

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

Cr. Appeal No. D- 109 of 2019

Present:-

Mr. Justice Abdul Maalik Gaddi.

Mr. Justice Adnan-ul-Karim Memon

Date of hearing: 11.08.2020
Date of Judgment: 11.08.2020
Appellant: Muhammad Arshad through Mr. Wazeer Hussain Khoso, Advocate.
State: Through Ms. Safa Hisbani Asst. Prosecutor General, Sindh.

JUDGEMENT

ABDUL MAALIK GADDI, J- Through this Criminal Appeal, appellant Muhammad Arshad s/o Moula Bux has called in question the judgment dated 21.05.2019 passed by the learned 1st Additional Sessions Judge, Mirpurkhas, in Special Case No.78-F of 2017 (Re: the State v. Muhammad Arshad) arising out of Crime No.85 of 2017, registered at P.S Kot Ghulam Muhammad, for an offence under Section 9(C) of Control of Narcotic Substances Act, 1997, whereby he was convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.2,00,000/- (Rupees Two Hundred Thousand), in case of non-payment of fine, to suffer S.I for one (01) year more with benefit of Section 382-B Cr.P.C.

2. Concisely, the facts as portrayed in the F.I.R are that on 02.08.2017, complainant alongwith ASI Assomal, PC Mushtaque, PC Menhar, PC Habibullah, PC Ghulam Qadir, PC Ishtiaque and driver/PC Muhammad Zahid left P.S vide Roznamcha entry No.08 at 1030 hours for patrolling. During patrolling they received spy information at Railway Phatak that absconding accused Muhammad Akram and 06 others were standing at Old Cotton Factory alongwith charas to shift the same to some other place and were waiting for some

conveyance. They reached at the pointed place at 1100 hours and saw the accused Muhammad Akram sitting on motorcycle with two bags/Thelas and out of other 06 culprits, one had white coloured katta, while remaining five had shoppers in their hands. Accused persons on seeing them started running towards Western side but they encircled them and caught hold all of seven accused at spot. Accused Muhammad Akram was already known to them, who was absconder in Crime No.182 of 2011 of P.S Kot Ghulam Muhammad. They checked big Thela of accused Muhammad Akram, which was found containing 120 pieces of charas and the small bag/Thela of Muhammad Akram was containing 02 pieces of opium. They also recovered two notes of Rs.1000/- each from personal search of the accused Muhammad Akram. The other accused having bag/Thela disclosed his name as Faheem son of Darwaish Makrani, resident of Makrani Para and on checking his bag/Thela was found containing three big pieces of charas and many small pieces of charas and small Theli of black coloured containing opium and 154 small pieces of opium. From his personal search two notes of Rs.500/- each were recovered from side pocket of his shirt. Third accused disclosed his name as Jawaid Ali son of Moula Bux Makrani, he was holding a black coloured shopper containing 06 pieces of charas and from his personal search one note of Rs.500/- was recovered from side pocket of his shirt. 04th accused disclosed his name as Muhammad Hanif son of Mehrab Makrani, from whom a black coloured plastic shopper containing 04 pieces of charas was recovered and from his personal search three notes of Rs.100/- each were recovered. 05th accused disclosed his name as Abdul Lateef son of Mehrab Makrani, from whom one black coloured shopper containing three pieces of charas were recovered and from his personal search four notes of Rs.100/- each were recovered from side pocket of his shirt. 06th accused disclosed his name as Wahid Bux son of Moula Bux Makrani, from

whom they recovered one black coloured plastic shopper containing 05 pieces of charas and from his personal search four notes of Rs.100/- each were recovered, 07th accused disclosed his name as Muhammad Arshad son of Moula Bux Makrani, from whom they recovered a black coloured shopper containing 06 pieces of charas and from his personal search four notes of Rs.100/- each were recovered. Due to non-availability of private person he made ASI Assomal and PC Ishtiaque Ali as mashirs. They weighed the recovered charas and opium in presence of mashirs, which were found as under:-

Accused Muhammad Akram.

Charas 60 kilograms and opium 12.700 kilograms.

Accused Faheem.

Charas 30 kilograms, opium 6.3 kilograms

Accused Jawaid.

Charas 03 kilograms

Accused Hanif.

Charas 02 kilograms.

Accused Abdul Lateef.

Charas 1.5 kilograms

Accused Wahid Bux.

Charas 2.5 kilograms

Accused Arshad.

Charas 03 kilograms.

3. The Prosecution in order to substantiate the charge against the appellant, examined the following three (03) witnesses:

P.W No.1: I.O SIP Ghulam Murtaza examined vide Ex:04, who produced the copies of departure and arrival entries of Roznamcha at Ex:04-A, FIR at Ex:04-B, mashirnama of place of incident at Ex:04-C, copy of entry of Property Register No.19 of Malkhana of P.S at Ex:04-D, copy of entries of Roznamcha of P.S at Ex:04-E and report of Chemical Examiner at Ex:04-F respectively.

P.W No.2 Eye-witness/mashir ASI Asoomal examined vide Ex:05, who produced the mashirnama of arrest and recovery at Ex: 05-A.

