminal Appeal No.115 of 2025

(Arsalan v. the State)

Criminal Jail Appeal No.130 of 2025

(Ain-ud-Din v. the State)

Mr. Ubedullah Ghoto, advocate assisted by Ms. Sonia, advocate for the appellant in Appeal No.130 of 2025

Mr. Sajeel Rehman, advocate for the appellant in Appeal No.111 of 2025 & in Appeal No.115 of 2025

M/s. Abbas Saleem Khan Tanoli & SM Ali Jaffri, advocate for the appellant in Appeal No.115 of 2025

Mr. Ali Haider Saleem, Additional Prosecutor General

Date of hearing: 10.08.2026

Date of Judgment: 17.08.2026

JUDGMENT

Omar Sial, J.: On 14.05.2024, S.I. Syed Akbar Ali Shah was leading a police party on patrol when he received intelligence that some persons in a rickshaw had narcotics. The spy informer identified the rickshaw, which was stopped with three persons riding in it. All three persons held a black shopping bag each, and when the bags were checked, 5140 grams of charas were recovered from the bag Arsalan had; 5575 grams of charas were recovered from the bag Ainuddin had, and 5270 grams were recovered from the bag Ali Murtaza had. All three were arrested, and F.I.R. No. 95 of 2024 was registered under sections 9(1) and 3(D) of the Sindh Narcotics Act, 2022, at the SIU police station in Karachi.

2. All three arrested accused pleaded not guilty and claimed to be tried. At the trial, the prosecution examined PW-1 S.I. Akbar Ali

Shah (complainant); PW-2 H.C. Amir Hussain Rajput (witness to the arrest and recovery); PW-3 S.I. Mohammad Waseem (investigating officer and courier); PW-4 A.S.I. Zia Abbas (maalkhana in charge). In their respective section 342 Cr.P.C. statements, the accused all professed innocence, denied any wrongdoing and said that because they had not acceded to a demand for bribe money, a false case was registered against them.

3. At the end of the trial, the learned 8th Additional Sessions Judge, Karachi West, on 16.01.2025, held all three accused guilty and sentenced them to fourteen years' imprisonment. They were also directed to pay a fine of Rs. 400,000 each, and if they did not pay the fine, they would have to remain in prison for another six months.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Prosecutor General. Our observations and findings are as follows.

5. Although the appellants' counsels did not submit, we note in our reappraisal of the evidence that none of the accused were confronted with the Chemical Analyst's report when their respective section 342 Cr.P.C. statements were recorded. The learned Additional Prosecutor General, after going through the statements, most reluctantly acceded that indeed the accused were not confronted with the Chemical Analyst's report.

6. It is now well settled that any piece of evidence not put to the accused while recording his section 342 Cr.P.C. statement cannot be used against the accused for recording his conviction. Reference in this regards may be made to **Shabbir Ali vs The State (2025 SCMR 802)**; **Syed Fida Hussain Shah vs The State and another (2024 SCMR 1622)**; **Bashir Muhammad Khan vs The State (2022 SCMR 986)**; **Dr. Waqar Hameed vs The State (2020 SCMR 321)**; **Haji Nawaz vs The State (2020 SCMR 687)**; **Mohammad Saddique vs The State (2018 SCMR 71)**.

7. The **Haji Nawaz case** (supra) was a narcotics case where the accused had not been confronted with the Chemical Analyst's

report. The Court observed that *“The prosecution had maintained that samples had been secured from each and every packet of the recovered substance which samples had subsequently been tested positive by the Chemical Examiner, but we note that at the time of recording the appellant's statement under section 342, Cr.P.C. the report of the Forensic Science Laboratory had not been put to him at all. The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342, Cr.P.C., then the same cannot be considered against him for the purpose of recording his conviction.”*

8. In narcotic-related prosecutions, the Chemical Analyst's report is usually the primary piece of evidence proving the recovered substance is in fact a narcotic — it's often the crux of the prosecution's case. Courts treat it as core, not peripheral, evidence. The accused were not confronted with the Chemical Analyst's report; thus, it could not be conclusively determined whether the seized substance was a narcotic or not.

9. Another aspect of the case which we have noticed is that the property, according to PW-1 Syed Akbar Ali Shah, was recovered and seized on 14.05.2024. It was ostensibly handed over to the maalkhana in charge by Shah when he returned to the police station the same day. The maalkhana in charge was PW-4 A.S.I. Zia Abbas, who confirmed that the narcotics were given to him by PW-1 Shah on 14.05.2024 (on the contrary, PW-3 Waseem testified that not Shah but he had deposited the case property in the maalkhana). On 15.05.2024, Abbas had handed over the property to PW-3 S.I. Waseem. The original Register XIX was not produced in court, nor was the Road Certificate. The extract of the Register XIX shows that the case property deposited by PW-1 Syed Akbar Ali Shah was listed at serial no. 96 of the Register. The annotation made to show that the case property was taken out on 15.04.2024 by PW-3 Waseem shows that the case property had been deposited in the maalkhaana under entry no. 123. This anomaly remained unexplained—the maalkhana in charge was PW-4 A.S.I. Zia Abbas

admitted that the extract of the Register XIX he had produced at the trial did not contain signatures of either the depositor or the person who took it out, or, as a matter of fact, his own. Possible malafide of the investigating officer is further supported by the fact that although the documents he presented at trial showed that the property was seized on 14.04.2024 and sent for analysis on 15.04.2024, in his examination in chief, the investigating officer testified that “I sent the case property to the Chemical Examiner on 15.05.2024 after the Eid Holidays”. The element of a typographical error was also eliminated when in his cross-examination, the investigating officer stated “*It is correct to suggest that I produce[d] the accused persons on 15.05.2024 for remand*”.

10. Either a false case was registered, or an extremely inefficient investigation and prosecution was conducted. In either case, the impact was that the prosecution was unable to prove its case beyond reasonable doubt. The appeals are therefore allowed. The appellants are acquitted of the charge and may be released if not required in any other custody case.

JUDGE

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