

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Criminal Appeal No.D-20 of 2018

[Muhammad Sharif and another vs. The State]

Present:

**Mr. Justice Khadim Hussain M. Shaikh &
Mr. Justice Muhammad Faisal Kamal Alam**

Date of hearing : 11.06.2019 and 16.06.2019

Date of decision : 24.07.2019

Appellants

[Muhammad Sharif and

Ghulam Nabi, respectively]

: Through Mr. Asif Ali Abdul
Razak Soomro, Advocate.

Respondent

[The State]

: Through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Through the present Appeal, the above named Appellants have challenged the Judgment (*impugned Judgment*) of the learned Trial Court. The Appellants have been found guilty by the learned Trial Court for committing an offence under Section 9 (c) of the Control of Narcotic Substances Act, 1997 (*CNSA*), in Crime No.31 of 2015, within the remit of Police Station Garhi Khairo and have been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.2,00,000/- (*Rupees Two Hundred Thousand only*) each and in case of default in payment of fine, both the Appellants shall further undergo simple imprisonment of six months. Benefit of Section 382-B of the Code of Criminal Procedure (CrPC), is extended to both the Appellants.

2. Briefly, the facts of the prosecution case as stated in the FIR No.31 of 2015 are that on 31.07.2015, a Police Party of Police Station Garhi Khairo, headed by SHO Wasim Ahmad Mirza left Police Station in official mobile for patrolling in the area and reached at "Dad Muhammad Laro" at 15-30 hours; received spy information that two persons transporting charas from Baluchistan in Al-Shahbaz Ambulance. After receipt of such information, they came at "Kiri-wah" at about 16-00 hours, where they saw Al-Shahbaz Ambulance of white colour coming from Baluchistan, which was stopped when signaled, wherein two persons were found sitting. The Complainant appointed ASI Wali Muhammad and HC (Head Constable) Mumtaz Ali as mashir, who upon checking the Ambulance, found a wooden box lying on its rear seat, which was opened and 100 packets of charas were lying therein. All the packets were weighed on the spot; each packet weighed 01 K.G., hence, total weight of 100 packets of charas comes to 100 K.G. Thereafter, the Complainant made enquiry from both the Accused persons, who disclosed their names as Muhammad Sharif son of Khuda Nazar Pathan and Ghulam Nabi son of Faqeer Muhammad. From the personal search, a currency note of Rs.500/- was recovered from Muhammad Sharif (Appellant No.1) from side pocket of his shirt; from personal search of Ghulam Nabi (Appellant No.2), two currency notes of Rs.500/- total Rs.1000/- were recovered. The Accused persons failed to produce the registration documents of the Ambulance Wagon and further disclosed that they used to sell charas. The Complainant separated 50 packets and sealed them for chemical analysis and also sealed the remaining 50 packets of charas separately. Memo of Arrest and Recovery was prepared on the spot in presence of the mashirs. The Accused persons along with case property and Ambulance Wagon

were brought at Police Station, where the Complainant lodged the cited above FIR.

3. A formal charge was framed against the Accused persons, to which they pleaded not guilty and claimed their trial.

4. Prosecution examined following three witnesses_

5. PW-1 Waseem Mirza, SHO Police Station Patidan. His testimony was recorded as Exhibit-05 and the said witness produced following documents_

(i) Roznamcha entry No.12 of leaving the Police Station (PS) at Exhibit-5/A;

(ii) Roznamcha entry No.14 of arrival at PS as Exhibit 5-C;

(iii) Roznamcha entry No.12 dated 31.01.2015 as Exhibit-5/D,

(iv) FIR of the case as Exhibit 5-E,

(v) Letter for sending the case property to Chemical Examiner as Exhibit 5-F,

(vi) Chemical Examiner Report as Exhibit 5-G.

PW-2-ASI Wali Muhammad, whose deposition was recorded as Exhibit-8,

PW-3-Dhani Bux, whose deposition was recorded as Exhibit-10. The said witness produced Roznamcha entries of departure and arrival at Police Station as Exhibit 10-A. PW-3 took the case property to the office of Chemical Analyst.

6. Statements of both the Appellants were recorded under Section 342 of CrPC and are available in the Paper Book as Exhibits-12 and 13,

respectively. Both Appellants have denied the allegations of the prosecution. Both the Appellants have even denied that they were arrested by the Police and did not opt to lead any defence and declined to give Statement on oath.

7. Mr. Asif Ali Abdul Razak Soomro, learned counsel for the Appellants has argued that ocular testimony in the case is unworthy of credit being full of contradictions and improvements; Appellants are victim of enmity with Complainant party as such alleged contraband has been foisted upon the Appellants; the Complainant has failed to associate any independent eye witness of the alleged incident / recovery from the place of destination or place of alleged recovery and thus the prosecution version is doubtful; that procedure was not followed while sending the alleged narcotic drug to the Chemical Examiner. It is further argued that Complainant has failed to comply with the provision of Section 21(2) of CNSA, which is fatal for the prosecution case. The learned counsel for Appellants has relied upon the following case law_

- (i) 2015 SCMR page 1002
(*Ikramullah and others vs. The State*)
- (ii) 2018 SCMR page 2039
(*The State vs. Imam Bukhsh*)
- (iii) 2019 SCMR page-608
(*Abdul Ghani and others vs. The State and others*)

On the other hand, Mr. Aitbar Ali Bullo, the learned Deputy Prosecutor General has stated that the requisite formalities for sending the charas recovered from the Appellants to the Chemical Examiner was fulfilled and there is no contradiction in the prosecution witnesses, while further arguing that the case record is silent about the allegation of Appellants that the Complainant (*police officials*) had a previous enmity

with the Appellants. The learned Deputy Prosecutor General has cited the following reported decisions_

