JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Jail Appeal No.D-05 of 2020
Cr. Jail Appeal No.D-06 of 2020

Present:-
Mr. Justice Mahmood A.Khan,
Mr. Justice Zulfiqar Ali Sangi

Appellants:	Rahib Ali [Criminal Jail Appeal No.D-05/2020] and Muhammad Mavia [Criminal Jail Appeal No.D-06/2020] through M/s. Syed Mahmood Alam Rizvi and Waqar Ahmed Memon, Advocates.
Respondent:	The State through Agha Abdul Nabi, Special Prosecutor ANF.
Dates of hearing:	09.08.2023 and 17.08.2023.
Date of Decision:	19.09.2023

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Appellants were tried by learned Additional Session Judge/Special Judge (N)/Model Criminal Trial Court Jamshoro @ Kotri in Spl. Case No.99/2019 bearing FIR No. D040600519/2019 U/s 6, 9 (c), 14 and 15 of CNS Act 1997 of P.S. ANF Hyderabad. Appellants were convicted U/s 9 (c), 14 and 15 of CNS Act, 1997 and sentenced to suffer life imprisonment with a fine of Rs. 100,000/= (one lac) each. In case of non-payment of the fine amount, the accused shall suffer S.I. for three months more. The benefit of section 382-B Cr. P.C. was extended to both appellants.

2. Brief facts of the prosecution case are that the complainant Sub-Inspector Syed Salman of ANF Hyderabad on 13.03.2019 received information that a smuggler namely, Rahib Ali and Muhammad Mavia travelling in a Car bearing No.ANX-572 Toyota Corolla of white colour and smuggling a huge quantity of contraband and they will pass from Indus Highway Toll Plaza in between 1200 hours to 1300 hours. The complainant obtained permission from high-ups and along with his subordinate staff ASI Qurban Hussain HC Khushal Khan, HC Iqbal, Constables Manzoor,

Yasir, Kashan Ahmed, Khizar and driver Constable Muhammad Ali and Constable Sajid Akbar left ANF Hyderabad in a government vehicle and reached to the pointed place at 1200 hours. It was 1230 hours, they saw said Car and stopped it, in which three persons were sitting. As per FIR, the private persons were asked to act as mashir but they refused, as such, ASI Qurban Hussain and Constable Kashan Ahmed acted as mashirs. On inquiry, the complainant found the appellants Rahib Ali and Muhammad Mavia who were sitting front portion of the Car while the third person sitting on the rare seat of the Car was co-accused Wali Muhammad, who disclosed to be unaware of the narcotics. The appellants Rahib Ali and Muhammad Mavia disclosed that they had concealed the narcotic substance in a secret compartment of the Car below the back seat and dashboard area. They recovered 100 multicoloured foil pack packets from the back seat area of the car, and 30 packets from the dashboard area, which contained chars. On weighing the same it became a total of 130 kilograms. The entire contraband was sealed in nylon bags for chemical analysis. They also recovered the running papers of said car, cash amount, purse and mobile phones from the accused. The appellants disclosed that they brought contraband from Quetta and took co-accused Wali Muhammad as a passenger on the way. Such a memo of arrest and recovery was prepared; the accused and case property were brought to PS, where instant FIR was lodged.

3. After the usual investigation challan of the case was submitted before the court having jurisdiction. The legal formalities including the supply of documents were completed and then the charge against appellants was framed to which they pleaded not guilty and claimed trial. At the trial, the prosecution examined P.Ws. Syed Salman complainant who was also an investigation officer, witness/mashir Constable Kashan Ahmed and Constable Yasir Ali, who produced relevant documents and the items in support of their evidence and then the prosecution closed its side.

4. After examination of the prosecution witnesses, the appellants were given a chance to explain the prosecution evidence by recording their statements under Section 342 Cr. P.C., in which they denied all the allegations and examined themselves on oath u/s 340 (2) Cr.P.C.

as well as examined defence witnesses namely Nawab and Bilawal. Appellant Rahib Ali produced an application moved to DIG Hyderabad and a letter to SSP Jamshoro. His defence witness Nawab produced an attested Photostat copy of the application moved to DIG Hyderabad and an invitation card. Then learned counsel for the appellants closed its side.

5. On conclusion of the trial, learned trial court after hearing the parties convicted and sentenced the appellants through impugned judgment as stated above.