P.W No.3 Complainant SIP Meeran Khan examined vide Ex:06.

All the above named witnesses have been cross-examined by Learned ADPP for State.

4. Learned trial Court after hearing the respective parties convicted and sentenced the appellant as stated in the preceding paragraph; hence, this appeal.

5. Learned counsel for the appellant has vehemently contended that the appellant has been involved in this case malafedly by the police; that the impugned judgment passed by the learned trial Court is opposed to law and fact and is against the principles of natural justice; that the learned trial Court has failed to appreciate the evidence produced by the appellant; that there is unexplained delay of 02 days in sending the sample of the alleged contraband to the chemical examiner; that no private / independent person has been made as mashir of the alleged recovery nor any efforts were taken by the police party though they were in advance information; that co-mashir PC Ishtiaque Ali has not been examined in this case, not only this the other police officials who were available in police mobile have also not been examined; therefore, according to him, false implication of the appellant in this case cannot be ruled out; that after the incident was over, the property was kept in malkana but no entry of malkana has been produced to corroborate this fact; that evidence so brought on record on behalf of prosecution is contrary to each other on material particular of the case but the learned trial Court while delivering the judgment did not consider / discuss these contradictions; that the learned trial Court has failed to consider that as per F.I.R the appellant was having found in possession of three (03) kilograms charas whereas the conviction awarded to him by the trial Court is imprisonment for life which is against the sentencing policy as laid down in the case of **GHULAM MURTAZA v. THE STATE** (PLD 2009 page 362); that the appellant has been booked in this case when he demonstrate a protest against the drug peddlers and being aggrieved of this fact local police involved the appellant in this case.

Learned counsel lastly prayed that this appeal may be allowed and appellant may be acquitted of the charge.

6. Conversely, learned Asst. Prosecutor General appearing on behalf of State has fully supported the impugned judgment by submitting that the appellant was arrested in possession of three (03) kilograms of charas in presence of mashirs and it has also come on record that recovered property was Charas as per the report of Chemical Examiner; that all the witnesses have supported the prosecution case; hence, the impugned judgment does not call for any interference.

7. We have given due consideration to the submission made by the learned counsel for the appellant as well as learned A.P.G for the State and have perused the material available on record.

8. From the perusal of record, it appears that complainant SIP Meeran Khan has deposed that on 02.08.2017, he along with his subordinate staff named in the F.I.R, left police station vide entry No.08 at 1030 hours for patrolling in the area and when reached at Railway Pathak he received spy information that absconding accused Muhammad Akram and six (06) others were standing at Old Cotton Factory along with charas to transport the same to some other place and were waiting for some conveyance. On such information they reached at the pointed place and arrested the present appellant and other co-accused who were standing there along with the recovered charas and opium, as stated in the F.I.R, in presence of mashirs ASI Assomal and PC Ishtiaque Ali. The property recovered from the present appellant was weighed which became 03 kilogram charas. Thereafter, they brought the accused and case property to police station, where SIP Meeran Khan being complainant of the case lodged F.I.R against

the accused on behalf of State under the aforementioned offence. Whereafter, 161 Cr.P.C statements of PWs were recorded and sample of charas was sent to the chemical examiner for analysis on 04.08.2017 through complainant SIP Meeran Khan and such positive report was received. The challan against the appellant was submitted and the evidence of the complainant SIP Meeran Khan was recorded who has also been cross-examined by the learned counsel representing the accused but he did not shake.

9. We have also examined the evidence of PW ASI Assomal who has acted as mashir, he has narrated the entire fact that the accused was arrested having possession of 03 kilogram charas in his presence. He also affirmed that the recovery from the appellant was made in his presence at spot. He also affirmed that the property was sealed at the spot. However, this witness was also cross-examined and during cross examination he denied all the suggestions made by learned counsel for the appellant. He also denied the suggestion that he is deposing falsely against the appellant at the instance of his superiors.

10. The I.O of the case SIP Ghulam Murtaza has also been examined as PW-1, who produced the copies of departure and arrival entries of Roznamcha at Ex:04-A, FIR at Ex:04-B, mashirnama of place of incident at Ex:04-C, copy of entry of Property Register No.19 of Malkhana of P.S at Ex:04-D, copy of entries of Roznamcha of P.S at Ex:04-E and report of Chemical Examiner at Ex:04-F respectively, though he was also cross examined but did not shake and has fully supported the case of prosecution.

11. We have carefully perused the evidence of the witnesses and have found that they have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison and all the salient features regarding

interception of the huge quantity of charas as well as steps taken subsequently. The separation of samples for chemical analysis taken from each bundle is found by us as exercise sufficient to constitute forensic proof. We have also examined the report of chemical examiner available on the record and have also found that it corroborates the evidence of all the police officials, who have stand juxtaposition with the chemical report. It is a matter of record that charas was recovered from the exclusive possession of the appellant on 02.08.2017 while the same was sent to chemical examiner on 04.08.2017 who did not find any tempering with the sealed parcel of the samples of the contraband so recovered from the appellant; hence, the report of the chemical examiner came positively. So far as the delay in sending sample of charas as per learned counsel is concerned, the same has been examined by the prosecution to the extent that the safe custody of the case property during intervening period has been established by producing Extract of Entry by keeping the safe custody in malkana.