- (i) PCrLJ 2018 page-257
(*Liaqaut Ali vs. The State*)
 - (ii) PLD 2013 Sindh page-586
(*Asif Vs. The State*)
8. Arguments considered and record perused.
9. Adverting to the plea of Appellants that violation of Section 21 (2) of CNSA, has been committed. Record and proceeding of the Trial Court has been examined. Exhibit 5/C-Roznamcha Entry No.14, shows that after lodging of FIR against the Appellants, in compliance of Section 157 of CrPC, copies of FIR is dispatched to higher officials. This Roznamcha Entry No.14 also mentions the entire incident starting from arrest of the Appellants and recovery of case property. Hence, compliance of Section 21 of CNSA has been made by the Respondent / State and this stance of the Appellants is misconceived in nature. **Secondly**, in his cross-examination, the above named PW-1 has specifically stated that he has informed the high-ups through wireless about receipt of spy information.
10. The two prosecution witnesses are the SHO and one ASI, namely, Wali Muhammad, who were there at the scene when the above vehicle was stopped and cannabis resin (charas) was recovered. Both prosecution witnesses have prepared the Memo of Arrest / Recovery (mashirnama), which has been exhibited as Exhibit-5/B and available in the present record. Both the above prosecution witnesses have corroborated each other, particularly, about recovery of charas and drawing of samples.

11. Examining of the testimonies of both the prosecution witnesses, the conclusion is that their credit could not be impeached during cross-examination. No significant contradiction exists in the evidence of these prosecution witnesses. Both of them have narrated the entire version from the time of leaving the Police Station (PS) upto the time of arrival at PS and sending the case property for chemical examination. These witnesses supported their version through the Roznamcha entries, which have been produced in the evidence as mentioned in the preceding paragraphs. The PW-1 has categorically rebutted the suggestion that the narcotics drug in question / case property was foisted upon the Appellants. No question was put to the prosecution witnesses about any previous enmity. The PW-1 was not cross-examined in respect of his Statement that the case property was duly sent to Chemical Examiner's Laboratory for Chemical Examination and the positive finding as mentioned in the Report of Chemical Examiner, which has been exhibited as 5-G.

12. The third prosecution witness is Dhani Bux, a Police Constable of the above Police Station, who took the case property / charas from the Police Station to the office of Chemical Examiner. In his examination-in-chief, he has narrated the entire procedure. In his cross-examination, he reiterated that the official at the office of Chemical Examiner has affixed a stamp on the Road Certificate, which has been produced by the witness as Exhibit-5/F (*at page 103 of the Paper Book*). No other significant question was put to the said PW-3, which can result in shaking his deposition.

13. The crux of the case law relied upon by the learned counsel for Appellants is_

about Rules 5 and 6 of the Control of Narcotic Substances (Government Analyst), Rules 2001 and mandatory nature of Rule 6; and if the Report issued by a Chemical Examiner is not in conformity with the said Rule then the said Report is to be rejected; besides procedure relating to the chain of custody of the seized drug by the Police, that is, from the spot of recovery till its delivery at the Narcotics Testing Laboratory; and non-examination of an official who has taken the seized drug to the office of Chemical Examiner of the Narcotics Testing Laboratory, is fatal.

14. The record of the present Appeal has been examined in the light of aforesaid decisions and the conclusion is that the Report of the Chemical Examiner-Exhibit 5-G (*at page 107 of the Paper Book*) is in conformity with the aforesaid Rules, so also, the procedure adopted by the prosecution, particularly, the Police Official who took the case property to the office of Chemical Analyst, has been examined as PW-3 (already discussed in the preceding paragraphs).

15. The Chemical Examination Report No.489 of 2016 dated 16.02.2016 in prescribed form “E” has been perused, in which description of Articles is mentioned and so is the result of examination, which is positive. It is specifically mentioned under the caption ‘Tests Performed’ that net weight of material and slabs which were sent for the chemical examination is 50 kg, which is the same quantity mentioned in the testimonies of the above named prosecution witnesses. The said Report containing the caption ‘RESULT OF EXAMINATION’ states that “the above white cloth parcel contained charas”. The said Report has been signed by four different officers, viz. (i) Incharge Excise Section, (ii) Biochemist, (iii) Additional Chemical Examiner and (iv) Chemical

Examiner. The Appellants have not questioned the veracity of the Chemical Examination Report in the trial proceeding. Therefore, what is relevant to the facts of present case, is the reported decisions (*supra*) relied upon by the learned Deputy Prosecutor General.

16. With regard to the contention of the Appellants' side that no private person was associated to witness the recovery of the narcotics in question, is also of no significance, *inter alia*, because under Section 25 of the CNSA, the applicability of Section 103 of CrPC, relating to this issue of recovery by independent mashirs, has been excluded. This is now an established rule as expounded in various judicial pronouncements including the above cited case of this Court in PLD 2013 Sindh 586.

17. We cannot turn a blind eye to a very significant fact of the entire case, which is, that the charas was being transported in an Ambulance, in order to avoid any routine checking or screening. This act on the part of Appellants has in fact aggravated the offence of possessing, transporting and selling narcotics drugs / charas as envisaged in Section 9 (c) of the CNSA.

18. The impugned Judgment of the learned Trial Court has attended to all the relevant aspects of the case and while giving its reasoning, the case law on the subject has been aptly applied. The learned Trial Court has correctly reached the conclusion that the prosecution has proven the guilt of the Appellants beyond reasonable doubt. We do not find any irregularity or illegality in the impugned Judgment, which justifies any interference in this Appeal and thus the present Appeal is devoid of merits and is dismissed accordingly.

JUDGE

JUDGE

Dated:_____

M.Javid/P.A.