

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No. 537 of 2023

Before:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellant : Syed Ameenullah s/o Syed Sarwar Shah,
through Syed Saaduddin Shah, advocate.

Respondent : The State, through Mr. Qamaruddin Nohri,
Deputy Prosecutor General (DPG), Sindh.

Date of hearing : **09.04.2025**

Date of Judgment : _____

JUDGMENT

TASNEEM SULTANA, J. Through this Criminal Appeal, appellant, Syed Ameenuddin s/o Syed Sarwar Shah has assailed the judgment, dated 20.09.2023, passed in Special Case No. 1684 of 2021, arisen out of F.I.R. No. 106 of 2021, registered at P.S Gadap City, Karachi, under sections 6/9-(c), 14/15 of the Control of Narcotic Substances Act, 1997 (“**Act of 1997**”), whereby the learned 1st Additional Sessions Judge/Model Criminal Trial Court, Malir Karachi, while acquitting the co-accused Sher Ali Khan s/o Gul Khan @ Gul Hasan and Jan Sher s/o Peer Muhammad of the charge, convicted the appellant for the offence punishable under section 6/9 (c) of the Act of 1997 and sentenced him to suffer R.I. for life with fine of Rupees One Million only, and/or in case of default thereof, he should suffer S.I. for six (06) months more. He has; however, been extended benefit of section 382-B, Cr.P.C.

2. It is alleged that, on 15.03.2021 at 1840 hours, police party of P.S. Gadap City headed by SIP Ali Akbar Siyal apprehended the appellant from a car at Katcha Road Gadap, near Commander Society, Karachi and recovered 57 kilograms of charas (cannabis) under a memo of arrest and recovery

prepared in presence of mashirs PC Ashfaq and PC Muhammad Aslam; for that he was booked in the aforesaid FIR.

3. During interrogation appellant disclosed the names of his accomplice as Sher Ali Khan and Jan Sher. On 25.03.2021, I.O. SIP Shahzad Gujar arrested the co-accused, namely, Sher Ali Khan under a memo, whereas Jan Sher after getting interim pre-arrest bail joined the trial. After usual investigation, police submitted the charge-sheet under section 173, Cr.P.C. against them. Having been supplied requisite documents as provided under section 265-C, Cr. P.C., the Trial Court framed a formal charge against the accused persons, to which they pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined five witnesses. **PW-1** SIP Ali Akbar Siyal, complainant, examined at Ex.6, who produced departure entry, memo of arrest and recovery, FIR, arrival/FIR entry, Malkhana Register No. 19 and memo of place of incident at Ex. 7 to 12 respectively; **PW-2**, PC Ashfaq, mashir, examined at Ex.13; **PW-3**, HC Ali Akbar, mashir of arrest of accused Sher Ali, examined at Ex.16, who produced memo of arrest of said accused at Ex. 16/A; **PW-4**, SIP Shahzad Hussain, I.O., examined at Ex.17, who produced departure entry for site inspection proceedings, site sketch, four photographs of place of incident on one leaf, arrival entry No. 27, roznamcha entry No. 09 dated 16.03.2021 for collecting case property form Head Mohrar for chemical examination, letter to Chemical Examiner, Entries No. 37 & 50 dated 25.03.2021 of formal arrest of accused Sher Ali, letter addressed to ETO Lasbela Baluchistan, verification report/vehicle tracking and Chemical Examiner's report at Ex.17/A to 17/K respectively; and **PW-5** Head Mohrar WHC-Muhammad Ali, examined at Ex. 18, who during evidence verified Extract from Register No. XIX at Ex. 11.

5. The statement of appellant under section 342, Cr. P.C. was recorded at Ex. 20, wherein he denied the allegations against him and claimed to be innocent. He deposed that he was illegally taken into custody by personnel of law enforcement agencies from KDA Flats, Surjani Town, Karachi, whereafter he was falsely implicated in this case and nothing incriminating was recovered from his possession. He, however, had not examined himself on oath to disprove prosecution's allegations, but examined one Mst. Farah Nadeem in his defence at Ex.23. The Trial Court after hearing the learning counsel for the appellant as well as APG for the State convicted the appellant and sentenced him as mentioned above, vide impugned judgment.

6. We have heard the learned counsel for the appellant as well as DPG, Sindh and scanned the material available on record with their assistance.

7. Learned counsel for the appellant, *inter alia*, has contended that the prosecution has failed to prove the recovery of alleged narcotic drug, yet the Trial Court recorded conviction assigning the reasons, which are contrary to the evidence available on record; that there are material contradictions in the statement of the witnesses, which have made the recovery of alleged narcotic drug highly doubtful, but the Trial Court failed to appreciate such aspect of the case; that Trial Court failed to appreciate the evidence produced by the appellant in his defence; that prosecution has failed to prove safe custody of the case property and its safe transmission to Chemical Examiner; that the Chemical Examiner has not observed the protocols for conducting test; as such, his report is not in accordance with the guidelines enunciated by the Apex Court in number of cases, and the Trial Court by over sighting the above important aspects of the case has erred in law by holding the appellant guilty of the offence on the basis of defective report of Chemical Examiner; that the

alleged recovery of charas from the possession of the appellant is doubtful and despite prior information, the complainant failed to associate any private person to witness search and recovery, the benefit thereof should be extended to him; hence, the impugned Judgment is liable to be set aside.