6. Learned counsel for the appellants mainly argued that the appellants are innocent and have been falsely implicated in this case; that no independent witness was associated despite information in advance which makes the case doubtful; that description of alleged recovered foils containing charas such as colour, shape etc. are not mentioned in the memo of recovery; that the appellant Mavia was minor aged about 16 years therefore his case was to be tried as juvenile but same aspect of the case has not been considered by the trial court; that the CNIC or any other documents which confirm the age above 18 years were not recovered nor were collected by the investigation officer during the investigation; that as per the CDR produced by the appellants all the official of the ANF witness in the present case were not present at the place of recovery at the relevant time, however, they were present at police station ANF Hyderabad and the entire case they have managed; that there is violation of Article 17 and 79 of the Qanoon-e-Shahadat, 1984, as the complainant was acting as complainant, investigation officer as well as the scriber of the memo of recovery and only one mashir was examined by the prosecution and the others were left without any reason; that the prosecution was required to examine at least two mashirs of the recovery to prove the mashirnama of recovery; that though it was alleged that appellants were coming from Quetta but the receipt of tool plaza or the receipt of any petrol pump were not recovered from them to prove their traveling; that major contradictions were available in the evidence of witnesses but the same were not considered by the trial court; that all the witnesses are police officials and the mashir is subordinate of the complainant

therefore their evidence cannot be relied upon; that the trial court ignored the provisions of section 367 Cr.P.C while passing the impugned judgment. Lastly, they submit that the entire case of the prosecution is doubtful therefore by extending the benefit of the doubt the appellants may be acquitted by allowing their appeals. In support of their contentions they relied upon the cases of Shan Mohammad v. The State (2018 MLD 826 (Peshawar), Kamran Shah and others v. The State and others (2019 SCMR 1217), The State through Regional Director ANF v. Imam Bukhsh (2018 SCMR 2039), Munir Hussain alias Munawar alias Muno v. The State (2019 YLR 51), Bahar Begum v. The State (2019 YLR 1585), Miandad v. The State (2019 YLR 954), Nazeer and another v. The State (SBLR 2019 Sindh 119), Shahid Dada v. The State (2017 MLD 288), Tanveer alias Chand v. The State (2018 YLR 2264), Ghulam Nabi Shah v. The State (2020 YLR 2127), Raees Khan v. The State (1991 P.Cr.L.J.617)(Lahore), Abdus Sattar Molla and others v. The State (PLD 1963 Dacca 251), Muhammad Usman v. The State (NLR 1992 CrLJ 272) (Sukkur), Asif Khan v. The State (2018 YLR 661)(Sindh), Ali Jan v. The State (2019 YLR 35 (Sindh (Hyderabad Bench), unreported judgment dated: 8-5-2022 passed by this Court in Spl. Cr. Anti-Terrorism Appeal No.175 and others of 2021 and Muhammad Saddique v. The State (2011 YLR 2261) (Karachi), Mst. Rasheeda Begum v. Muhammad Yousaf and others (2002 SCMR 1089), Islam-Ud-Din through L.Rs and others v. Mst. Noor Jahan through L.Rs and others (2016 SCMR 986), Faid Bakhsh v. Jind Wadda and others (2015 SCMR 1044), Farzand Ali and another v. Khuda Bukhsh and others (PLD 2015 SC 187), Muhammad Rafiq v. Muhammad Ali and another (2018 YLR (Lahore) 253), Syed Ali Muhammad Naqvi through L.Rs and others v. Abbas Raza and another (2018 YLR 1616) (Sindh).

7. On the other hand, learned counsel for the ANF has contended that the prosecution has successfully proved its case by examining the P.Ws, who have no enmity with the appellants; that there are eyewitnesses who deposed that in their presence the appellants were arrested and narcotics recovered from them under the mashirnama of arrest and recovery; that no major contradiction is pointed out by the defence counsel; that in respect of the CDR, the appellants had

not examined any defence witness in support of the said CDR; that appellant Mavia himself admitted to being adult in his statement recorded under section 342 Cr. P.C; that all the P.Ws have supported the prosecution case, therefore, conviction and sentence awarded by the trial court requires no interference by this court and the appeals of the appellants are liable to be dismissed. Learned special prosecutor has relied upon the cases of Muhammad Ismail and another vs. The State (2018 YLR Note 41 (Sindh (Hyderabad Bench), Mushtaq Ahmed v. The State and another (2020 SCMR 474), Shafa Ullah Khan v. The State and another (2021 SCMR 2005), Faisal Shahzad v. The State (2022 SCMR 905), Raja Ehtisham Kiayani v. The State (2022 SCMR 1248), Muhammad Rasool v. The State (2022 SCMR 1145) and unreported judgment dated: 29-5-2023 passed by the Supreme Court of Pakistan in Criminal Appeal No.208 of 2022 re: Zain Ali v. The State.

