

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 318 of 2020

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant: Muhammad Sadiq son of Abdul Ali
through Mr. Ajab Khan Khattak,
advocate.

Respondent: The State through Mr. Habib Ahmed,
Special Prosecutor ANF.

Date of hearing: 08.03.2022
Date of announcement: 15.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Appellant, Muhammad Sadiq, through captioned criminal appeal has challenged the judgment dated 14.03.2020 (*impugned judgment*) passed by the learned Special Judge, CNS-II Karachi in Special Case No. 667/2013 (*Re: The State v. Muhammad Sadiq*), outcome of FIR No. 33 of 2013 registered at Police Station ANF Clifton, whereby the learned trial court convicted the appellant under section 9(c) CNS Act 1997 and sentenced him to suffer Rigorous Imprisonment for life with fine of Rs.1,000,000/- (*Rupees one million only*) and in case of failure in payment of fine, the appellant was ordered to suffer further rigorous imprisonment for five years. However, benefit of section 382-B was extended to him.

2. Briefly, the prosecution case is that the appellant Muhammad Sadiq, while driving a truck bearing registration No. LIT-4313, was apprehended by the police party of PS ANF-C headed by Inspector Muhammad Muzammil Ahmed after receiving spy information and they secured a total of 113 kilograms of charas from 113 packets recovered from five wooden crates concealed under apple cartons pointed out by the appellant. ANF officials also seized original CNIC of the appellant,

Rs.550/-, a driving licence, two Nokia cell-phones with SIM cards. They also secured the registration book of truck in the name of Aminullah, public carrier part A and B certificate of vehicle, four insurance folios, one fitness certificate and some other visiting cards from the dashboard of the truck. Memo of arrest and recovery was prepared in presence of witnesses PC Majid Baloch and ASI Umair Faheem. Thereafter, appellant along with the case property was brought back to the police station where FIR was registered.

3. After usual investigation, challan was submitted against the appellant after providing him necessary documents, whereafter a formal charge was framed against the accused by the trial Court to which he pleaded not guilty and claimed trial. In order to substantiate the charge against the appellant, prosecution examined in all three witnesses namely PW-1 **Inspector Muhammad Muzammil Ahmed**, PW-2 **PC Majid Baloch** and PW-3 **ASI Javed Aslam**, all of whom produced a number of documents and other items in their evidence which were duly exhibited. Statement of accused was recorded under section 342, Cr.P.C. wherein he has denied the allegations made against him and claimed his false implication. He further stated that real culprits have been released by the complainant party. He examined himself on oath in disproof of charge as required under section 340(2) Cr.P.C. However, he did not produced any evidence in his defence. Prosecution, then, filed an application u/s 540 Cr.P.C for examining of the official responsible for sending the case property which was allowed. As such, PW-1 **Muhammad Muzammil Ahmed** was again examined as PW-4. Thereafter, prosecution side was closed. Statement of accused was again recorded u/s 342 Cr.P.C wherein he maintained his stance regarding his innocence.

4. Learned trial Court, after considering the material available before it and hearing the learned counsel for the respective parties, handed down the impugned judgment and sentenced the appellant as stated supra.

5. Learned counsel for the appellant has argued that despite receiving spy information, none from the public was made witness to any of the proceedings of the case; that in the charge, heroin is alleged to have been recovered from the appellant instead of charas therefore the charge is defective; that the truck wherefrom charas was alleged to have been recovered has not been produced in Court during trial; that complainant has stated that during his cross-examination he has not produced the arrival entry; that the complainant has not made entry in the daily diary regarding receipt of spy information; that endorsement as "Sher Sindh 2013 to 2015" has not been disclosed in memo and FIR; that the complainant has not produced the entry in the property register at the time of recording of his evidence but later on application under section 540, Cr.P.C. was filed and then the entry was produced in order to fill up the lacuna in the prosecution case; that PW-3 ASI Javed Aslam has not produced the entry through which he proceeded to the office of Chemical Examiner; that there is a violation of section 21(2) of CNS Act, 1997; that the appellant had no conscious knowledge/possession of the charas in the truck; that the complainant/I.O. had released the real culprits and involved the appellant in this false case. In support of his arguments, he has cited the case law titled as **2019 PCrLJ 1610** (*Juma Khan v. The State*) and **2019 MLD 1445** (*Syed Karam Hussain Shah & others v. The State & others*).