8. Conversely, learned DPG while supporting the impugned Judgment has maintained that the prosecution has proved its case against the appellant beyond any doubt; that prosecution has produced evidence to establish safe custody and safe transmission of the case property; that the Chemical Examiner has observed the requisite protocol in examination of case property; that the impugned Judgment is based on proper appreciation of evidence on record; hence the Appeal is liable to be dismissed.

9. It appears from the statements of P.Ws. that, on 15.03.2021, at katcha road near Commander Society, Gadap, Karachi police party on secret information apprehended the appellant from a Toyota Corrolla car bearing registration No. LE-1615, and recovered from rear seat of the car a white colour sack with the inscription "BAWANI SUGAR MILLS" containing 50 packets of charas (cannabis), weighing total 57 kilograms, whilst on frisk cash amount of Rs.2,24,000/- and two mobile phones were also secured. In this regard, the prosecution has based its case on the testimony of ocular account furnished by **PW-1** SIP Ali Akbar Siyal, complainant, (Ex.6) and **PW-2** PC Ashfaq, mashir, (Ex.13), who arrested the appellant red handed along with alleged narcotic drug, which was taken into possession by the said complainant vide recovery memo (Ex.8). Both the P.Ws. were put at lengthy cross-examination by the defence counsel but they remained firm to their depositions and nothing came out to suggest that the appellant was falsely implicated by them or they have any animosity with him.

10. On reassessment of the evidence of P.Ws., it appears that the prosecution has taken all necessary steps to ensure the safe custody of the recovered material, which ultimately through report of Chemical Examiner (Ex.17-K) was confirmed as charas. The case property was sealed at the spot, handed over to PW-5 HC Muhammad Ali, Head Mohrar (Ex.18), who incorporated this fact in Register No. XIX (Ex.11) and kept the contraband in the Malkhana. He has affirmed the fact of safe custody of the case property before Trial Court as well. PW-4, I.O. SIP Shahzad Hussain (Ex.17) delivered the sealed parcel to the office of Chemical Examiner and he himself received the report (Ex.17/K) from the said office. He was also cross-examined by the defence counsel but nothing came on record to challenge the safe transmission of the case property to the Chemical Examiner. Hence, the evidence of aforesaid P.Ws. has remained un-shattered on the points of arrest and recovery of charas from appellant and its safe custody in Malkhana and safe transmission to the office of Chemical Examiner.

11. In the instant case, the recovery of charas having been proved, the burden shifted to the appellant to prove that he was innocent. Although, in the cross-examination of P.Ws., the appellant strived to toss the plea of his false implication by suggesting that police illegally took him from KDA Flats Surjani Town, Karachi, but he failed to substantiate it either by avowing in his statement recorded under section 342, Cr.P.C. or by affirming it on oath, however, in support of his claim of being arrested from KDA Flats, Surjani Town, Karachi, he has examined one Mst. Farah Nadeem who, in her deposition, has asserted that on 15.03.2021, she along with her husband was residing at KDA Flats, Surjani Town. She was at gallery of her flat in between 0900 hours to 1000 hours when she saw 5/6 unknown persons came in a

white car, went inside tea hotel situated at ground floor of the flats and dragged its owner (appellant) out of his hotel while beating and blood was oozing from his head and took him in white car. However, her said assertions are just words, as she did not produce any document to prove that she on the relevant day and time was residing in the KDA Flats. Besides the facts of maltreatment, oozing of blood surfaced first time by her, as the appellant himself has not taken such stance in the cross-examination of P.Ws. or in his statement under section 342, Cr.P.C. If such incident ever took place, then what was the reason that the appellant himself did not disclose such fact to the concerned Judicial Magistrate orally or in writing when he was produced before him for remand, along with report under section 167, Cr.P.C by the I.O after his arrest. Such inconsistent pleas if put in juxtaposition with the prosecution's case, then the defence version appears to be unbelievable, untrustworthy and without substance. It is a settled proposition that primary obligation of the prosecution is to prove its case beyond reasonable doubt and its burden shifts under the presumption contained in section 29 of the Act of 1997. In the instant case, once the prosecution established recovery of charas beyond shadow of doubt, the burden has shifted to appellant to prove his innocence, but he has failed to do so.

