FIN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 692 of 2024

Present:
Justice Zafar Ahmed Rajput (CJ)
Justice Jan Ali Junejo

Appellant	:	Muhammad Wali Khan s/o Bilo Khan, through Ms. Palwasha Tareen, advocate
Respondent	:	The State, through Mr. Habib Ahmed, Special Prosecutor, ANF
Date of hearing	:	05.03.2026
Date of order	:	27.04.2026

JUDGMENT

ZAFAR AHMED RAJPUT-CJ:- Impugned in this Crl. Appeal under Section 48 of the Control of Narcotic Substances Act, 1997 (*the **"Act of 1997"***) read with Section 410, CrPC is the judgment, dated 27.09.2024, passed in Special Case No.107 of 2023, arising out of FIR No.38/2023, registered at P.S. ANF-Gulshan-e-Iqbal, Karachi under Sections 6, 9 (1) 3 (c) of the Act of 1997, as amended by the Control of Narcotic Substances (Amendment) Act, 2022 (the **"Act of 2022"**), whereby the Special Court No.1 (Control of Narcotic Substances) Karachi **("Trial Court")** convicted the appellant and awarded him sentence to endure R.I. for ten (10) years and to pay a fine Rs. 1,00,000/- or, in default thereof, to undergo S.I. for six (06) months more. The benefit of Section 382-B, CrPC was, however, extended to him.

2. It is alleged that, on 02.11.2023 at 0940 hrs., a raiding party headed by SI Madiha Kanwal of P.S. ANF, Gulshan-e-Iqbal, Karachi arrested the appellant on Service Road, at near Total Petrol Pump, Al-Asif Square, Karachi on being recovered 2 kg charas *(cannabis)* from a secret cavity made under the rear seat of his rickshaw; for that, he was booked in the aforesaid FIR.

3. After usual investigation, ANF submitted the report under Section 173, CrPC. Formal charge was framed on 18.05.2024 by the Trial Court against the

appellant, to which he pleaded not guilty and claimed to be tried. In support of the case, the prosecution produced four witnesses in all. PW-1, Sub-Inspector Madiha Kanwal, the complainant/I.O., examined at Exh.3; PW-2, ASI Asif Shah, the *Malkhana* incharge, at Exh.4; PW-3, PC Usama Razi, the parcel carrier, at Exh.5 and PW-4, PC Muhammad Shoaib, the mashir, at Exh.6. They produced relevant documents in their evidence. The statement of the appellant under Section 342, CrPC was recorded at Exh. 8, wherein he denied the allegation against him and pleaded innocence. He opted for examination on oath under Section 340 (2), CrPC and examined at Exh. 9, wherein he asserted that he was a rickshaw driver and, on 01.11.2023 at 1900 or 2022 hrs., he was apprehended from a *"Dhaba"* located at Manghopir road, Naya Nazimabad, where he was taking tea, in presence of Sultan and Imran and then he was brought at P.S. ANF where FIR was lodged against him on failure to fulfil their demand. He also produced DW-1 Sultan Muhammad and DW-2 Imran Khan in his defence, who were examined at Exh.11 & Exh.12, respectively. Upon the assessment of the evidence on record, the Trial Court convicted the appellant and awarded him sentence as mentioned above, vide impugned judgment.

4. Learned counsel for the appellant has contended that the impugned judgment being contrary to law and facts is liable to be set aside; that the Trial Court has not taken into consideration the entire material on record, which has resulted in recording conviction of the appellant in a case fit for acquittal; that despite the prior information and rush place, the complainant did not make effort to engage any private person to witness the alleged recovery; that the prosecution failed to discharge its burden of proving conscious possession of the alleged charas with the appellant; that the appellant is not the owner of the rickshaw and he was not aware of the concealing of charas in secret cavity; that there is a considerable delay in sending the sample to the Chemical Examiner for which no explanation is available on record; that the prosecution has failed to prove safe

custody and safe transmission of the alleged charas; that there is material discrepancy in sealing the case property, as PW-4, Muhammad Shoaib (mashir) has admitted in cross-examination that the two packets of case property did not bear his signature, which create serious doubts in the prosecution case, entitling the appellant to acquittal of the charge. In support of her contentions, she has relied on the case of *Manjhi Khan v. The State* **(2023 P Cr. LJ Note 34)** and *Abdul Rehman v. The State* **(PLD 2022 Sindh 233)**.