6. On the other hand, learned Special Prosecutor ANF supported the impugned judgment while arguing that the appellant/accused has admitted his presence and arrest in his statements under section 342 Cr.P.C and 340(2) Cr.P.C; that the appellant being driver of the vehicle was responsible for the contraband material available in the said truck; that a huge quantity of charas alongwith truck have been recovered on the pointation of the appellant which proved that he had actual knowledge of the narcotics being in the truck; that no enmity or ill-will has been alleged or proved by the appellant against the ANF officials.

7. We have heard the arguments advanced by the learned counsel for the respective parties and have gone through the entire material available on record with their assistance.

8. When it comes to the case of the appellant being the driver, after a careful scanning of the evidence of the witnesses, we have found that they have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. All the witnesses are in comfortable unison on all the salient features regarding interception of huge quantity of charas as well as all the steps taken subsequently. At the time of the arrest, appellant Muhammad Sadiq was the driver of the truck and from five concealed wooden crates available under a pile of apple cartons in the the truck, 113 kilograms of charas was secured in the shape of 113 different packets hence making the appellant responsible for the same being the driver of the truck. Since the narcotics were pointed out in the specific wooden crates by the appellant to the police, he had actual knowledge that he was transporting hidden narcotics in his truck. We have also scanned the report of the chemical examiner available on the record and have also found that it totally corroborates the evidence of the prosecution witnesses, whose stance is supported by the chemical examiner's report. It is a matter of record that from the concealed wooden crates, a huge quantity of charas has been secured, which was being transported while hidden under a pile of apple cartons and the whole case property was placed in five sacks for the chemical examiner, who did not find any tampering with the sealed parcels of the contraband, so secured from the truck and the report of the chemical examiner was received positive. More so, all the witnesses have testified that the case property available in the court is the same and they were not cross-examined on the said aspect of the case by the defence counsel at any point. According to the memo of arrest and recovery produced by the complainant at Ex.4-B, the same had been prepared at 0800 hours on 26.08.2013 whereas the occurrence had taken place on 25.08.2013 at 2300 hours at which point the case property had remained at the place of occurrence with the raiding party. The case property was sent to the chemical examiner through PW-3

Javed Aslam on 27.08.2013 i.e. one day after the recovery which has been duly explained. The case property was sealed on the spot and kept in the malkhana by the complainant PW-1 Muhammad Muzzamil Ahmed under Entry Serial No. 78 of Register No. 19 which is available at Ex. 17/A. Such fact has also been fully corroborated by the chemical examiner's report wherein it was mentioned that *"Five sealed light grey coloured nylon bags each with 01 seal, seals perfect and as per copy sent."* Therefore, the contention with regard to safe custody of the property does not have any sanctity as the property viz. charas so recovered from the appellant had been proved adequately by examining the PWs, even otherwise, they were not cross-examined on this either. Furthermore, as per the chemical examiner's report, the seals were received in intact condition which rules out any question of tampering and it was in fact the examiner who had broken the seals to open the bags/sacks. Reliance, in this respect, is placed on the case of *Zahid and another v. The State (2020 SCMR 590)*. Resultantly, the charas so recovered from the five wooden crates available in the boot of the truck which was driven by the appellant has been established to the extent of realization and safe custody of the same from the time of the recovery from the truck to the time when it was delivered to the chemical examiner has been proved. The appellant himself, in his statement of accused u/s 342 Cr.P.C and his statement on oath u/s 340(2) has admitted his presence at the place of incident while answering question No. 1 as *"I had loaded 850 cartons of apples and 16 wooden boxes of apples and total boxes of apples were 911 and there was fare of Rs. 47,000/- of 850 cartons and separate fare for wooden boxes of apples."* From such admission, it is clear that he was aware of the presence of wooden boxes/crates in his truck which he claims to be apples. As far as 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 is concerned, we found contradictions that were of only a minor nature and not material and as such do not affect the prosecution case. Furthermore, no enmity has been suggested against any ANF officials which might have led them to falsely implicate the appellant in this case. It is well established 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 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. Further, 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)*.

