

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.414 of 2023

Appellants : *Fida Ahmed and Abdul Rauf* through
Mr. Mallag Assa Dashti, advocate

Dil Jan through Mr. Habib-ur-Rehman
Jiskani, advocate

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

Date of hearing: 21.04.2026

Date of Judgment: 04.05.2026

JUDGMENT

Omar Sial J. On 23.07.2022, a police party led by S.I.P Faqeer Hussain of the Saeedabad police station, acting on intelligence, went to a bus stand where a bus bearing registration number BSA-241 was parked. Two people, outside the bus, ran away upon seeing the police, while three inside it were apprehended. The three persons were identified as (i) Dil Jaan, (ii) Abdul Rauf, and (iii) Fida Ahmed. The former was the driver, while the latter two were the bus conductors. Upon Dil Jaan's lead, the police recovered one white colored sack, inside of which were five packets of opium wrapped in yellow tape. Two packets weighed 5 kg each, while the remaining three weighed 10 kg each. An aggregate of 40 kgs of opium was thus recovered. Subsequently, Ghulam Haider, ostensibly the owner of the bus, was also arrested. F.I.R. No. 375 of 2022 was registered under sections 6 and 9(c) of the CNS Act, 1997.

2. All the accused pleaded not guilty and claimed to be tried. At the trial, the prosecution examined PW-1 S.I. Faqeer Hussain (complainant); PW-2 H.C. Majid Ali (witness to the

arrest and seizure); PW-3 H.C. Shahid Ali (witness to Ghulam Haider's arrest); PW-4 S.I.P Ch. Muhammad Amir (Investigating Officer) and PW-5 H.C Muhammad Ramzan (in whose presence the case property was deposited in Malkhana).

3. In their respective section 342 Cr.P.C. statements denied any wrongdoing and professed innocence, however, they did not examine themselves on oath. At the end of the trial, the learned VIIIth Additional Sessions Judge, Karachi (West) vide judgment dated 05.08.2023 convicted and sentenced the accused under Section 9(c) Control of Narcotics Substance Act to suffer R.I for life imprisonment with fine of Rs.500,000/- each and in default in payment thereof to undergo further S.I for one year. It is this judgment that has been challenged through this appeal.

4. We have listened to the appellants' learned counsel and the learned Additional Prosecutor General and have re-appraised the evidence with their assistance. Our findings and observations are as follows.

5. The prosecution alleged, and as is reflected in the F.I.R., that the opium was recovered from a hidden cavity in the bus. S.I. Faqeer Hussain, at trial, admitted that there was no hidden cavity in the bus and that the sack of opium was recovered from the "miscellaneous articles" in the bus – in his words, "*I see the F.I.R. and admit that as per its contents there was a secret cavity/box in the coach. It is correct to suggest that there is no secret cavity in the coach.*" A case starting with a misrepresentation by the complainant did not reflect well on the prosecution.

6. PW-2 H.C. Majid Ali damaged the prosecution's case further. He also admitted that the documents prepared at the time of arrest and seizure all showed recovery from a secret cavity in the bus, but that there was no secret cavity when the bus was produced at the trial. He also categorically admitted that the opium was not recovered from the exclusive

possession of Dil Jaan but that it was lying with “miscellaneous articles”.

7. Safe custody and transmission of the narcotics was another aspect of the case that the prosecution was unable to prove. PW-5 H.C. Muhammad Ramzan claimed he was the Head Mohrar at the police station. All he said was that on 23.07.2022, at about 1630 hours, S.I. Faqeer Hussain had deposited the property in the maalkhana. He said that the entire case property was received by him in a single sack with three seals. This was not in line with the prosecution's case, as the prosecution's witnesses and the documents presented at trial showed that one kilogram was sealed separately, while the remaining 39 kgs were in a separate bag. Indeed, the chemical laboratory's report also shows that two parcels were sent to it. The Head Mohrar did not testify to who and when the property was handed over after its initial deposit. The attested copy of the Register 19 entry was produced at trial, which also contained no details of who took the property out and when. The extract produced was dubious to say the least. Quite incorrectly, the trial court rejected the defense's request to compare the extract with the original Register 19. Although the Head Mohrar said that the property was given to him by S.I. Faqeer Hussain, it was PW-4 Chaudhry Mohammad Aamir who claimed that the accused and two packets of the case property were handed over to him when he began investigating the same day. He then went on to state that *“on 24.07.2022, I submitted the entire property of 40 kgs to the chemical examiner.”* The chemical analyst's report indicates that the case property was received by the analyst on 26.07.2022. The investigating officer, having lied on oath in his examination-in-chief, attempted to mitigate the damage by admitting that he did not deposit the property on 24.07.2022 because it was a holiday. Still, he did not explain where the property was from the 24th to the 26th, i.e., until its deposit. As mentioned above, the extract from Register 19 also did not reflect the property's

removal. The investigating officer further misrepresented the matter by claiming that no procedure existed for issuing a road certificate. Obviously, none was produced at the trial. The trial court took a very casual approach in analyzing the aspects of safe custody and transmission.

8. We have kept our judgment brief, as safe custody and transmission of the property could not be proved, and in accordance with a string of judgments of the Honorable Supreme Court, the conviction cannot be sustained. The appeal is allowed, and the appellants are acquitted of the charge. They may be released if not required in any other custody case.

9. Looking at the case holistically, we are of the view that either this was a false case or that the police showed immense negligence in their investigation. We therefore request the Inspector General of Police, Sindh, to initiate an inquiry, if he deems it appropriate, against the police officers involved in this case to determine whether they were swayed by any extraneous force in the conduct of the investigation.

JUDGE

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