

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Mohammad Karim Khan Agha J.
Mr. Justice Zulfiqar Ali Sangi J.**

CRIMINAL APPEAL NO. 705 OF 2021

Appellant:	Sardar Ali son of Sameen Jan. Through Mr. Ameet Kumar, Advocate.
Respondent:	The State through Mr. Habib Ahmed, Special Prosecutor, ANF.
Date of Hearing:	16.11.2022.
Date of Judgment:	25.11.2022.

J U D G M E N T

ZULFIQAR ALI SANGI-J. Through this appeal, the appellant has assailed the judgment dated 10.12.2021 passed by learned Special Court Control of Narcotic Substances No. II at Karachi in Special Case No.366 of 2018 arising out of crime No.05 of 2018 for offence U/section 9-C read with section 14/15 of Control of Narcotic Substances Act, 1997, registered at PS ANF, Clifton, Karachi whereby the appellant namely Sardar Ali son of Sameen Jan was convicted under Section 9(c) read with section 14/15 of Control of Narcotic Substances Act, 1997 and sentenced to suffer Rigorous Imprisonment for life and to pay fine of Rs.2,00,000/- (Rupees Two Lac only) and in case of default, he shall suffer Simple Imprisonment for two (02) years more. However, the appellant was extended the benefit of Section 382-B Cr. P.C by the trial court.

2. Brief facts of the prosecution case as per FIR are that on 01.03.2018 the Complainant received spy information that a huge quantity of drugs is to be smuggled to Ronaq Islam Girls School opposite Machi Miani Market, Khaharadar Karachi. Upon such information, the complainant/Inspector Mamoon-ur-Rasheed alongwith his sub ordinate staff i.e. ASI Nawab Aslam, PCs Waqas Ahmed, Muhammad Rizwan, Sajida Ali and Taufeeq-ul-Hassan under the supervision of D.D Ahsan-ul-Haq, duly armed in official

vehicle along with driver Hussain Bux under Roznamcha entry No.6 for raiding the pointed place where they reached at about 1130 hours where they saw one person was standing along with white sack at the gate of Ronaq Islam Girls School at Machi Miani Market, Kharadar, Karachi, who was arrested with the help of staff members. The arrested person disclosed his name as Sardar Ali while white sack was opened and checked and a big cartoon containing 16 pieces wooden spring baskets were recovered which were opened and in its bottom charas was wrapped with plastic in shape of slabs were recovered. Such slabs were weighing 1200/1200 grams, 10/10 grams charas were taken from each slab of charas and put in brown envelop separately and sealed in white cloth for chemical examination and remaining wooden spring baskets in the same cartoon and sealed thereon, further personal search of the accused found original CNIC, one Nokia mobile along with sim Card, copy of bilty of alleged white sack and one visiting card of Peshawar-Lahore Goods Transport Company and cash of Rs.3000/- were also recovered. Passers by were asked to act as mashir and on their refusal PC Waqas Ahmed and Rizwan were made as mashirs. The memo of arrest and recovery was prepared on the spot. The remaining case property was sealed separately. The complainant seized the charas and arrested the accused named above and brought him along with the case properties to PS where instant FIR under Section 9-C read with section 14/15 Control of Narcotics Substance Act, 1997 was registered against the accused.

3. After the usual investigation case was challaned before the court having jurisdiction and after completing all the legal formalities charge against the appellant was framed to which he pleaded not guilty and claimed trial. At the trial, the prosecution examined six (06) witnesses including the complainant, mashir of arrest and recovery and the investigation officer who produced/exhibited certain documents in support of the case of the prosecution.

4. The statement of the appellant was recorded u/s 342 Cr. P.C wherein he denied the prosecution allegations and pleaded innocence. However, neither he examined himself on oath nor led any evidence in his defence. After the trial, the learned trial Court

after hearing the parties convicted and sentenced the appellant through impugned judgment as stated above.

5. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in this case; that the prosecution has not been able to prove the case against the appellant beyond the shadow of reasonable doubt; that the trial court seriously erred by not considering the material evidence brought on record by the appellant during cross-examination of the prosecution witnesses which completely shattered the case of the prosecution; that the prosecution has failed to prove safe custody and safe transmission of the narcotic to the chemical examiner; that the trial court failed to apply judicial mind and the judgment has been delivered in a slipshod manner. Learned counsel lastly contended that the prosecution had failed to prove the charge against the appellant and prayed for acquittal of the appellant by extending him the benefit of the doubt. In support of his contentions he has relied upon the cases of ***Ikramullah and others Vs. The State (2015 SCMR 1002)*** and Judgment passed by this Court on 30.05.2022 in the case of ***Muhammad Arif v. The State (Cr. Appeal No. 413 of 2021)***.