9. As far as the mentioning of heroin in the charge framed on 07.11.2013 is concerned, it appears to be a typographical error which is one that is curable u/s 537 Cr.P.C. No prejudice has been caused to the appellant nor is the error of such grave importance that it would vitiate the entire proceedings. Apart from the above, the defence plea that has been agitated by the appellant is that he had been falsely involved by the complainant and the real culprits were let go after receiving a bribe. He miserably failed to establish his defence plea by producing documentary or oral evidence. Moreover, the recovery of a driving license also suggests that he was the one driving the truck and responsible for its contents. It would be sufficient for an ordinary person of prudent mind to realize that such huge quantity of contraband could not be foisted upon the appellant. In this respect, we are fortified by the dictum laid down in the case of *Shazia Bibi v. The State (2020 SCMR 460)*. With regard to there being no independent or private person being cited as witness, the evidence of ANF officials was based upon truthfulness without any hint of uncertainty, enmity and ambiguity. There is no universal rule that evidence of an interested witness *per se* must be invariably corroborated by independent evidence either. If that were the case, courts would not at all take into account the testimony of an interested witness. If no other independent witness is available in the case, it would result in a grave miscarriage of

justice to insist upon independent corroboration. ANF officials are as good witnesses as any other private witness and their evidence is subject to the 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. Reliance is placed on the case of *Hussain Shah and others v. The State (PLD 2020 Supreme Court 132)*. Even otherwise, S.103 Cr.P.C. is excluded for offense falling under the Control of Narcotic Substances Act 1997 by virtue of Section 25 of that Act which principle was enunciated by the Hon'ble Apex Court in the case of *Muhammad Hanif v. The State (2003 SCMR 1237)*.

10. Regarding the establishment of role and the question of exclusive possession, it is well established principle of law that the driver of the vehicle in which the contraband is being transported is solely responsible for the same. In this regard, the Hon'ble Apex Court in the case of *Hussain Shah and others v. The State (supra)* 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."

(emphasis supplied)

11. In case of *Kashif Amir v. The State (PLD 2010 SC 1052)* the Hon'able Apex Court has also observed that:-

"It is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics, having knowledge of the same as no condition or qualification has been made in Section 9(b) of CNS Act that the possession should be an exclusive one and cannot be joint one with two or more persons. Further, when a person is driving the vehicle, he is Incharge of the same and it would be under his control and possession, hence, whatever are details lying in it would be under his control and possession. Reference in this

behalf may be made to the case reported as Muhammad Noor v. The State (2010 SCMR 927). Similarly, in the case of Nadir Khan v. The State (1988 SCMR 1899) this Court has observed that knowledge and awareness would be attributed to the in charge of the vehicle.”

(emphasis supplied)

12. Similarly, in the case of *Faiz Muhammad and another v. The State (2009 SCMR 1403)*, the Hon’ble Apex Court has observed that:-

No piece of evidence incriminating in nature produced by the prosecution appears to have been misread, omitted from consideration or not appreciated in its true perspective. The evidence of the prosecution witnesses about the recovery of Charas weighing 126 Kgs. and taking of sample from each of the rod and slab could not be disputed by the defence and report of chemical examiner also supported the case of the prosecution. *The petitioners were using uncommon route for transportation of Charas, arms and ammunitions by concealing it in secret cavities of the vehicle, which reflects their knowledge. The driver having the charge of vehicle for long journey, is supposed to have knowledge with regard to contents and articles being transported in it.* The findings and judgments of trial Court as well as High Court neither reflect any mis-appreciation or non-reading of evidence nor suffer from any legal infirmity so as to make room for further consideration. Learned counsel though argued at length but could not point out any misreading or non-appraisal of evidence.

(emphasis supplied)

13. Keeping in view the above position, discussion and circumstances, we are of the opinion that the prosecution has undoubtedly proven the guilt of the appellant Muhammad Sadiq beyond reasonable shadow of any doubt. The appellant has failed to point out any material or procedural illegality in the impugned judgment or any infirmity committed by the trial Court while passing the judgment. Thus, the captioned criminal appeal is dismissed being meritless and the impugned judgment, needing no interference is upheld.

JUDGE

JUDGE