

IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. D-87 of 2019

**Present:**

**Justice Zafar Ahmed Rajput**

**Justice Adnan-ul-Karim Memon**

**Appellant** : Zamir s/o. Muhammad Raman Magsi,  
through Mr. Asif Ali Muhammad Khan  
Chandio, advocate

**Respondent** : The State, through Mr. Abdul Ghani Buriro  
Special prosecutor, A.N.F.

**Date of Hearing** : 06.07.2021  
**Date of Order** : 06.07.2021

**JUDGMENT**

**ZAFAR AHMED RAJPUT-J:-** Impugned in this Criminal Jail Appeal is the judgment dated 11.12.2019, passed in Special Case No.291 of 2018, arising out of Crime No.08 of 2018, registered under section 6, 9(c), 14 & 15 of the Control of Narcotic Substances Act, 1997 (*" the Act"*) at P.S., A.N.F. Sukkur, whereby the learned First Addl. Sessions Judge/Model Criminal Trial Court, Shikarpur convicted the appellant for the offence under section 9 (c) of the Act and awarded him sentence to endure life imprisonment and to pay a fine of Rs. 1,00,000/- or, in default thereof, to undergo simple imprisonment for one year more. The benefit of Section 382-B, Cr. P.C has, however, been extended to the appellant.

2. Succinctly, the facts of the prosecution case as narrated in F.I.R. are that on 27.07.2018 at 06:00 a.m. the appellant was arrested by Sub-Inspector Muhammad Ehsan of A.N.F, Sukkur, in presence of mashirs, from near Askari CNG Station, situated on Shikarpur-Kandhkot road on being recovered 110 kilograms of charas from secret cavity of Shahzore pick-up bearing registration No. KN-9565, owned by one Bakht Shahzeb

and being driven by him. The appellant informed the officials of the A.N.F. that the charas was booked by accused Haji Abdullah for supplying to accused Zahid Ali Chandio and Wahid Bux Brohi.

3. After completing investigation, A.N.F. police sent up the appellant for trial by showing accused (1) Wahid Bux (2) Zahid Ali (3) Haji Abdullah (4) Sarfraz and (5) Bakht Shah as absconders. Later, accused Zahid Ali surrendered himself before the Court. Formal charge was framed by the trial Court against the appellant and accused Zahid Ali as Exh.5 to which they pleaded not guilty and claimed to be tried, vide plea recorded at Exh.6 and 7. Later, accused Wahid Bux Brohi was arrested and Amended Charge was framed by the trial Court against the appellant, accused Zahid Ali and Wahid Bux Brohi as Exh.9 to which they pleaded not guilty and claimed to be tried, vide plea recorded at Exh.10 to 12, respectively.

4. At the trial, prosecution in order to substantiate the charge examined three witnesses, namely, PW-1 S.I. Muhammad Ehsan, the complainant/I.O, at Exh.14; PW-2 P.C. Zaheer Ahmed, the mashir, at Exh.27 and PW-3 A.S.I. Attaullah Khan, in-charge *Malkhana*, at Exh.29, who produced relevant documents in their evidence. Statements of appellant and accused Zahid Ali and Wahid Bux Brohi were recorded under section 342, Cr.P.C at Exh.31 to 33, respectively, wherein they denied the allegation against them and pleaded innocence. They; however, neither opted for examination on oath under section 340 (2), Cr. P.C. nor even led evidence in their defense. Upon the assessment of the evidence on record, the learned trial Court vide impugned judgment convicted and sentenced the appellant as mentioned above and acquitted accused Zahid Ali and Wahid Bux Brohi of the charge.

5. Learned counsel for the appellant has contended that the impugned judgment being contrary to the facts and law is not sustainable in law; that the charge is defective as it contains different registration number of the vehicle; that no evidence has been brought on record to prove safe transmission of the sealed samples of alleged charas from *Malkhana* to the Government Analyst and even the relevant entry regarding keeping the case property in *Malkhana* does not bear the time of its recording, so also, arrival entry shows that the complainant/IO, who has showed his arrival after arrest and recovery at 9:00 a.m. was already present at P.S. A.N.F., Sukkur at 8:00 a.m.; that as per prosecution witnesses, the complainant/IO made the endorsement on envelopes of samples in Urdu language, but it reflects from the report of chemical analyst that the same were bearing endorsement in Sindhi language, such contradictions and discrepancies have rendered the entire prosecution case against the appellant doubtful entitling him for the benefit hence, the conviction and sentence awarded to appellant are liable to be set aside. In support of his contentions, learned counsel has relied upon the case of *Mattiullah v. The State* **2020 SCMR 1222**; *Mst. Razia Sultana v. The State* **2019 SCMR 1300**; *Ashiq alias Kaloo v. The State* **1989 P. Cr. L.J 1601**; *Haji Inayat v. The State* **2010 P. Cr. L.J 825**; *Shamsuddin v. The State* **2010 YLR 861**; *Shaukat Ali v. The State* **2004 YLR 356** and *Agha Qais v. The State* **2009 P. Cr. L.J 1334**.

6. Conversely, learned special prosecutor, A.N.F. has fully supported the impugned judgment. He has maintained that all three prosecution witnesses have given trustworthy and steadfast account of alleged recovery of charas in huge quantity and no enmity has been alleged by the appellant with A.N.F. police to implicate him falsely in the case.

7. We have heard the learned counsel for the appellant as well as learned special prosecutor and have examined the material available on record with their assistance.

