

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan,*

CRIMINAL APPEAL NO.431 OF 2022

Appellant: Muhammad Rehan S/o. Muhammad Zaman, through Mr. Waseem Zafar, Advocate.

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

Date of hearing: 19.12.2022.

Date of Announcement: 21.12.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Muhammad Rehan S/o. Muhammad Zaman has preferred this appeal against the judgment dated 09.05.2022 passed by the 1st Additional Sessions Judge/Model Criminal Trial Court (MCTC-I)/Special Court (CNS-I), Karachi Central, in Special Case No.1124 of 2021 arising out of Crime No.812 of 2021 U/s. 6, 9(b) of Control of Narcotic Substance Act, 1997 registered at P.S. Liaquatabad, Karachi whereby the appellant was convicted under Section 265-H(ii), Cr.P.C. for the aforesaid offence, and sentenced to suffer R.I. for 05 years along with fine of Rs.100,000/-. In failure to pay the fine he was ordered to suffer S.I. for one month more. Benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The facts in short of the prosecution case are that on 03.10.2021 at about 1130 hours, SIP Ahmed Nawaz of police station Liaquatabad, Karachi, has arrested accused Muhammad Rehan s/o. Muhammad Zaman and recovered ten sachets of chars which on weighing became 130 grams as per digital scale and cash amount of Rs.150/- only from Nadi Kinara under Teen Hatti Bridge, Liaquatabad, Karachi, under memo and lodged the instant FIR against the accused.

Muhammad Arif

3. After completion of investigation I.O. submitted charge sheet against the arrested appellant accused Muhammad Rehan to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 04 witnesses and exhibited various documents and other items. The appellant in his section 342 Cr.PC statement claimed false implication by the police however he did not give evidence on oath or call any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment, hence, the appellant has filed this appeal against his conviction.

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

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case by the police in order to show their efficiency; that the narcotics were foisted on the appellant; that there are material contradictions in the evidence of the PW's which renders there evidence unreliable; that there was no independent mashir to the arrest and recovery of the narcotics in violation of S.103 Cr.PC; that the prosecution failed to prove safe custody of the narcotics and that for any or all of the above reasons the appellant be acquitted of the charge by being extended the benefit of the doubt.

8. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment. In particular, he has contended that the evidence of the prosecution witnesses who made the arrest and recovery could be safely relied upon; that the appellant had been caught red handed and the recovery was made from his person; that the prosecution had proven safe custody of the narcotics which resulted in a positive chemical report; that the appellant was a habitual offender as reflected in the charge and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and the appeal be dismissed.

9. 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 appellant, the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

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

(a) The FIR was lodged with promptitude giving no time for concoction and the S.161 Cr.PC statements of the witnesses who gave evidence were recorded promptly which were not significantly improved upon by any PW at the time of giving evidence.

(b) That the arrest and recovery was made on the spot by the police and the appellant was caught red handed with the narcotics on his person. No enmity has been suggested against any police official by the accused whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case the appellants were unable to prove through evidence any such enmity. Thus we believe the police evidence which is corroborative in all material respects and rely on the same. Reliance in this respect is placed on the case of *Mushtaq Ahmad v The State* (2020 SCMR 474) where it was held by the Supreme Court in material part as under at para 3;

"Prosecution case is hinged upon the statements of Aamir Masood, TSI (PW-2) and Abid Hussain, 336-C (PW-3); being officials of the Republic, they do not seem to have an axe to grind against the petitioner, intercepted at a public place during routine search. Contraband, considerable in quantity, cannot be possibly foisted to fabricate a fake charge, that too, without any apparent reason; while furnishing evidence, both the witnesses remained throughout consistent and confidence inspiring and as such can be relied upon without a demur."

(c) That there are no material contradictions in the evidence of the PW's and exhibits 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 the case of *Zakir Khan V State* (1995 SCMR 1793).

(d) That most of the relevant police entries have been exhibited including those relating to departure, arrival and safe custody of the narcotic and mashirnama of arrest and recovery which

was prepared on the spot which all support/corroborate the prosecution case.

(e) The narcotics were sealed at the time of recovery and kept in the malkhana for which the person who recovered the narcotics was examined, the person who deposited the narcotics in the malkhana was examined, the head of the malkhana where the narcotics were kept was examined, the person who took the narcotics to the chemical examiner one day later was examined and all the relevant malkhana entries have been exhibited and thus safe custody of the narcotics has been proven from the time it was recovered until the time it was sent to the chemical examiner. Even no suggestion of tampering with the narcotics was made by the appellant during cross examination.

(f) The chemical report proved to be positive and all relevant protocols were followed.

(g) That although no independent mashir was associated with the arrest and recovery of the appellants and the narcotics this is not surprising because people are reluctant to be involved in cases concerning narcotic dealers. Even otherwise, S.103 Cr.P.C is excluded for offenses falling under the Control of Narcotic Substances Act 1997 by virtue of Section 25 of that Act. In this respect reliance is placed on the case of **Muhammad Hanif V The State** (2003 SCMR 1237).

(h) That the appellant is a habitual offender. This was mentioned in the charge. The relevant CRO and judgment on conviction was exhibited and the appellant in his S.342 Cr.PC statement admitted his conviction in another similar case for which he was granted probation and then whilst on probation committed this offence which fully justified the sentence handed down to him in this case.

(i) That in dealing with narcotics cases the courts are supposed to adopt a dynamic approach and not acquit the accused on technicalities. In this respect reliance is placed on the case of **Ghualm Qadir V The State** (PLD 2006 SC 61) which held as under at para 8 P.66.

"We are not agreeable with the contention of the learned counsel because fact remains that "Poppy Flowers" were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned counsel, would not be sufficient to acquit him. In addition to it in such-like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305)". (bold added)

This position was reiterated in the following terms in the case of **Faisal Shahzad v. The State** (2022 SCMR 905):

"9. This Court has time and again held that the menace of drugs is increasing day by day to various reasons. It is very disheartening to observe that every day there are many reports of drug peddlers being caught with drugs. This menace is great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized in anti-state / terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then unnecessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned courts below." (bold added)

(j) 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 in essence as per the appellant is false implication simplicitor by the police. However no enmity has been suggested against any police official to suggest that he had any reason to falsely implicate the appellant. The appellant did not give evidence on oath and did not call any DW in support of his defence case and thus we disbelieve the defence case as an after thought in the face of trustworthy, reliable and confidence inspiring prosecution evidence.

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

12^a The appeal is disposed of in the above terms.