8. We have heard learned counsel for the appellants as well as learned special prosecutor for the ANF and perused the material available on record with their able assistance.

9. The re-appraisal of evidence brought on record established that the prosecution has successfully proved its case against the appellants/accused beyond any reasonable shadow of doubt by producing reliable, trustworthy and confidence-inspiring evidence. The prosecution to prove the case against the appellants has examined two eyewitnesses in respect of the arrest and recovery of contraband material from the possession of the appellants. ***PW-1 Syed Salman the complainant so also the investigating officer of the case, whereas, PW-2 P.C Kashan Ahmed is the eyewitness and the mashir.*** Both the witnesses deposed against the appellants in the same line and stated that on 13.03.2019, they were available at PS ANF Hyderabad. The informer provided information to their higher authorities that inter-provincial drug peddlers namely Rahib Ali r/o Tando Allahyar and Muhammad Mavia r/o Quetta are bringing narcotics in huge quantities by car bearing No.ANX-572 of white colour for smuggling from Quetta to Tando Allahyar and will arrive between 1200 to 1300 hours, they will cross Petaro Toll Plaza Indus Highway. If the immediate action could be taken, then the arrest and recovery would be made. On receipt of such information,

on the instruction of higher authority, a raiding party was constituted comprising over complainant, ASI Qurban Hussain, HC Khushal Khan, HC Iqbal, PC Manzoor, PC Kashan, PC Yasir, Sepoy Khizer, drivers PC Muhammad Ali, PC Sajid Akbar, PC Manzoor along with informer. They left PS in a government vehicle equipped with weapons vide entry No.08 at 1115 hours and at 1200 hours they arrived near toll Plaza Indus Highway and made nakabandi. Near about 1230 hours, the pointed-out car bearing No.ANX-572 was seen by them coming from the Sehwan side. It was signalled on the pointation of the spy informer by the complainant to stop the vehicle. The car was stopped on the left side of the road. The people who were present in the vehicle were asked to act as mashir but due to fear, they refused. They then apprehended the persons who were sitting in the driver's seat, in the front seat and the back seat. The person who was sitting in the driver's seat was asked about his identity and disclosed his name as Muhammad Mavia s/o Raheem Dad r/o near TCF School, Saryab Road, Quetta and further informed that he was the driver of the Car. The person, who was sitting in the front seat, disclosed his name as Rahib s/o Muhib Ali by caste Thebo r/o village Vithal Thebo, tehsil Jhando Mari, District Tando Allahyar. The person, who was sitting in the back seat, disclosed his name as Wali Muhammad s/o Abdullah r/o Sakran, District Lasbela, Balochistan. They inquired from them about the presence of narcotics in their vehicle, upon which the person sitting in the back seat namely Wali Muhammad showed ignorance about the presence of narcotics, while the person sitting in the driving seat Muhammad Mavia and in the front seat Rahib Ali disclosed that in the secret cavity under the back seat and in the secret cavity of dashboard, chars is lying. On their disclosure, they removed the back seat of the vehicle and found 100 multicoloured foiled packets were present in secret cavity. They then removed the dashboard and found 30 multicoloured foiled packets were present in its secret cavity. Each packet was checked and found to contain chars in the shape of two slabs that were recovered. Each packet was weighed separately through an electronic weighing scale. Each packet stood to be 1/1 KG (One Kilogram each). Total chars stood to be 130 KGs gross chars. For chemical examination, 26/26 packets were separated and sealed in 05 nylon bags/kata of white colour. A further search of the car was also conducted but nothing