8. It reveals from the evidence of prosecution witnesses that on 25.07.2018, P.W-1 S.I. Muhammad Ehsan, complainant/I.O, received spy information in his office that appellant would bring narcotic from Queeta in Shahzore pick-up bearing registration No. KN-9565, in morning time, for its onward delivery to Wahid Bux Brohi in front of Askari CNG, Shikarpur. He then along with his subordinate staff left P.S., vide Daily Diary Entry No.8 at 05:00 a.m. (Exh.15) in two official vehicles and reached the pointed place where at 06:00 a.m. they saw the said pick-up coming from Quetta-Kandhkot road, they got it stopped. On inquiry, the driver/appellant disclosed his name as Zamir Hussain Magsi and on further inquiry, he also disclosed that he had concealed the charas in secret cavity of vehicle in floor "*farash*" and voluntarily opened the left counter side of vehicle and then opened the screw and produced 110 multi colored foil packets containing charas, on further opening by the P.W-1, each packet was found containing two slabs wrapped in white colored transparent. On weighing, each packet of charas came to one KG and total 110 KG. out of each packet, 20 grams charas was separated as a sample for chemical analysis and the same were kept in khaki envelopes by marking on each packet serial Nos. 1 to 11 and then all the samples were sealed in one nylon bag, while remaining case property was sealed in three white nylon bags. From body search, Rs. 2100/-, CNIC and one Q-mobile were secured from the appellant. Besides, registration book in the name of Bakht Shahzeb was also secured from dash-board of the vehicle. On enquiry, the

appellant disclosed that Ubedullah and Sarfraz, resident of Kachlac Quetta, were the owners of the charas and the same was being transported by him to Wahid Bux Brohi and Zahid Ali. P.W-1 S.I. Muhammad Ehsan arrested the appellant under a *mashirnama* (Exh. 17) prepared in presence of PC Zaheer Ahmed (P.W-2) and PC Muhammad Azeem and brought him with case property at P.S., vide entry No.3 (Exh.16) and lodged the F.I.R. (Exh. 18). He handed over the recovered charas to P.W-3 A.S.I. Attaullah Khan, in-charge *Malkhana*, who made such entry on the same day in the *Malkhana* Register No. 19 vide entry No. 477 (Exh.30). On 26.07.2018, said P.W-1 handed over the sealed samples to PC Muhammad Azeem to deposit the same with Chemical Examiner, Sukkur, through a letter (Exh.19) for analysis and report. As per report of chemical examiner (Ex.20), one sealed plastic bag bearing one perfect seal containing 110 *khakhi* paper envelops each containing two black brown colored pieces, total 2200 grams net weight, was of charas. Case property viz. charas was produced before the trial Court during evidence of the P.W-1 and 2, while the seized Shahzore pick-up was parked outside the Court room at the time of recording evidence of the said P.Ws.

9. All three P.Ws have implicated the appellant to have been apprehended on/at aforementioned day, time and place on being in possession of 110 kilograms of charas. The evidence of P.Ws. in respect of arrest and recovery of charas is consistent and confidence inspiring. There appears no material contradiction in the depositions of P.Ws rendering the prosecution case as doubtful. Admittedly none of the prosecution witnesses had any enmity with the appellant nor was it suggested.

10. So far arguments of the learned counsel for the appellant regarding certain contradictions and discrepancies are concerned, it may be observed that due to typographical error vehicle No. KN-9595 has mentioned in the charge framed against the appellant instead of KN-9565, however, since said error is unsubstantial in nature, it has not occasioned a failure of justice, hence, the same is curable under section 537, Cr.P.C. As regard safe transmission of the sealed samples of charas from *Malkhana* to the Government Analyst, it may be noted that alleged recovery was effected on 25.07.2018, on the same day case property was deposited in *Malkhana* and on second day, the sealed samples were deposited with Government Analyst and in this regard, evidence of P.W-3, A.S.I. Attaullah Khan, in-charge *Malkhana* is on record and it was not the case of the appellant before the trial Court that the sealed samples of charas were tempered with during transmission from *Malkhana* to the Government Analyst. The *Malkhana* entry No. 477 (Exh.30) reflects comprehensive details of case property with date of entry, non-mentioning of time of entry is insignificant aspect of such fact on record. Similarly, presence of P.W-1, S.I Muhammad Ehsan, complainant/IO, at 8:00 a.m. at P.S. A.N.F., Sukkur vide entry No.1 (Exh.16) is a minor discrepancy which is liable to be ignored. As regard deposition of P.W-1, S.I Muhammad Ehsan in his cross-examination that he endorsed in Urdu language over recovered property but as per chemical examiner's report (Exh.20) reflects endorsement in Sindhi language, it may be observed that nowhere in the said report it is mentioned that the endorsement was in Sindhi language. It is in fact heading of the pro-forma of Chemical Analyst's report as "LABELLED IN SINDHI AS/" and with no stretch of imagination, it can be termed as alleged endorsement . It may also be observed that in narcotic cases the

Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in the statements of prosecution witnesses due to lapse of time or in preparing documents during investigation or in conduct of the trial having no impact on the material aspects of the case, have to be ignored. Once the prosecution *prima facie* establishes its case, then under Section 29 of the Act of 1997 burden shifts upon the accused to prove contrary to the case of the prosecution, and in the instant case, the appellant has failed to do so. The case-laws cited by the learned counsel for the appellant being on distinguishable facts do not advance the case of the appellant.

**11.** For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording sentence and conviction to appellant by the trial Court. Hence, instant criminal appeal is dismissed.

JUDGE

JUDGE