

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Muhammad Hasan (Akber)

Criminal Appeal No. 318 of 2023

[Allah Ditta vs. The State]

Appellant : through Ms. Zainab Bibi, Advocate

The State : through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Date of Hearing : 21.04.2025

Date of Decision : 06.05.2025

J U D G M E N T

Omar Sial, J.: On 17.01.2018, a police party led by S.I. Zahid Umar was on patrol duty when it received spy information on the location of a man with a huge quantity of narcotics in his possession. The police party reached the identified location and saw the appellant Allah Ditta, who was carrying a suitcase and a bag at that time. Upon a search of the possessions of Allah Ditta, 52 kilograms of charas were recovered from the suitcase, while 26 kilograms of charas were in the bag. An aggregate amount of 78 kilograms of charas was recovered. Allah Ditta was arrested and F.I.R. No. 14 of 2018 under sections 6 and 9(c) of the Control of Narcotic Substances Act, 1997 was registered at the SITE police station in Karachi.

2. The appellant pleaded not guilty and claimed to be tried. At trial, the prosecution examined S.I. Zahid Umar (the complainant); H.C. Mohammad Nawaz (witness to the arrest and recovery); H.C. Abdul Naseer (Head Mohrar and maalkhana incharge), and S.I. Zameer Ahmed (the investigating officer). In his section 342 Cr.P.C. statement, the appellant professed innocence and said that the charas had

been foisted upon him, and the actual owners were let go by the police.

3. The learned Sessions Judge, Karachi West, convicted the appellant of an offence punishable under section 9(c) of the CNS Act, 1997, on 01.06.2023, and sentenced him to life imprisonment.

4. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General. From the very face of the record, it is obvious that a non-professional and casual approach was taken by the police in the recovery, seizure, safe custody, and transmission of the narcotics. Our reasons to make such an observation are as follows:

- (i) S.I. Zahid Umar testified that he had recovered 39 packets of charas from the black colored suitcase, and 20 packets of charas were recovered from a brown color bag. H.C. Mohammad Nawaz (the witness to arrest and recovery) remembered otherwise. According to him, 20 packets of charas were recovered from the black suitcase, and 39 packets were recovered from the bag. Also, according to H.C. Mohammad Nawaz, the suitcase was not black, but red, and the carrying bag was black.
- (ii) The suitcase and the bag were taken to a weighing station, where they were weighed. An extremely dubious receipt of a weighing station was produced at trial. The receipt exhibited in the trial merely shows the numbers 52 and 26 and their total, i.e., 78 kilograms. Some weight could have been given to the receipt had the prosecution examined a representative of the weighing station. This was not done. Such was the apathy, deliberate or otherwise, of the police officials that S.I. Zahid Umar admitted that he had not informed the investigating officer that the charas was taken to a weighing station and weighed there. S.I. Zameer

Ahmed acknowledged that *“it is correct to suggest that I did not associate any person from the Super Samandar Kanta, where from the weight of the charas was carried out as per complainant. It is correct to suggest that I did not verify the receipt of Samandar Kanta regarding the weight of the charas. It is correct that I neither asked the name of the person who carried out the weight at Super Samandar Kanta nor made him as a witness in the case.”* This witness also admitted that he neither prepared a memo to take over the receipt nor had any of the witnesses put their initials on the receipt.“

- (iii) S.I. Zahid Umar explained at trial that he had found 39 packets of charas from the suitcase and 20 packets of charas from the carrying bag. A recovery of a total of 59 packets. On the contrary, the witness to the recovery, H.C. Mohammad Nawaz, recollected 78 packets in total. Perhaps he got confused about the number of packets with the aggregate weight. Most surprisingly, this witness also testified that *“it is a fact that the description of the charas has not been mentioned in the memo of arrest and recovery.”* This statement was made in connection with the shape of the recovered charas. While the seizing officer recollected seizing charas in different shapes, i.e., round, square, and rectangular, H.C. Mohammad Nawaz remembered all the charas as square pieces. The case property produced at trial was neither in the shape that the seizing officer nor the witness remembered it to be. While admitting that the case property produced at trial was in pieces, S.I. Zahid Umar justified it by saying that the charas had disintegrated over time. Any person remotely connected with narcotics investigations would know that charas hardens with time and does not

disintegrate into small pieces. Further, S.I. Zahid Umar testified that single slabs of chars were in each packet he had seized. This was not true, as each packet consisted of two slabs when the property was opened at trial. The witness to the recovery could not remember at trial how many slabs were in each packet when the police ostensibly recovered it. Further still, the record reflects that the charas, according to the seizing officer, was in packets with various words, numbers, and images on them, yet the witness to the seizure testified that "*there was no emblem or mark over the slabs when we removed them from the foil packets.*"