6. On the other hand, learned Special Prosecutor ANF has contended that the prosecution has successfully proved its case by examining the P.Ws who have no enmity with the appellant; that there are eyewitnesses who deposed that in their presence the appellant was arrested and also recovered a cartoon containing 16 wooden spring baskets of charas in the shape of slab wrapped in plastic sheet weighing 19.200 kilograms. There are no major contradictions between the depositions of the complainant and P.Ws; that safe custody and transmission of the narcotic to the chemical examiner has been proven which lead to a positive chemical report and thus the impugned judgment does not call for any interference by this court. He prayed for the dismissal of the appeal.

7. We have heard learned counsel for the appellant as well as learned Special Prosecutor ANF and perused the material available on record with their able assistance.

8. The prosecution in order to prove the arrest and the recovery of the contraband viz charas has examined two witnesses namely

Waqas Ahmed as PW-1 and Mamoon-ur-Rasheed as PW-2 whose evidence is on the same lines and while supporting the case have deposed on 01.03.2018 they were posted at PS ANF Clifton, Karachi and under the entry No.6 left PS at about 1100 hours and about 1130 hours reached at Ronaq-e-Islam Girls School in front of Machi Miani Market, Kharadar, Karachi and found a person standing near the gate of Ronaq-e-Islam Girls School who the spy pointed who was having a white sack of nylon and on inquiry disclosed his name as Sardar Ali. The suspected sack was checked by SI Mamoon ur Rasheed it was containing a big carton which was also containing 16 wooden spring baskets packed in card papers and on checking of the baskets from the bottom side of the baskets Charas in the shape of slab-like bread (Roti) was recovered and on weighing the weight of each slab was 1200 grams and the total weight of the slabs was 19.200 Kgs. From each slab 10/10 grams samples were obtained for chemical examination and put in the brown envelopes and made the serial number 1 to 16 for identification whereas the rest of the charas slabs were wrapped in white polythene sheet/packing. The brown envelopes were put into the white cloth bag and were sealed, whereas the rest of the slabs were also sealed in a nylon sack and the wooden baskets along with card papers put in the same carton and sealed in the same white nylon sack. Upon personal search of the accused from the right side pocket Rs.3000/- PKR, original CNIC and cell phone Nokia with sim and a photocopy of bilty of the same sack in the name of Peshawar Lahore Goods Transport and visiting card of the same transport company were recovered. SI Mamoon ur Rasheed prepared the memo of arrest and recovery at the spot, secured all the articles under the memo and obtained the signatures of the mashirs. Thereafter, they returned to the police station along with the accused and case property where the complainant lodged the FIR and after mentioning the FIR number on the sealed parcels *deposited into the Makhana*. The investigation officer sent the samples to the chemical examiner under a proper letter by the hand of PC Eido Rehman and received the report from the chemical examiner, which is positive. During interrogation, the accused disclosed that he is a resident of Peshawar and driving a rickshaw and met with Rehan who informed him that Asghar wanted to send Spring Basket by concealing the narcotics in it at

Karachi and Asghar had given him a copy of Bilty and visiting card. The complainant who was also the investigation officer called Zamarud the in charge of the goods transport company Kharadar and recorded his statement and showed a picture of Sardar Ali to Zamarud to which he identified that he was the same person who had taken Bilty from him and then called Majid of Peshawar Branch goods transport company who on 05.03.2019 came at PS ANF Clifton where statement was recorded which disclosed that a person namely Asghar Aman came for booking bilty of spring basket and had given a visiting card of Hafiz Handicraft where from the spring basket was manufactured which were secured under a proper memo. Investigation Officer also secured the bilty which was given by Zamarud under a proper memo in presence of PC Rizwan and PC Imran. After completing the investigation, the investigation officer filed the charge sheet. Both the witnesses identified the appellant to be the same from whom they recovered the contraband and they also identified the case property to be the same which was recovered from the appellant. They were cross-examined by the defence counsel but we could not find any substantial dent in the prosecution case. We find their evidence to be reliable, trustworthy and confidence-inspiring and believe the same and place reliance on it.

9. The prosecution also examined two witnesses viz Muhammad Zamrud as PW-4 and Majid Khan as PW- 5. PW-5 is the person who booked the said material from which charas was recovered and PW-4 is the person from whom said material was taken by the appellant after handing over the bilty. They both are independent witnesses having no relations with the accused and the prosecution witnesses. PW-4 clearly stated that on seeing the picture of the accused he identified him to be the same person who took the material from him. No enmity or ill-will was suggested for false implication. Further to prove the safe custody of the contraband and its safe transmission to the chemical laboratory the prosecution examined PW-3, Ali Muhammad who deposed that on 01.03.2018 he was posted at police station ANF Clifton being Malkhana in charge and SI Mamoon-ur-Rasheed lodged FIR bearing No.5/2018 and the case property of such FIR comprising on one cloth sack of the samples, one cloth bag parcel of rest of narcotics, one nylon sack containing packing material, a personal