was recovered from it. Thereafter, a physical search of all three persons was conducted. From the right side pocket of the shirt of accused Muhammad Mavia, one running paper of the said car, cash Rs.1200/-, and one mobile phone with SIM were recovered. From the right side pocket of accused Rahib Ali, one brown coloured purse, one original CNIC in the name of Rahib Ali, cash Rs.1500/-, and two Nokia mobile phones with SIMs were recovered. From the right side pocket of the shirt of accused Wali Muhammad, one OPPO mobile phone with SIM, cash Rs.900/- PKR, and one NADRA CNIC token in the name of Wali Muhammad were recovered. All three accused persons were arrested on the spot. On inquiry from the arrested accused, accused Muhammad Mavia and Rahib Ali disclosed that they had brought the recovered chars from Quetta and going to Tando Allahyar. For accused Wali Muhammad, they disclosed that Wali Muhammad was lifted by them as a passenger from Sehwan Sharif against the fare of Rs.500/-. Five sealed parcels of recovered property, a personal search of the accused, car No.ANX-572 along with the key was taken in custody under the mashirnama. On reaching the police station an FIR was registered. ***The complainant kept the case property in the Malkhana being in-charge of Malkhana for safe custody purposes and maintained entry in Register No.19 vide No.184.***

10. The complainant on the order of the higher authority conducted the investigation and recorded the 161 Cr. P.C. statements of witnesses and prepared the hulia/face sheets of the accused and obtained fingerprints from them. During the investigation, the accused Muhammad Mavia disclosed that the recovered chars was handed over to him by one Abdul Rasheed in Quetta and introduced him to accused Rahib Ali and disclosed that the recovered chars belonged to Rahib Ali and the said chars is shifted to Tando Allahyar. During the investigation, the accused Rahib Ali disclosed that he had collected the recovered chars from Abdul Rasheed and Abdul Rasheed had introduced the driver Muhammad Mavia to him and the driver brought them at Tando Allahyar with chars. The accused Rahib Ali further informed that from the recovered 130 KGs chars, 30 KGs chars are the property of Sohrab Mari s/o Haji Saifal Khan Mari, r/o Dolatabad Mirpurkhas and the remaining 100 KGs chars belong

to him. During the investigation, the accused Wali Muhammad had disclosed that he had gone to Sehwan for Ziarat and after Ziarat he was waiting for conveyance, meanwhile, Mavia and Rahib Ali arrived in their car and he took a lift from them against the fare of Rs.500/-. During the investigation, it surfaced that the seized car was registered in the name of Khan Muhammad s/o Dur Muhammad. Khan Muhammad also investigated and produced the original documents of the car and a car other than the car recovered from the appellants. Since two cars were found with the same registration numbers and chassis numbers, hence investigation of the car was also conducted through Forensic Science Laboratory, Hyderabad. As per the FSL report, the correct registration number and chassis number were of the car of Khan Muhammad s/o Dur Muhammad while the seized car was found tampered with its engine and chassis numbers. ***On 14.03.2019, the entire recovered case property was sent to the Chemical examiner, Karachi through PC Yasir.*** The chemical examiner's report was positive. After investigation, the accused Muhammad Mavia and Rahib Ali were found guilty while the accused Wali Muhammad did not reply satisfactorily during the investigation in respect of questions put to him, hence he was also challaned in this case and the accused Abdul Rasheed and Sohrab Mari shown as absconders. The complainant who was also the investigation officer had to produce mashirnama of arrest and recovery at Ex.10/A, entry No.8 and 11 on one page at Ex.10/B, Malkhana entry No.184 at Ex.10/C, a letter addressed to the chemical examiner, Karachi at Ex.10/D, chemical examiner's report at Ex.10/E, copy of notice u/s 160 CrPC issued against Muhammad Khan s/o Dur Muhammad at Ex.10/F, mashirnama dated 03.04.2019 at Ex.10/G, letters issued for collection of criminal record of accused dated 17.04.2019 (two pages) at Ex.10/H, letter issued for Forensic Examination of vehicles dated 03.04.2019 at Ex.10/I FSL reports (two pages) at Ex.10/J, letter of CPLC dated 21.03.2019 (two pages) at Ex.10/K, letter addressed to ETO, Karachi dated 18.03.2019 at Ex.10/L, report of ETO dated 20.03.2019 at Ex.10/M. The case property in five nylon bags of white colour containing chars as article 1 to 5 of Exh.10 in sealed condition and mobile phone G-5, running paper of seized vehicle, cash Rs.1200/- recovered from accused Mavia, two Nokia mobile phones, brown wallet, original

CNIC, cash Rs.1500/- recovered from accused Rahib Ali, one OPPO mobile, CNIC token, cash Rs.900/- recovered from accused Wali Muhammad was also produced before the court including the seized vehicle which was present outside the court at the time of evidence. Photostat copy of sale/transfer deed No.58757 dated 22.02.2019 (10 pages) at Ex.10/N and letter No. RB 1321 dated 29.03.2019 at Ex.10/O was also produced and exhibited in evidence. They both were cross-examined at length but we could not find any substantial material which favored the appellants.

