

**IN THE HIGH COURT OF SINDH,  
BENCH AT SUKKUR**

**Criminal Jail Appeal No. D-03 of 2016**

**Present:-**

Fahim Ahmed Siddiqui &  
Yousuf Ali Sayeed, JJ

Appellants : (1) Khan Afzal, and (2) Munawar Shah, through Imdad Ali Malik, Advocate.

Respondent : The State through Aftab Ahmed Shar, APG

Date of hearing : 03.02.2021

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** The Appellants were apprehended while plying a trailer truck bearing Registration No. P-4495 (the “**Vehicle**”) on the National Highway on 08.01.2014 ostensibly laden with a consignment of leather, when the Vehicle was stopped and searched at about 4:00 PM at a check post on the Sindh-Punjab border by a party of excise officials deployed from DIO Camp Ubauro, with the examination thereof yielding an ostensible cache of narcotics secreted in the spare tyre, consisting of 20 packets of what appeared to be charas, each weighing 1 kg. A sample of 200 grams is said to have been drawn from each packet and separately wrapped in white paper for onward transmission to the Chemical Examiner, with the remaining case property being sealed and a Memo as to the arrest and seizure being prepared on the spot by A.E.T.O Abdul Latif Pitafi (the “**Complainant**”), who had led the search party, in the presence of two Mashirs, namely E/C Abdul Sattar Thaheem and E/C Kifayat Ali Solangi. A First Information Report, bearing Crime Number 2 of 2014 (the “**FIR**”), was then registered in the matter by the Complainant at P.S. Excise DIO Camp Ubauro at 7:30 PM on the same day.

2. Following the usual investigation, the matter was challaned and sent up before the Sessions Judge/Special Judge (CNSA), Ghotki (the “**Trial Court**”), where the Appellants came to be charged in the ensuing Special Case, bearing No. 4 of 2014, under S.9(c) of the Control of Narcotic Substances Act, 1997 on account of a contravention of Section 6 thereof, to which they pleaded not guilty and claimed trial.

3. Of the several officials said to have comprised the excise team on the fateful day, the Prosecution examined only the Complainant (PW-1) and one of the Mashirs to the arrest and recovery, namely E/C Abdul Sattar Thaheem (PW-2), with the former producing the FIR, Mashirnama, attested copy of the Roznamcha entry reflecting the departure of the excise team from their camp on the given day, the report of the chemical examiner, and a letter as to verification of the registration of the Vehicle.

4. Based on the depositions of those witnesses and the evidence produced by them, the Trial Court arrived at the conclusion that the prosecution had successfully proven the charge against both the Appellants, with a finding of guilt accordingly being recorded against them in terms of the judgment rendered in the aforementioned Special Case on 21.12.2015 (the “**Impugned Judgment**”), and their being sentenced to life imprisonment, with the benefit of Section 382-B extended. Being aggrieved, the Appellants have preferred the instant Jail Appeal through the Superintendent, Central Prison, Sukkur.

5. Learned counsel for the Appellants assailed the Impugned Judgment, contending that the so-called facts narrated in the FIR were a fabrication, designed to falsely implicate the Appellant, and that the evidence produced was insufficient for the Trial Court to have recorded a conviction, with the prosecution having failed to establish safe custody as well as transmission of the samples to the office of the Chemical Examiner. He submitted that the case of the prosecution was thus marred by gaps and defects and under such circumstances there was no scope for a conviction.

6. Conversely, the learned APG defended the Impugned Judgment, albeit with little conviction and enthusiasm, relying entirely on the Report of the Chemical Examiner to contend that the samples received were found to be charas, that of itself served to establish the guilt of the Appellants so as to prove the charge against them, hence their conviction ought to be sustained.

7. Having considered the matter in light of the record, we have observed that whilst the two prosecution witnesses furnished their testimony as to the interception of the Vehicle and the investigative steps taken thereafter, the chain of custody remains shrouded in uncertainty as nothing was brought on record to show how the case property and samples were kept/handled prior to being sent to the Chemical Examiner, and even the official who supposedly conveyed the samples to the office of the Chemical Examiner was not called upon to depose in that regard. Needless to say, for the Chemical Examiner's Report to have real probative value, the sanctity of the chain of custody is absolutely imperative.

8. We are fortified in this regard by the Judgment of the Honourable Supreme Court in the cases reported as The State through Regional Director ANF v. Imam Bakhsh and others 2018 SCMR 2039, as well as a more recent Judgment in Criminal Appeal No.184 of 2020, titled Mst. Sakina Ramzan v. The State, where it was held that:

“The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the

Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.”

9. In the matter at hand, it is apparent that the prosecution has failed to establish the necessary links of the chain so as to demonstrate that after the alleged recovery, the substance so recovered was kept in safe custody and safely transmitted to the office of the Chemical Examiner without being tampered with or replaced while in transit, as was necessary to drive home the charge against the Appellants. We have also observed that while the samples drawn from each 1 kg packet were stated in the Memo or Arrest and Seizure as well as the depositions of the prosecution witnesses to have been wrapped in white paper and then sealed, the Chemical Examiners Report shows each of the white paper packets received to have contained 4 black brown coloured pieces, each wrapped in plastic. Under the circumstances, this discrepancy casts further doubt in the matter.

10. It is for these reasons that we had determined upon culmination of the hearing on 03.02.2021 that the Impugned Judgment could not sustain, hence had made a short Order in open Court whereby the Appeal was allowed, with the Appellants being acquitted of the charges and the conviction and sentence awarded to them being set aside.

11. Before parting with the matter, it is pertinent to observe that even when the items comprising the case property were apparently produced at trial, the same were generally referred to in the deposition of the Complainant as being seen, but were not properly marked as Articles in compliance of Rule 9, Chapter 5, Part A of the Federal Capital and Sindh Courts Criminal Circulars, stating the General Procedure relating to Inquiries and Trials in all Courts. As a corollary, the items of case property were then also not identified in the proper manner when put to the Appellants at the time of recording their statements under S.342 Cr. P.C. The aforementioned Rule ought

to be followed during the course of evidence, and similarly, the accused ought to be properly confronted with all incriminating articles produced in evidence, with due reference being made to the particular Article number(s) at the time of recording their statements under S.342 Cr. P.C. The Registrar of this Court is directed to circulate a copy of this Judgment to the presiding officers of all courts of criminal judicature in the Province for information and due compliance.

JUDGE

Sukkur  
Dated \_\_\_\_\_

JUDGE