12. So far, the contention of learned counsel for the appellant regarding non-association of a private witness(es) is concerned, it is a settled proposition that the testimonies of the official witnesses are required to be treated in the same manner as the testimony of any other witness, unless some enmity with the witness is proved. In the case of *Zain Ali v. The State* (2023 SCMR 1669), it has been observed that "This Court has time and again held that reluctance of general public to become witness in such like cases has

become judicially recognized fact that there is no way out to consider statement of official witnesses, as no legal bar or restriction has been imposed, in such regard. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds.” In this context section 25 of the Act of 1997 being relevant is reproduced hereunder:

“25. Mode of making searches and arrest. The provisions of the Code of Criminal Procedure, 1898, except those of section 103, shall, mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these sections.”

Needless to mention that section 103, Cr.P.C is excluded for the offences falling under the Act of 1997 by the section 25 *ibid*. In this respect, reliance is placed on the case of Abdul Rasheed vs. The State (2009 SCMR 306), wherein the Apex Court has observed as under: -

“So far as the arguments regarding non-association of public witness at the time of raid by the raiding party is concerned, suffice it to observe that application of provision of section 103, Cr.P.C. has been excluded under section 25 of the Act, as laid down by this Court in Fida Jan vs. The State (2001 SCMR 36). The prosecution witness being member of party were the natural witness and their testimony cannot be discarded merely on the ground that they were the employees of the police force. Reference in this context may be made to Muhammad Azeem vs. the State (PLD 1996 SC 67); Muhammad Hanif vs. The State (2003 SCMR 1237); Riaz Ahmed vs. The State (2004 SCMR 988); and Naseer Ahmed vs. The State (2004 SCMR 1361).”

13. As regards the next contention of learned counsel for the appellant regarding applying of protocols by the Chemical Examiner, it may be observed that Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 requires reference to the protocols applied for the test

or analysis as per Form-II. We have scanned the Chemical Examiner's report (Ex.17/K) and are of the opinion that the same significantly meets the rudiments of Rule 6 (*ibid*) and Form-II. It reflects from perusal of the Ex.17/K that it bears reference of letter through which sample was deposited, date of receiving sample, name of official, who deposited the sample, the condition of the seals on the packet, description of article in the parcel, gross and net weight of charas, physical examination, fast blue B salt test, TLC test, and the result of the examination. It further appears that the Chemical Examiner has followed the analysis protocols which are in line with the United Nations Office on Drug and Crime (UNODC) Guidelines of 2009. We are, therefore, of the view that the Chemical Examiner's report qualifies to meet the required standards and it is in consonance with Form-II referred to in Rule 6 (*ibid*). In the case of *Shafaullah Khan vs. The State (2021 SCMR 2005)*, the Apex Court has held that the report of Chemical Analysis must contain (i) the test applied (ii) the protocols applied to carry out tests (iii) the result of the tests. Ex.17/K bears aforesaid all three requisites. Hence, the contention of learned counsel for the appellant is contrary to record.

14. As regards the contention of learned counsel for the appellant that there are contradictions and discrepancies in the evidence of prosecution witnesses, it may be observed that minor contradictions and discrepancies do not cast doubt on the guilt of the appellant in the judicial mind of the Court. Instead, these discrepancies are found to be trivial and can be overlooked, especially when the factum of recovery, the chain of safe custody, and the secure transmission of contraband are proven beyond doubt. It cannot lose the sight of the fact that police officials routinely conduct the process of recovery of narcotic substances. Overtime, recollections of exact things, this

does imply that witness did not provide truthful testimony, rather it shows the fallibility of memory and the routine nature of such proceedings. By now, it is well settled that prosecution witnesses are not to be expected to provide statements with mathematical precision, but to provide truthful testimony to the best of their recollection. Minor discrepancies or inconsistencies in testimony should be disregarded as long as the core facts remain consistent. It follows that parrot like narration of facts with mathematical precision is not required, nor necessarily trustworthy. As held by the Apex Court in the case of Aqil v. The State (2023 SCMR 831), parrot like statements are discredited by the Courts. It is a normal course of human conduct that minor discrepancies may occur while narrating a particular incident. In appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Apex Court in the case of Shamsher Ahmed & another v. The State & others (2022 SCMR 1931) unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case, rather they should be ignored. The accused cannot claim a premium for such minor discrepancies, and attaching too much importance to such insignificant inconsistencies would destabilize the purpose of criminal administration of justice, which is not solely intended for acquittal based on minor discrepancies.

15. In view of the above discussed facts and circumstances of the case, we have found that the prosecution has proved its case against the appellant beyond any reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence in shape of ocular and documentary evidence corroborated by the report of Chemical Examiner. Therefore, we are of the view that the impugned judgment does not suffer from any illegality or

infirmity calling for interference of this Court in its appellate jurisdiction. Consequently, instant appeal is dismissed by maintaining the conviction and sentence awarded to appellant.

J U D G E

J U D G E

Faheem/PA