5. Conversely, learned Special Prosecutor, ANF, has fully supported the impugned judgment by maintaining that the discrepancy pointed out by the learned counsel for the appellant is immaterial, as the PW-4 has admitted his signatures on sealed Parcels (Article A & B); otherwise, the alleged recovery of charas in terms of date, time and place is fully supported by the prosecution witnesses, and there is no lapse in the control and custody of the sealed samples.

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

7. It reflects from the evidence of prosecution witnesses that, on 02.11.2023, PW-1, Sub-Inspector Madiha Kanwal (Exh.8), was on duty at P.S. ANF-Gulshan-e-Iqbal, Karachi. On the same day, she received a tipoff through her superior officer that Muhammad Wali Khan would come near the Total Petrol Pump, Service Road, Al-Asif Square, Karachi at about 0930 to 1000 hrs. in his rickshaw No. D21-02012 for delivering drugs to his customer. On such information, she proceeded from P.S. along with her sub-ordinate staff in official vehicle, vide Entry No. 05 at 0910 hrs. (Exh.3/A). She reached the pointed place at 0925 hrs. and started surveillance. At about 0940 hrs. ANF stopped the above-mentioned rickshaw being driven by the appellant who, in the presence of mashirs PC Muhammad Shoaib (PW-4) and PC Dilber Hussain, voluntarily produced from a

secret cavity made under the rear seat of the rickshaw one polythene bag containing two packets, wrapped in yellow plastic tape, each containing one kilogram of charas, total two kilograms (gross). PW-1 separated ten grams of charas from each packet as sample for chemical analysis and sealed in two brown envelopes with "MK" seal and mentioned serial No. 1 & 2 thereon, then she sealed both the envelopes in one cloth parcel and the remaining charas she sealed in another white cloth parcel along with shopper with "MK" seal. She prepared such mashirnama of arrest and recovery (Exh.3/B) in the presence of the said mashirs; thereafter, she brought the appellant, seized rickshaw and case property to P.S., where she kept the arrival entry No.6 (Exh. 3/A) and lodged the FIR (Exh.3/C) against the appellant on behalf of the State. Next day, she sent the sealed samples for chemical analysis, vide letter dated 03.11.2023 (Exh. 3/D), through PW-3 PC Usama Razi. The Chemical Examiner issued receipt (Exh. 3/E) and examination report (Exh.3/F), which reflects that on 03.11.2023, one sealed white cloth bag containing two brown paper envelopes bearing serial Nos. 1 & 2, bearing satisfactory seal condition, each containing dark brown piece, were received by the hand of PC-Usama Razi (PW3). Each sealed packet was containing net weight 10 grams of charas. The seized rickshaw as Article 'D", one sealed parcel of case properties as Article 'A" and one sealed parcel of samples as Article 'B" were produced before the Trial Court during evidence of PWs. The sealed parcels were de-sealed in the presence of Special Prosecutor, ANF, and defence counsel.

8. It also reflects from the evidence of PW-2, ASI Asif Shah (Exh.4) that he was the *Malkhana* incharge at P.S. ANF, Gulshan-e- Iqbal. On 02.11.2023 at 1200 hrs., PW-1 handed over to him two sealed white cloth parcels, one of case property and the other of samples with "MK' seal along with personal search articles and one rickshaw. He kept the same in the *Malkhana* of P.S. He made such entry No. 423 in the Register No.19 (Exh. 4/B). On the next day, he de-sealed the lock of the *Malkhana*, took out the sealed parcel of samples and handed over the

same to PC- Usama Razi (PW-3), who deposited the same to the Government Laboratory under a Road Certificate (Exh. 5/B).