search of accused Sardar Ali (One original CNIC, one cell phone, Nokia with sim, Rs.3000/- PKR, one photocopy of Bilty receipt of Peshawar-Lahore Goods Transport Company and one visiting card) handed over to him for depositing into the Malkhana and he deposited the above articles into the Malkhana under Register No.19 at Serial No.271 and produced a photocopy of such entry duly attested by the SHO ANF Clifton. He further deposed that on 02.03.2018 on the instructions of SI Mamoon-ur-Rasheed he handed over the sample parcels to PC Eido Rehman for depositing to the chemical examiner. PW-6, Eido Rehman was examined who brought the samples for the chemical examination and deposed that on 02.03.2018 he was posted at PS ANF Clifton as P.C. S.I Memoon Rasheed handed him one parcel of samples under the Entry No.5 at about 0900 hours which he took to chemical lab and submitted the same in Sindh chemical lab. Afterwards he returned to the police station and handed over the acknowledgment of submission at lab to S.I Mamoon Rasheed. Their evidence we also believe as no enmity or ill-will was suggested against them. We find their evidence to be reliable, trustworthy and confidence-inspiring and believe the same and place reliance on it.

10. We have carefully examined the evidence of the prosecution witnesses and found the same reliable, trustworthy and confidence-inspiring. The recovery of a huge quantity of charas was affected from the possession of the accused and the same was kept in safe custody and within the shortest period it was sent for chemical examination. The prosecution also proved the safe custody and its safe transmission by producing the witnesses in whose custody the property was in the Malkhana and through whom it was sent for chemical examination. All the chains from the recovery of the narcotics till sending the same for the chemical examination have been proven by the prosecution beyond a reasonable doubt. The same is also strengthened by the fact that the report of the chemical examiner was exhibited in the evidence which confirms that the parcel was received on the same date it was sent from the person who brought it. Therefore, it can safely be said that the safe chain of custody of the recovered narcotics was not compromised at all. Reliance is placed on the cases of

Faisal Shahzad v. The State [2022 SCMR 905] and Ajab Khan v. The State [2022 SCMR 317].

11. With regard to the contention of defence counsel that the complainant and the investigation officer of the case is the same person therefore his evidence cannot be relied upon and its benefit must be given to the appellant. This contention has no force as there is no prohibition in the law for the police officer to investigate the case lodged by him as has been held by the Honourable Supreme Court of Pakistan in the case of ***Zafar v. The State (2008 SCMR 1254) and Advocate-General Sindh v. Bashir and others (PLD 1997 SC 408)***. Even otherwise, the mere status of one as an ***official*** would not alone prejudice the competence of such witnesses until and unless he is proven to be ***interested***, who has a motive, to falsely implicate an accused or has previous enmity with the person involved. Reliance is placed on the case of ***Farooq v. The State (2008 SCMR 970)***.

12. As regards the contentions of the learned counsel for the appellant that having prior information no private persons were associated as witness/mashir in the recovery proceeding hence the provision of section 103 Cr. P.C was violated by the complainant and the evidence of police officials cannot be relied upon while awarding the conviction in cases of capital punishment also has no force as the reluctance of the general public to become a witness in such cases has become a judicially recognized fact and there was no way out but to consider the statement of the official witnesses as no legal bar or restriction has been imposed and even then there was no time to collect independent witnesses. No direct enmity or ill will has been suggested by the appellant against the complainant or any of the officials who participated in recovery proceedings during cross-examination and therefore in the circumstances the police officials were good witnesses and could be relied upon if their testimony remained un-shattered during their cross-examination. Even otherwise, section 25 of the CNS Act has excluded Section 103 Cr.P.C. during recovery proceedings. Reliance is placed on the cases of ***Salah-uddin v. The State (2010 SCMR 1962)***, ***Shabbir Hussain v. The State (2021 SCMR 198)*** and ***Mushtaq Ahmad v. The State & another (2020 SCMR-474)***.

13. It is a settled proposition of law that by the 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 otherwise proved, the approach of the Court should be dynamic and pragmatic in approaching facts of the case and drawing correct and rational inferences and conclusions while deciding such type of cases. “No drug peddler can be acquitted in the narcotics case on technicalities.” Reliance is placed on the case of ***Ghulam Qadir v. The State (PLD 2006 SC 61)***.

14. Thus based on the particular facts and the circumstances of the case in hand as discussed above, we have found that the prosecution has proven its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence in the shape of oral/direct and documentary evidence corroborated by the report of the chemical examiner. The impugned Judgment passed by the learned trial court does not suffer from any illegality, gross irregularities or infirmities so as to call for interference by this court. Resultantly, the appeal in hand is dismissed.

15. The appeal is disposed of in the above terms.

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