11. To prove the safe transmission of the recovered contraband from the police station to the chemical examiner the prosecution examined Constable Yasir who deposed that on 14-03-2019, SI Syed Salman Hyder gave him the case property related to this case i-e five sealed parcels in white nylon katas along with necessary documents, for depositing the same with the office of Chemical Examiner. Karachi, vide entry No. 8 at 9.10 a.m. He proceeded from PS ANF Hyderabad in a Government vehicle with driver Constable Muhammad Ali and the property was deposited with the Chemical Examiner safely for which he obtained the receipt and then arrived at PS where maintained the roznamcha entry for his arrival. During the cross-examination, he denied suggestions that at the time of depositing the case property in Karachi, he was available in different areas of Hyderabad and did not go for depositing the case property in Karachi as per the location of his mobile number. He further clarified during the cross-examination that while on duty the cell phone was not with him. On perusal, no major contradiction was found in his evidence. His evidence when scrutinised with the Chemical Examiner's report was found reliable, trustworthy and confidence-inspiring. As per the Chemical Examiner's report, the property reached the lab on 14-03-2019 through PC Yasir. The property as per the report was Pel. No. 1 to 5, each parcel having 26 KG Chars, a total of 130 KG. As regards the description of the property and the seals the report shows that five sealed white nylon bags (torras) each with (01) seals, seals perfect and as per the copy sent. In the case in hand, the prosecution examined the Malkhana incharge to prove the safe custody and the person who brought the property to the lab for safe transmission even otherwise if the same witnesses were not

examined and the Chemical Examiner's report supports that the property reached at the lab with perfect seals as per the document then it is sufficient to hold that the property was in safe custody and the same was safely transmitted. No question was put from this witness in respect of any tempering with the samples during the cross-examination. The latest view of the Supreme Court on this point in Cr. Appeal No. 208 of 2022, ***Zain Ali v. The State*** (unreported) Judgment dated: 29-05-2023 (Three member bench) is as follows:-

> *"During the course of arguments, learned counsel for the appellant had argued that* ***one Suleman Haider, Constable, who deposited the sample parcels in the office of Chemical Examiner was not produced in evidence, therefore, the safe custody of the allegedly recovered narcotic and its safe transmission is not established. However, this argument is of no help to the appellant. A bare perusal of the record shows that a huge quantity of 563 kilograms charas and 1500 grams opium was recovered from the appellant on 25.03.2013. The Investigating Officer separated 83 kilograms of charas in two separate parcels of 43/40 kilogram and sealed the same. The whole recovered 1500 grams opium was also separated and sealed in a parcel. All the three sealed sample parcels were sent to the office of Chemical Examiner on the very next day i.e. 26.03.2013. The report of the Chemical Examiner testifies this fact that the three sealed parcels were received on the said date, which were found to be charas and opium.*** *It also came in evidence that the whole recovered narcotics, except the parcels which were sent to the Chemical Examiner, was produced in Court in sealed parcels during trial as a case property. Although, Tahir Ahmed, Inspector/I.O. was cross-examined by the defence at length but no question was put to him, which could suggest that either the whole recovered narcotics was not produced in Court or the same was not sealed in separate parcels as stated by him. Similarly, no question was put to him, which could suggest that the recovered narcotics was planted on the Criminal Appeal No. 208/2022.* ***In this view of the matter, it can safely be said that the safe chain of custody of the recovered narcotics was not compromised at all."***

In another case of ***Izzatullah and another v. The State (2019 SCMR 1975),*** the Apex Court has observed as under:-

> *"Other pieces of evidence have been found by us as independently sufficient to drive home the charge; forensic report confirms the lethal nature of the substance, recovered in a quantity that cannot be possibly foisted in routine; seizure of the vehicle clinches the case. Argument of safe custody does not hold much water as Abdul Faraz 28/C (PW-10) took the sample to the Forensic Science Laboratory along with Rahdari Ex.PW8/3 was not cross-examined despite opportunity. Forensic Report (Ex.PZ) corroborates the position taken by the said PW. Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in a comfortable unison: being functionaries of the*

> *Republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trustworthy, as in the case in hand. Both the courts below have undertaken an exhaustive analysis of the prosecution case and concurred in their conclusions regarding petitioners' guilt and we have not been able to take a different view than concurrently taken by them. Petitions fail. Dismissed."*

