

Judgment Sheet

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

**Cr. Appeal No. D-249 of 2019**

**Before:**

Mr. Justice Khadim Hussain Tunio  
Mr. Justice Irshad Ali Shah

**Appellant:** Muhammad Qasim Malezai, through .  
Mr. Rukhsar Ahmed Junejo Advocate

**Respondent:** The State, through Mr. Zulfiqar Ali Jatoi,  
Additional Prosecutor General.

**Date of hearing:** 27-04-2021

**Date of decision:** 27-04-2021

**J U D G M E N T**

*Khadim Hussain Tunio, J.* - Through this judgment, we intend to dispose of instant Criminal Appeal, whereby appellant / convict Muhammad Qasim son of Haji Muhammad Alam has challenged his conviction recorded by the learned Additional Sessions Judge-I / Special Judge for Control of Narcotic Substance (MCTC), Sukkur, vide judgment dated 21.10.2019, in Special Case No.105/2019 (*Re. The State v. Muhammad Qasim and others*), emanating from FIR No.03/2019, registered at Police Station Excise Rohri Circle, for offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced to suffer Imprisonment for life and to pay fine of Rs.100,000/- (Rupees one lac); in case of default in payment of fine, he shall suffer imprisonment for one (01) year more. However, the benefit of Section 382-B, Cr.P.C was extended to him.

2. Brief facts of the prosecution case as stretched out in the FIR are that on 28.04.2019, at 12.00 p.m appellant/accused Muhammad Qasim was apprehended by a police party headed by ENI Abdul Rasool Junejo of PS Excise Rohri Circle, from NHW road leading towards Rohri to Ghotki, Excise Check post EPS, who secured 80 K.gs. of charas loaded in a truck, as

well as other articles from his bodily search in presence of mashirs ENI Syed Muhammad Akram and EC Shahid Hussain Mangi. During investigation co-accused Sabz Ali was found involved in the offence being owner of the gtruck who remained absconder.

3. After registration of the FIR and conducting the investigation in the case, the Investigating Officer submitted challan against the accused. After compliance of section 265-C Cr.P.C, a formal charge was framed to which appellant pleaded not guilty and claimed to be tried.

4. In order to substantiate the charge, prosecution examined mashir ENI Syed Muhammad Akram Shah who produced memo of arrest and recovery, Complainant/I.O ENI Abdul Rasool, who produced departure entry and arrival entry, FIR, letter to ETO along with TCS receipt, letter to laboratory and its receiving, letter to SSP, Form-F, report of laboratory, and PW EC Sardar Dino. Thereafter prosecution side was closed.

5. Statement of accused under Section 342, Cr.P.C was recorded in which he denied the allegations leveled against him and claimed his innocence. However, he neither examined himself on oath nor adduced any evidence in his defence.

6. After hearing learned counsel for the respective parties, learned trial court convicted the appellant / accused as stated above.

7. Learned counsel for the appellant has argued that the appellant is innocent and has been falsely implicated in the present case; that Excise Circle Rohri in order to show his efficiency has falsely involved the appellant in this case; that all the witnesses are Excise officials and no private person was associated as mashir though the incident had taken place on national highway; that there is no iota of evidence against the accused to connect him with the alleged offence; that there are many contradictions in the evidence of the complainant, PWs/mashir; He therefore prays that the appellant be acquitted of the charge.

8. On the other hand, learned Additional P.G for the State has fully supported the impugned judgment while arguing that the appellant or his

counsel failed to put any questions regarding the foisting of charas to any of the prosecution witnesses; that the contradictions so pointed out by the defence counsel are immaterial and minor in nature; that the samples of charas were sent to the chemical examiner promptly by EC Sadar Dino, who has been examined; that the prosecution has proved its case against the appellant beyond reasonable shadow of doubt.

9. We have heard learned counsel for appellant and learned Additional P.G for State and perused the record carefully with their able assistance.

10. Perusal of record it reveals that on 28.04.2019, the complainant / ENI Abdul Rasool Junejo left Excise PS Rohri along with subordinate staff having arms and ammunition and investigation box through roznamcha entry No.1, at 5. 30 a.m for checking the narcotic offence and checking of vehicles in vehicle No.GS 9910 and started checking at Excise Check Post Rohri. During checking at about 12 p.m they found that one truck was coming from Ghotki side in high speed and same was signaled to stop and driver stopped the truck, they found registration number of the book TKC-335 and only driver was sitting in the truck who alighted from the truck and enquired about his name address and further enquired about the load in the truck. On enquiry he disclosed his name as Muhammad Qasim son of Haji Muhammad Ali by caste Molazai r/o Taj road mohallah Jamia Masjid Chaman District Qila Abdulah and for load he disclosed that the truck is empty. They took search of the truck which was found empty. During search they found one secret cavity in the tank containing three portions one was empty while second portion was containing packets of colour plastic panni found and same were took out an opened it was found chars which was consisting of two patties and further it was found on patties "Jangli Badshah 2019-2020 Arl-arb 2010" written, then counted the packets which became 80 in umber and same was weight and each packet become one kilogram charas total 80 k.gs, same were sealed for chemical analysis in four green plastic kata by putting 20 packet in each kata totalt 80 k.g chars was sealed in same kattas.