- (iv) The record reflects that the seizure memo was made at 12:30 a.m. on 18.01.2018. The memo (incorrectly) records that the charas was sealed immediately upon seizure. The entire story of the charas being taken to a weighing station and then sealed is not reflected in the memo. Notwithstanding the foregoing, the record shows that the seizure was made at 12:30 a.m. on 18.01.2018. The F.I.R. was registered at 2:30 am on 18.01.2018. Zahid Umar said that he came back to the station, registered the F.I.R., and "the case property was handed over to the head mohrar". This claim was corroborated by witness H.C. Abdul Naseer Sawati when he said, "*S.I. Zahid Umar had produced two sealed bags of 78 kilograms of charas to me for keeping in the maalkhana.*" H.C. Abdul Naseer also noted that the narcotics were given to him by Zahid Umar for deposit in the maalkhana at 2:00 p.m. on 18.01.2018. Zahid Umar had testified that he was back at the station at 2:30 am on 18.01.2018. Neither Zahid Umar, Sawati, nor the investigating officer, Zameer Ahmed, could explain where the property was for nearly twelve hours. The chain of safekeeping was broken at this juncture. It is now well settled that if the

prosecution is unable to establish an unbroken chain of safe custody and transmission, the lapse is fatal for the prosecution. This principle established by the Supreme Court is not dependent on citing precedents.

- (v) Safe custody and transmission continued to be compromised when Zameer Ahmed said that on 19.01.2018 (the next day after the seizure) he came to work, took the accused to the Civil Hospital for a medical check up and then to the City Court to seek a remand however when he reached the City Court the court time was over. Hence, he returned with the accused to the station. When he was asked at trial when he deposited the charas at the office of the Chemical Analyst, Zameer replied that he had dropped off the charas at the Chemical Analyst before he had taken the accused to the hospital, and for seeking remand. He could, however, not produce the original letter that showed the deposit with the analyst because he had misplaced it. He could also not produce the original Chemical Analysts report, as that too had been lost. This witness did not identify the case property (as it was not available in court). However, he still confirmed that the charas in the City Court maalkhana were the same as the one recovered from the appellant. He justified his confirmation by saying that he had taken photos of the charas when it had been produced in court earlier. The learned trial court has erred in permitting such an identification without wondering how Zameer Ahmed was allowed to photograph the case property during court proceedings. Such identification was flawed. The lies in Zameer Ahmed's testimony are apparent and do not require much analysis. Suffice it to say that Zameer Ahmed was neither a credible nor trustworthy witness. Prosecution witnesses were further exposed when Zameer Ahmed said that he had himself seen the

narcotics lying in the station's maalkhana at 7:52 am on 18.01.2018. One wonders what he saw as the maalkhana in charge said that it was not till 2:00 pm on 18.01.2018 that the narcotics were deposited with him.

5. We also find the prosecution's story rather unnatural. Why would a person, ostensibly deeply entrenched in the narcotics trade, stand aimlessly on a road at midnight? We are also sceptical whether the quantity of narcotics as claimed could even fit into the suitcase and the bag. Even if it did, surely that would make it even more unnatural to have a man stand on a road in the middle of the night with a substantial quantity of charas. The contradictions between the account narrated by the seizing officer and the seizing witness, on matters where there was no reason to give different accounts when both claimed to be present, also add to doubt about the veracity and accuracy of events testified by the prosecution witnesses.

6. We allow this appeal on the ground that the prosecution was unable to prove the safe custody and transmission of the narcotics. Given the manner in which this case has been handled, we are constrained to request the Inspector General of Police to review the service records of S.I. Zahid Umar and S.I. Zameer Ahmed to determine whether they are conducting investigations properly and without any bias or malafide.

7. The appellant is acquitted of the charge and may be released if not required in any other custody case. A copy of this judgment should be sent to the Inspector General of Police to facilitate him taking note of paragraph 6 above.

JUDGE

JUDGE