Yet in another case of ***Zahid and another v. The State (2020 SCMR 590)***, the Supreme Court of Pakistan observed as under:-

> ***.....The chemical examiner's report produced by the lady doctor states that the seals of specimens sent for chemical examination were received intact and it was the chemical examiner who had broken open the seals, therefore, the contention of the petitioners' learned counsel regarding the safe transmission of the specimens is discounted both by this fact as well as by the fact that no question was put regarding tampering of the said seals.***

12. We have carefully examined the evidence of the prosecution witnesses and found the same reliable, trustworthy and confidence-inspiring. The recovery of a huge quantity of charas was affected from the possession of accused persons and the same was kept in safe custody and with shortest period it was sent for chemical examination. The prosecution also proved the safe custody and its safe transmission by producing the witnesses in whose custody the property was in the Malkhana and through whom it was sent for chemical examination. All the chains from the recovery of the narcotics till sending the same for chemical examination have been proven by the prosecution beyond a reasonable doubt. The contention raised by the learned counsel for the appellants that PW-1 Syed Salman himself is the complainant and the investigation officer of the case, therefore, his evidence cannot be relied upon and its benefit must be given to the appellants has no force as there is no prohibition in the law for the police officer to investigate the case lodged by him as has been held by the Supreme Court of Pakistan in the case of ***Zafar v. The State (2008 SCMR 1254),*** wherein it is held as follows:-

> *"11. So far as the objection of the learned counsel for the applicant that the Investigation Officer is the complainant and the witness of the occurrence and recovery, the matter has been dealt with by this Court in the case of* ***State through Advocate-General Sindh v. Bashir and others PLD 1997 SC 408, wherein it is observed that a Police Office is not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an Investigating Officer,*** *so long as it does not in any way*

> *prejudice the accused person. Though the Investigation Officer and other prosecution witnesses are employees of A.N.F., they had no animosity or rancor against the appellant to plant such a huge quantity of narcotic material upon him. The defence has not produced any such evidence to establish animosity qua the prosecution witnesses. All the prosecution witnesses have deposed in line to support the prosecution case. The witnesses have passed the test of lengthy cross-examination but the defence failed to make any dent in the prosecution story or to extract any material contradiction fatal to the prosecution case. The prosecution has been successful to bring home the guilt of the appellant to the hilt by placing ocular account, recovery of narcotic material, the Chemical Examiner report G.1, Exh.P.3. The learned counsel for appellant has not been able to point out any error of law in the impugned judgment and the same is unexceptionable.*

13. The objection raised by learned counsel for the appellants that having prior information no private persons were associated as witness/mashir in the recovery proceeding hence the provision of section 103 Cr. P.C was violated by the complainant and the evidence of police officials cannot be relied upon while awarding the conviction in cases of capital punishment also has no force as the reluctance of the general public to become a witness in such cases has become a judicially recognized fact and there was no way out but consider the statement of the official witnesses as no legal bar or restriction has been imposed and even then there was no time to collect independent witnesses. No direct enmity or ill will has been suggested by the appellants against the complainant or any of the officials who participated in recovery proceedings during cross-examination and therefore in the circumstances the police officials were good witnesses and could be relied upon if their testimony remained un-shattered during the cross-examination. Even otherwise, the provision of ***Section 25 of the CNS Act*** has provided the exclusion of Section 103 Cr.P.C. during recovery proceedings. The Supreme Court of Pakistan in the case of ***Salah-uddin v. The State (2010 SCMR 1962)***, has held as under:-

> ***"We are conscious of the fact that no private witness could be produced but it must not lost sight of that reluctance of general public to become witness in such like cases by now has become a judicially recognized fact and there is no way out but to consider the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard. We are fortified by the dictum laid down in Hayat Bibi v. Muhammad Khan (1976 SCMR 128), Yaqoob Shah v. The State (PLD 1976 SC 53), Muhammad Hanif v. State (2003 SCMR 1237). It is well settled by now that police officials are good witnesses and can be relied upon if their testimony remained un shattered during cross***

> ***examination as has been held in case of Muhammad Naeem v. State (1992 SCMR 1617), Muhammad v. State (PLD 1981 SC 635). The contentions of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner qua violation of provisions as enumerated in section 103, Cr.P.C. seems to be devoid of merit when examined in the light of provisions as contained in section 25 of the Act which provides exclusion of section 103, Cr.P.C.****"***

