

CERTIFICATE OF THE COURT IN RECORD NO. ---

Cv. Jail A. 215 of 2014

Akhtar Zarin vs. The State

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Mohammed Karim Khan Aghe

Mr. J. Muhammad

Dates of hearing: 19-02-20

Decided on 27-02-20

(a) Judgment approved for reporting.

Yes
No

[Signature]

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

①

c.	Date to hear adju
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Telephone No. 021 - 99230882

OFFICE OF THE SUPERINTENDENT CENTRAL PRISON KARACHI

NO.JB/11432

Dated: 25.06.2014

To,

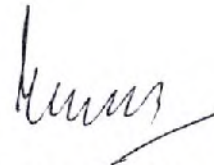
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The Assistant Registrar (Criminal),
Honorable High Court of Sindh,
Karachi.

7640
C81
26/6/14

SUBJECT: JAIL APPEAL OF LIFER CONVICTED PRISONER
AKHTAR ZARIN S/O SHAH ZARIN CONFINED IN
CENTRAL PRISON KARACHI.

I have the honour to enclose herewith jail appeal
(in triplicate) submitted by the above named convict for further necessary
disposal.



SUPERINTENDENT
CENTRAL PRISON KARACHI

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.215 of 2014

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Appellant by: Akhtar Zarin S/o. Shah Zareen through Mr. Ajab Khan Khattak, Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

Date of hearing: 19.02.2020.

Date of announcement: 27.02.2020.

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Akhtar Zarin Khan S/o. Shah Zareen has preferred this Criminal Jail Appeal against the impugned judgment dated 30.05.2014 passed by the learned Special Court-II (C.N.S.) Karachi Camp at Central Prison, Karachi in Special Case No.92 of 2011, F.I.R. No.27 of 2011 U/s. 9/C, C.N.S. Act, 1997, P.S. CID/AEC Sindh, Karachi whereby the appellant has been convicted for offence under section 6 punishable under section 9-C CNS Act, 1997 and sentenced to suffer Life Imprisonment and fine of Rs.500,000/- (Rupees five hundred thousand only). In case of default in payment of fine he was ordered to suffer further Rigorous Imprisonment for three years. Benefit of section 382-B Cr.P.C. has also been extended to the appellant.

2. The brief facts of the case as per FIR are that on 26.01.2011 Complainant SIP Muhammad Shoaib Qureshi of CID/AEC Sindh along with ASI Tariq Mahmood, HC Ali Faisal, HC Syed Younus Ali, HC Khalid Yaqoob, PC Banaras, PC Rajab Ali, PC Muhammad Kashif, PC Punno Khan, PC Nasim Ahmed and PC Khan Rehman left PS in official vehicle for patrolling. During patrolling they received information that from Khyber Pakhtoon Khawa two vehicles are coming to Karachi in which some persons were bringing huge quantity of narcotics and ammunitions through Super Highway towards Karachi. On such information the complainant's party reached at Toll Plaza Super Highway, Karachi along with police party and spy informer at 0130 hours and held Naka before the gate of Tool Plaza, Karachi and started checking the vehicles which

were coming from Hyderabad. They checked several vehicles when two white cars passed the Toll Plaza and the spy informer pointed out that these are the same cars which were carrying the narcotics, arms and ammunition and thus the complainant party signaled the said cars to stop which lead to the culprits in the first car firing which fire hit the informer Sabir which lead to the police returning fire in self defence. The tyres of the first car being registration No.V-3199 burst and stopped while the second car sped away. In the first car one lady was sitting on rear seat in an injured condition and one person was sitting on the driving seat. The person in the driving seat got down from the vehicle who disclosed his name Akhtar Zareen S/o. Shah Zareen and so also disclosed the injured lady's name as Gulshan Bibi wife of Sher. On search of the accused Akhtar Zareen one pistol 30 bore with 2 live rounds was recovered. Thereafter search of the said car was conducted in presence of private witnesses namely (i) Maroof son of Sardar and (ii) Shamshad son of Maroof who were present there and six KK, 7 TT Pistols, 2023 rounds of KK, 80 packets of Charas consisting of rods weighing 80 Kgs were recovered from secret cavities made in different parts of the said car and inside the mudguards made with aluminum. The recovered 80 packets of Charas were sealed in two white cloth bags on the spot. The recovered arms and ammunition were also sealed on the spot.

3. It is averred in the FIR that memo of arrest and recovery was prepared on the spot at 0145 hours on 26.01.2011. Thereafter the recovered contraband Charas and ammunitions were sent to CID CTU, Garden, Karachi through ASI Tariq Mahmood and injured lady and informer were shifted to hospital through Ambulance and the complainant brought the accused Akhtar Zareen and HC Syed Younus who were also injured to Jinnah Hospital, Karachi. Complainant SIP Muhammad Shoaib Qureshi prepared statement under section 154 Cr.P.C. which was sent through HC Ali Faisal for lodging the FIR which was lodged being Crime No.27/2011 under section 6/9-C, CNS Act, 1997. During investigation I/O Inspector Malik Muhammad Adil inspected the place of incident and prepared Memo of site inspection and sent the recovered narcotics for chemical analysis. After completion of investigation I/O filed challan/final report under section 173 Cr.P.C. before the Court of law against accused Akhtar Zareen while Gul Zaman son of Sher Rehman was shown as absconder.

4. Thereafter charge was framed against the accused to which he plead not guilty and claimed trial.

5. The prosecution to prove the charge examined 03 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statement under section 342 Cr.P.C. of the accused was recorded in which he denied the allegations leveled against him and claimed false implication. However, he did not examine himself on oath or call any DW in support of his defense case.