12. Under the aforementioned fact and circumstances, the charas recovered from the possession of the appellant stands proved. The contention of the learned counsel for the appellant that the evidence of the PWs is not reliable as the same suffers from the material contradictions and inconsistencies has no force until and unless some cogent and reliable evidence is brought on record, which may suggest that the appellant is innocent or his act is beyond any doubt. The alleged contradictions in the testimony of PWs being urged by learned counsel for the appellant appear to be minor in nature and those seem to be not fatal to the case of prosecution. It is well-settled principle of law that minor discrepancies in the evidence of raiding party do not shake their trustworthiness as observed by the Honourable Apex Court in the case of **“The STATE / ANF v. MUHAMMAD ARSHAD**

(2017 SCMR 283). So far as the defence plea raised by the appellant that charas has been foisted upon him at the behest of some drug peddlers against whom the appellant has made a protest on road but in this connection no documentary evidence is brought on record to prove his case.

13. On query of the Court, learned counsel for the appellant has also failed to point out any cogent evidence on record to show that present appellant has made any protest against drug peddlers. Thus, the above defence plea appears to be afterthought which has rightly been disbelieved by the trial Court. Admittedly, the appellant was arrested by the police and from his possession three (03) kilogram of charas was recovered which cannot easily be foisted upon accused. At this juncture, we are fortified by the dictum laid down in the judgment dated 08.01.2020 passed by the Honourable Supreme Court in the case of **SHAZIA BIBI v. THE STATE** (Jail Petition No.847 of 2018).

14. The next argument of learned counsel for the appellant is that he has questioned upon the veracity of the police witnesses that their evidence is not trustworthy and that no independent or private person has been cited as witness; therefore, as per him the case of the prosecution is doubtful. This argument of the learned counsel also has no force; such argument could have been considered when the evidence of police officials is based upon untruthfulness casting uncertainty, enmity and ambiguity. The police officials are good witnesses as any other private witness and their evidence is subject to same standard of proof and the principles of the scrutiny as applicable to any other category of witnesses; in absence of any animus, infirmity or flaw in their evidence, their testimony can be relied without demur. Even otherwise, the prosecution witnesses have deposed that none from the public was present at the place of incident at the time of commission of the alleged incident. Reference in this regard may be

made from the case of **IZAT ULLAH and another v. THE STATE** (supra), wherein the Honourable Apex Court has observed as under:-

“3.....Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in comfortable unison: being functionaries of the republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trustworthy, as in the case in hand. Both the courts below have undertaken an exhausting analysis of the prosecution case and concurred in their conclusions regarding petitioners’ guilt and we have not been able to take a different view then concurrently taken by them. Petitioners fail. Dismissed.”

15. Same view has also been taken in the case of **HUSSAIN SHAH and others v. THE STATE** (PLD 2020 Supreme Court 132), wherein the Honourable Supreme Court of Pakistan has held as under:-

“3. Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical examiner had declared that the recovered substance was Charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witnesses had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which could possibly be used to doubt the veracity of the said witnesses.

16. It also appears from the record that three (03) kilogram charas was recovered from the possession of appellant but the appellant has been convicted and sentenced to imprisonment for life with fine of Rs.2,00,000/- [Rupees Two Hundred Thousand], which sentence appears to be against the sentencing policy as laid down in the case of **GHULAM MURTAZA and another v. THE STATE** [2009 PLD Lahore 362] and according to the said sentencing policy, imprisonment with regard to keeping possession of three (03) kilogram charas is R.I of five (05) years and six (06) months with fine of Rs.25,000/- [Rupees Twenty Five Thousand] and in default whereof, SI for five months and fifteen days.

17. The said judgment has been approved by the Honourable Supreme Court of Pakistan in the case of **AMEER ZEB v. THE**

STATE (PLD 2012 SC 380); but the trial Court while awarding conviction and sentence to the appellant did not consider this aspect of the case and deviated the sentencing policy and did not apply its judicious mind. On being asked by the Court, learned Asst. Prosecutor General has conceded this fact

18. In view of what has been discussed above, the instant Criminal Appeal stands dismissed. However, while applying the sentencing policy of the Lahore High Court, Lahore laid down in the case of **GHULAM MURTAZA** (*supra*), the conviction of the appellant so recorded by the trial Court is maintained, whereas the sentence for keeping three (03) kilogram charas is modified to the extent as mentioned hereunder:-

“The appellant is convicted under Section 9-C of Control of Narcotic Substances Act, 1997, and sentenced to suffer R.I for five (05) years and six (06) months with fine of Rs.25,000/- [Rupees Twenty Five Thousand]; and in default whereof, he shall suffer S.I for five months and fifteen days more. However, the benefit of section 382-B Cr.P.C is extended to him.

19. The instant Criminal Appeal is **dismissed** in the above terms.

JUDGE

JUDGE

Hafiz Fahad