In another case of ***Shabbir Hussain v. The State (2021 SCMR 198),*** the Supreme Court of Pakistan has observed as under:-

> ***"Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status."***

Yet in another case of ***Mushtaq Ahmad v. The State & another (2020 SCMR-474),*** the Supreme Court of Pakistan has also held as under:-

> ***"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring".***

14. The contention of learned counsel for the appellants that only one attesting witness of the mashirnama of recovery of Chars and arrest was produced by the prosecution and the prosecution was bound to produce at least two witnesses as required by Article 17 (2) of the Qanoon-e-Shahadat, order, 1984, and the evidence of complainant being the author of the mashirnama and being scriber is not a substitute for an attesting witness and his evidence may have a supportive value, but was neither in line with the mandate of law nor did it meet the test of Article 79 of the Qanoon-e-Shahadat, order, 1984, has no substance in view of the fact that each case is to be

decided on its own facts and the circumstances. We observed that the production of documents and proof of documents are two different subjects. The document could be produced in evidence that was always subject to proof as required under Art. 78 of Qanoon-e-Shahadat, order, 1984, which provides that *"If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting".* The complainant who wrote the mashirnama and signed the same being the author and the attesting witness of the said document was examined before the trial court and exhibited the same in his evidence by stating that after the recovery of chars, he wrote and signed the same so also obtained the signatures of mashirs. During cross-examination, his signature on it was not challenged/ disputed by the defence counsel nor it was disputed that he had not written the same, hence the prosecution proved the mashirnama to be prepared/written and signed by the complainant. The other aspect regarding the proving of the document under Art, 79 of Qanoon-e-Shahadat Order, 1984 which provides that *"If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given Evidence. Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."* As already observed that the complainant being the author of the mashirnama who also attested the same along with two other mashirs has not been challenged by the defence counsel. Both the attesting witnesses were examined by the prosecution who stated that they had signed the said document and it was also exhibited in evidence. Their signature on it was not disputed nor denied. During cross-examination, though a plea was taken that the ANF party was not available at the site where from the charas was allegedly recovered but no substantial proof was produced by the appellants that can be made based on discarding the evidence of prosecution

witnesses. On this point Lerned cousel has relied upon the case of Mst. Rasheeda Begum v. Muhammad Yousaf and others (2002 SCMR 1089), Islam-Ud-Din through L.Rs and others v. Mst. Noor Jahan through L.Rs and others (2016 SCMR 986), Faid Bakhsh v. Jind Wadda and others (2015 SCMR 1044), Farzand Ali and another v. Khuda Bukhsh and others (PLD 2015 SC 187), Muhammad Rafiq v. Muhammad Ali and another (2018 YLR (Lahore) 253), Syed Ali Muhammad Naqvi through L.Rs and others v. Abbas Raza and another (2018 YLR 1616) (Sindh) and on perusal of all these judgments the same are found to be the cases of civil disputes specialy the disputes under the specific relief act where the approach of law is some different from the approach of law in deciding the criminal case, under these ciecumstances the case law relied upon by the learned counsel for the appellants is not helpful to his contentions.

15. It is observed that in the cases of narcotic substances, a recovery memo is a basic document, that should be prepared by the Seizing Officer, at the time of the recovered articles, containing a list thereof, in the presence of two or more respectable witnesses and memo to be signed by such witnesses. The main object of preparing the recovery memo on the spot and with the signatures of the witnesses is to ensure that the recovery is effected in the presence of the marginal witnesses, honestly and fairly, so as to exclude the possibility of false implication and fabrication. Once the recovery memo is prepared, the next step for the prosecution is to produce the same before the Trial Court, to prove the recovery of the material and preparation of the memo through the Scribe and the marginal witnesses. The complainant when was examined as PW1 before the Trial Court, which he produced and stated that people were asked to act as mashir but due to fear they refused and after recovery of contraband material was taken into possession through the recovery memo and on the said memo signature was obtained from two witnesses after they read and understand the contents. The PW2 Kashan Ahmed claimed to be the recovery witness and contended that recovery was effected in his presence and the presence of other witnesses he also named those witnesses and further stated that he signed the recovery memo, by giving details of the recovery of contraband material.