11. We have found that the prosecution witnesses have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison on all the salient features regarding interception of the huge quantity of charas as well as all the steps taken subsequently. Entire recover quantity of 80 K.Gs of charas was referred to the chemical examiner for analysis and report, which is found by us being exercise more than sufficient to constitute forensic proof. At the time of arrest, the accused was available at the driving seat of truck from which 80 kilograms of charas was secured, therefore, he was responsible for the same. We have also examined the report of chemical examiner available on record and found that it fully corroborates the evidence of all the prosecution witnesses. It is a matter of record that charas was secured from the secret cavity of the appellant's truck on 28.04.2019 and same was sent to chemical examiner for analysis on the next day i.e 29.04.2019, who did not find any tampering with the sealed parcel of the contraband so recovered from the appellant, hence, the report of chemical examiner came in positive. Moreover, all the witnesses have deposed that the case property in Court is the same and they were at no point cross-examined on the same point by the defence counsel alleging tampering with the same. There is no delay in sending the charas to the chemical examiner besides few hours which one could safely assume is the time taken during completion of necessary formalities and due process. The case property for the chemical examiner was sent through EC Sadar Dino as sealed by the complainant on the spot in the shape of 80 packets. Such fact has also been fully corroborated by the chemical examiner's report wherein it was stated that "*Katta No.1 to 4 contains twenty (20) printed pane packets containing two lack brown coloured slabs.*" Hence, the charas so recovered from the possession of the appellant has been proved to the extent of realization. The contention of the learned counsel for the appellant that the evidence of PWs is not reliable as the same suffers from material contradictions and inconsistencies, has no force at all until and unless some cogent and reliable substance is brought on record which may suggest that the appellant is innocent and that his case is beyond any shadow of doubt. It is well-settled proposition of law due to flux of time, in the case of transportation or possession of narcotics,

technicalities of procedural nature or otherwise should be overlooked in the larger interest of the country, if the case stands proved the approach of the Court should be dynamic and pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of the cases. The Court should consider the entire material as a whole and if it is convinced that the case is proved then conviction should be recorded notwithstanding any procedural defect. Moreover, the minor discrepancies in the evidence of raiding party do not shake their trustworthiness as expressed by the Hon'ble Supreme Court in the case of *STATE/ANF v. MUHAMMAD ARSHAD (2017 SCMR 283)*.

12. Undoubtedly, the appellant was arrested by the Excise Police officials and from his exclusive possession a huge quantity of charas was recovered and it would be enough for a person of prudent mind to realize that such huge quantity of contraband could not be foisted upon the accused. In this respect, we are fortified by the dictum laid down in the judgment dated 08-01-2020 passed by the Hon'ble Supreme Court in the case of *SHAZIA BIBI v. The STATE (Jail Petition No.847 of 2018)*. So far as, the contention of learned counsel that the evidence of Excise Police officials is not trustworthy and that no independent or private person has been cited as witness, therefore, per him the case of the prosecution is doubtful, is concerned, same has no force as such contention raised by learned counsel could have been considered when the evidence of Excise Police officials is based upon untruthfulness casting uncertainty, enmity and ambiguity. As far as their testimonies are concerned, there is no universal rule that evidence of an interested witness *per se* must be invariably corroborated by independent evidence. If that were the case, then why would the Courts at all take into account the testimony of interested witness? If no other independent witness is available in the case, it would result in a grave discourage of justice to insist upon independent corroboration. Excise Police officials are as 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 upon without demur.

13. The above dictum has also been laid down in the case of **HUSSAIN SHAH and others v. The STATE (PLD 2020 Supreme Court 132)** wherein the Hon'ble Supreme Court of Pakistan has held as under:-

*"3. ....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."*

14. The Hon'ble Apex Court has been pleased to observe in the case of **Matiullah v. The State (Crl. Petition No. 18 of 2019)**, which reads as under:-

*"The witnesses comfortably responded the cross-examination and the learned counsel has not been able to point out any flaw or discrepancy in their narratives either on salient features of the case or matters collateral therewith; they are in a unison that inspires confidence and, thus, absence of support from the public does not diminish value of their testimony, fortified by a ring to truth. Reluctance by the public to stand in aid of law is symptomatic of abysmal civic apathy which cannot be allowed to be used as an escape route from justice. Being functionaries of the Republic, both of them are second to none in status; their official acts and declarations are statutorily presumed as intra vires and unless proved contrarily and in the absence of any flaw or discrepancy in their depositions, their testimony cannot be conditioned by additional riders.*

*Forensic report sufficiently details tests applied for determination of narcotic character of the contraband, carried out on the samples transmitted from safe custody and as such is not violative of 'protocol' directed by the rules."*

15. Keeping in view the above discussion and circumstances, we are of the considered view that the prosecution has undoubtedly proven the guilt of the accused beyond shadow of any doubt. Learned counsel for the appellant has failed to point out any material or procedural illegality in the impugned judgment or any infirmity committed by the learned trial Court. Therefore, the present Criminal Appeal was **dismissed**. Consequently, the impugned judgment was maintained by our short order dated 27-04-2021. These are the reasons for the same.

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Suleman Khan/PA