9. All the four PWs have implicated the appellant to have been apprehended on the aforesaid day, time and place on being in possession of two kilograms of charas. Their evidence in respect of arrest and recovery of charas is consistent and confidence inspiring. There appears no material contradiction in their depositions rendering the prosecution case doubtful. Admittedly none of the prosecution witnesses had any enmity with the appellant, nor was it ever suggested.

10. So far as the arguments of the learned counsel for the appellant regarding not associating any private person as mashir is concerned, it may be observed that Section 25 of the Act of 1997 specifically excludes application of Section 103, CrPC in narcotic cases. The case property was sent to Chemical Examiner promptly on the second day of the alleged recovery and as per the report of the Chemical examiner the samples were received in sealed condition, which is sufficient to establish the chain of safe custody of the sealed sample parcel from the day and time of recovery to its deposition in the office of the Chemical Examiner. Even otherwise, it was not the case of the appellant before the Trial Court that the case property was tampered with while lying in the *Malkhana.* As regard the argument of conscious knowledge of possession, the appellate was found driving the alleged rickshaw. He is supposed to be the custodian of the same. Mere shrugging of shoulders by him that he had no conscious knowledge of what was present in the secret cavity of the rickshaw was a self-defeating argument. Regarding non-availability of signatures of mashir/PW-4 on two packets of case property, it is case of the prosecution that the said packets were sealed in one white cloth parcel by the complainant/PW-1, which bears the signature of said mashir/PW. Even otherwise, in narcotic cases the Courts should have a dynamic approach in appreciating the evidence. Discrepancies, which may

occur in the preparation of the documents or in the statements of prosecution witnesses due to lapse of time and in the investigation or sealing the case property, those having no impact on the material aspects of the case, have to be ignored. The defence plea taken by the appellant in his statements under Section 342 & 340 (2), CrPC, was not suggested to complainant (PW-1) & Mashir (PW-2); hence, the same appears to be after thought; so also, the evidence of DWs on the same score.

11. It may be observed that once the prosecution *prima facie* establishes its case, then under Section 29 of the Act of 1997, the burden shifts upon the accused to prove contrary to the prosecution's case; in the instant case, the appellant has failed to do so. The case-law cited by the learned counsel for the appellant being on distinguishable facts does not advance the case of the appellant for acquittal.

12. It is, however, well established that the punishment for an offence serves not only as a means of retribution but also as a tool for deterrence and a mechanism to strengthen the fabric of society through the rehabilitation of the offender. The law itself classifies offences distinctly. In some instances, punishment is mandated with the expression *"not less than,"* denoting a fixed minimum, while in others, the law provides flexibility through terms like *"may extend to"* or *"may extend up to."* This legislative contrast signifies that, in the former category i.e. *"not less than,"*, the courts are expected to exercise judicial discretion by taking into account the specific facts and circumstances of the case. These are the kinds of offences where a minimum/lesser punishment may serve the ends of justice by allowing room for the offender's moral and social reformation. In the instant case, Section 9 (1), column 3 (c) of the TABLE of the Act of 2022 provides punishment as *"imprisonment which may extend to fourteen years but shall not be less than nine years along-with fine which may be up to four hundred thousand rupees but not less than eighty thousand rupees."* Since the appellant is neither previously convicted of any offence nor is there any instance

of his involvement in narcotics cases, we deem it appropriate to reduce his sentence awarded by the Trial Court to R.I. for nine (09) years; however, the fine amount i.e. Rs.100,000/- and sentence in default thereof i.e. S.I. for six (06) months shall remain the same.

13. For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording conviction to the appellant by the Trial Court. Hence, the instant Crl. Appeal is dismissed with above modification in sentence.

CHIEF JUSTICE

JUDGE