PW2 was confronted with the said document at the time of recording his statement to confirm the contents of the same and his signatures upon it. He was also confronted with the recovered contraband available in the court to which he stated that it was the same which was recovered from the accused including other articles belonging to the accused. The complainant and the witness of the recovery corroborate each other on material points, therefore, their statements are reliable and inspire confidence as such, the prosecution has established the recovery of the contraband material from the accused persons beyond the reasonable doubt.

16. In the case at hand, two eyewitnesses have fully supported the case as has been discussed above. However, the sole evidence of a material witness i.e. an eyewitness is always sufficient to establish the guilt of the accused if the same is confidence-inspiring and trustworthy and supported by another independent source of evidence because the law considers the quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of *one eye-witness* to be reliable, trustworthy and confidence-inspiring as has been held by the Honourable Supreme Court of Pakistan in the cases of ***Muhammad Ehsan v. The State (2006 SCMR 1857)*** and ***Niaz-Ud-Din v.The State (2011 SCMR 725)***. There can be no denial of the legally established principle of law that it is always the *direct* evidence that is material to decide a *fact (charge).* The *failure* of direct evidence is always sufficient to hold a criminal charge as *'not proved'* but where *direct evidence* holds the field and stands the test of being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can *safely* be placed on the case of ***Muhammad Ehsan vs. The State (2006 SCMR-1857)*.**

17. In the instant case, no proof of enmity with the complainant and the prosecution witnesses has been brought on the record, thus in the absence thereof, the competence of prosecution witnesses being ANF officials was rightly believed. Moreover, a procedural formality cannot be insisted at the cost of completion of

an offence and if an accused is otherwise found connected, then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The Supreme Court of Pakistan in the case of State/ANF v. Muhammad Arshad (2017 SCMR 283), has held that;-

> "We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case".

18. In matters of huge quantity of narcotics, the absence of enmity or any valid reason for false involvement would also be circumstances tilting the case against the accused. The reliance may be placed on the case of Salah-ud-Din v. The State (2010 SCMR 1962), wherein the Supreme Court of Pakistan has held that;-

> "....No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reasons..."

19. Learned counsel for the appellants emphasized that there are material contradictions in the case of prosecution but no such material contradiction has been highlighted to create doubt in the prosecution story. The courts are supposed to dispose of the matter with a dynamic approach, instead of acquitting the drug paddlers on technicalities as has been held by the Supreme Court of Pakistan in the case of ***Ghulam Qadir v. The State (PLD 2006 SC 61)***. In another case of ***The State/ANF v. Muhammad Arshad (2017 SCMR 283),*** it is observed by the Supreme Court of Pakistan that if in the case no proper investigation was conducted, but if the material that came before the court was sufficient to connect the accused with the commission of the crime the accused could still be convicted notwithstanding minor omissions that had no bearing on the outcome of the case.

20. Turning to the defence evidence produced by the appellants, it is observed that the appellant Rahib Ali was examined on oath and

he produced two witnesses in his defence namely Nawab and Bilawal. On perusal their evidence is found contradictory to each other on the material points. Appellant Rahib Ali stated that when they reached at Dasori mori, they saw five/six persons were present in the vehicle and came in front of their motorcycle, whereas the DW Bilawal stated that vehicle was behind them and officials signaled them. The appellant Rahib Ali stated that he was kept in the vehicle for one day and one night and on the next day he was put into the lockup. During the cross-examination of all the witnesses this aspect of remining in vehcle for one day and one night was not put to them nor the appellant made any complaint to Magistrate who allow his remand for investigation. The application produced by the DW Nawab the brother of the appellant Rahib Ali available at page-127 of the paper book is also found to be managed one as it was forwarded on 16.03.2019 wheras the FIR was registered on 13.03.2019. Though the defence was setup that the appellant was arrested when he was returing from the marragige ceremony and invitation card was produced by the DW Nawab but no where in the cross-examination it was suggested that who had invited the appellant and where the marriage ceremony was arranged. Producing the invitation card at latter stage itself speaks that it was managed. In these circumstance the defence evidence so produced by the appellant Rahib Ali is unreliable, untrustworthy and cannot be made basis for the acquittal of the appellant in the case of recovery of a huge quantity of the narcotics substance.

21. Thus based on the particular facts and the circumstances of the case in hand as discussed above, we have found that the prosecution has proven its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence in the shape of oral/direct and documentary evidence corroborated by the report of the chemical examiner. The impugned Judgment passed by the learned trial court does not suffer from any illegality, gross irregularities or infirmities to call for interference by this court. Resultantly, these appeals are ***dismissed.***

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