6. Learned Special Court-II (C.N.S.) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 30.05.2014, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant is completely innocent, that he has been falsely implicated in this case by the police because the IO had enmity with him as his wife had filed a case against the IO although he admitted that he was arrested at the scene of the incident, that the police encounter was fake, that the narcotics had been foisted on him, that there was a delay of 6 days in sending the narcotics for chemical analysis, that there was no evidence that the narcotics had been kept in safe custody before sending them to the chemical examiner and that for any of the above reasons the accused should be acquitted of the charge based on this court extending to him the benefit of the doubt. In support of his contentions he placed reliance on **Ikramullah V The State** (2015 SCMR 1002) and **Muhammed Ayoub V State** (un reported) of this court dated 03.09.2019

9. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment and contended that that the accused was arrested on the spot, that the narcotics were recovered from the vehicle which he was driving and which belonged to him, that the chemical report was positive, that there was evidence of safe custody of the narcotic and as such the prosecution had proved

its case beyond a reasonable doubt and the appeal should be dismissed. In support of his contentions he placed reliance on **State through Regional Director ANF Peshawar v. Sohail Khan** (2019 SCMR 1288), **Shah Muhammad v. The State** (2012 PSC (Crl.) 772), **Salah-ud-din v. The State** (NLR 2011 Criminal 485), **Mian Muhammad Latif and 2 others v. Muhammad Aslam Nagi, Chairman Baking Tribunal Lahore and another** (2002 CLD 923), **Ghulam Muhammad v. Member (Judicial-III), Board of Revenue Punjab, Lahore** (2005 CLC 1512), **Tariq Mehmood v. The State through Deputy Attorney-General, Peshawar** (PLD 2009 Supreme Court 39), **Gul Badshah v. The State** (2011 SCMR 984), **Arshad Hussain v. The State** (2011 SCMR 1400) and **Begum Nusrat Ali Gonda v. Federation of Pakistan and others** (PLD 2013 Supreme Court 829).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellants, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. After our reassessment of the evidence we are of the view that the prosecution has proved its case beyond a reasonable doubt against the appellant for the following reasons:-

(a) That the FIR was filed promptly keeping in view the encounter, the need to take the injured to hospital, the time taken to search and weigh the drugs and as such any slight delay in lodging the FIR has been fully explained and thus there was no time for the police to cook up a false case against the accused who in any event was arrested on the spot by his own admission.

(b) That the arrest and recovery was made on the spot and the appellant was caught red handed with the narcotics by the police. The appellant has also admitted his presence at the spot. He has claimed that the police have falsely implicated him since his wife had filed a case against the IO. We do not consider this defense believable for the reason that if the IO wanted to fix the appellant they would have fixed his wife instead as she was the one who filed the complaint and not the appellant. His wife did not come as a DW to support this position nor did he exhibit any document showing that the appellant's wife had

made any complaint against the IO. Furthermore **and more importantly**, the evidence of PW 1 Muhammed Shoaib who is the complainant is corroborated in all material respects by PW 2 Muhammed Maroof who was an independent witness who was behind the accused car at the toll plaza and acted as mushir of arrest and recovery and had no axe to grind with the accused and had no reason whatsoever to falsely implicate the accused in this case. In our view he was not a chance witness as he was travelling from Hyderabad to Karachi and was stuck behind the accused vehicle at the Karachi toll plaza. Thus, we have no reason to disbelieve this PW.

(c) That even the informer who was present with the complainant party and who pointed out the accused's vehicle was shot and killed during the operation which shows that the police had gone to the specific place as mentioned by the informer.

(d) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).

(e) **Most significantly** the narcotics were recovered from secret cavities in the car which was owned by the appellant as admitted in his S.342 Cr.PC statement and he was driving at the time of the arrest and recovery from KPK to Karachi as per spy information. The car was recovered along with its key and the narcotics. In this respect in the similar case of **Nadir Khan V State** (1998 SCMR 1899) it was held as under,

"We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving licences also. As being person incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents. The probabilities or the presumptions are all dependents on the circumstances of each case and in the present case the circumstances fully establish their knowledge and awareness of the contents and their explanation showing the ignorance actually strengthens that conclusion rather than weakening it". (bold added)

(f) Under S.29 CNSA once the recovery has been proven as in this case the onus shifts to the accused to show his innocence in that at least he had no knowledge of the narcotics. The appellant has not been able to do so in this case. In the case of **Mehboob-Ur-Rehman V State** (2010 MLD 481) it was held as under in this respect at P485 Para 14

"Under the provisions of section 29 of the C.N.S. Act once the recovery of contrabands was made from a private car which was by then in control of the two appellants, the burden to explain the possession whether actual or constructive was on the appellants to discharge but neither they have led any evidence in defence nor have appeared in disproof of the prosecution evidence under section 340(2), Cr.P.C. thus the charge laid upon them has remained un rebutted".

(g) That it would be extremely difficult to foist such a large amount of Charas being 80 KG's and the fact that it was all hidden in secret cavities in a car owned and driven by the accused points to his actual knowledge of the narcotics and his guilt for the offense as charged.

(h) That the recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken for chemical analysis and no suggestion of tampering with the same has even been made. The narcotic was taken to the chemical laboratory for testing by PW 3 Muhammed Adil who was the IO. It is true that the recovered narcotics were sent for chemical analysis with a delay of 6 days however it is well settled by now that the provisions governing such rules are directory and not mandatory and such chemical report was positive and complied with all relevant legal requirements and protocols as is apparent from the report itself.

(I) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which for the reasons already mentioned above we disbelieve.

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12. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellant and the impugned judgment is upheld and the appeal is dismissed.

13. The appeal is disposed on in the above terms.

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