

**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.D-94 of 2021
[Ghulam Muhammad alias Gul vs. The State]

DATE **ORDER WITH SIGNATURE OF JUDGE**

BEFORE:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Appellant : **Through Ghulamullah Chang advocate**

The State : **Through Mr. Shahid A. Shaikh, Addl: P.G**

Date of hearing : **01.02.2023**

Date of judgment : **14.02.2023**

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: Through instant appeal, appellant has impugned the judgment dated 02.08.2021, passed by learned Special Judge for Control of Narcotic Substance/MCTC Tando Muhammad Khan in Special Case No.10 of 2021 [**Re: The State versus Ghulam Muhammad @ Gul**], outcome of Crime No.41 of 2021 registered at P.S Tando Ghulam Hyder for offence punishable under Section 9(c) of CNS Act, 1997, whereby he was convicted and sentenced to undergo Rigorous Imprisonment for four years and six months with fine of Rs.20,000/- and in case of failure in payment of fine, he was directed to further suffer Simple Imprisonment for five months, however, benefit of Section 382-B Cr.P.C was provided to him.

2. The allegation against the appellant/accused, per FIR, is that on 29.03.2021 during snap checking he was caught hold by the patrolling police party headed by Complainant SIP Muhammad Siddique Dal and from his possession a polythene bag, containing two pieces of Chars weighing 1985 grams, was recovered, hence aforesaid FIR was registered against him.

3. After registration of FIR investigation was conducted by the Investigation Officer, who on completion of investigation submitted challan before the concerned trial Court. Then copies of the case were provided to the appellant/accused at **Ex.01** and Charge was framed against him at **Ex.02**, to which he pleaded not guilty and claimed trial vide his plea at **Ex.03**. In order to prove the Charge, the prosecution examined five witnesses at **Ex.04** to **08**, who produced and recognized certain documents. Thereafter prosecution closed its

side at **Ex.09** and the statement of appellant/accused under Section 342 Cr.P.C was recorded at **Ex.10** wherein he denied the allegations, leveled against him, however, neither he produced any witness in his defence nor examined himself on Oath under Section 340(2) Cr.P.C. The learned Court finally after hearing the parties convicted and sentenced the appellant/accused, as noted above, vide impugned Judgment at **Ex.11**, hence he preferred captioned appeal.

4. Learned counsel for the appellant argued that impugned judgment is against the law, facts and principles of criminal justice; that impugned judgment is result of misreading and non-reading of material available on record; that the case property was sent for chemical examination with delay of two days, but same was not considered by the learned trial Court; that prosecution has failed to prove safe custody of alleged case property; that no independent witness was associated as witness for alleged recovery and arrest; that there are material contradictions in the evidence of prosecution witnesses, but same have been ignored by the learned trial Court; that nowhere it is mentioned that case property was sent for chemical examination through HC Imtiaz Ahmed; that even though the HC Imtiaz Ahmed stated in his deposition that he was posted at SSP office at that time; that property produced before the learned trial Court was not same. He lastly prayed for acquittal of appellant/accused. He relied upon 2014 SCMR 862.

5. Learned Additional P.G; however, vehemently opposed the appeal and supported the impugned judgment and argued that prosecution has fully established its case and there are no contradictions in the evidence of the prosecution witnesses who arrested the appellant red handed on the spot with contraband; that safe custody has been proved which lead to a positive chemical report; that in addition to present case there are six other cases of similar nature registered against the appellant/accused; that appellant/accused has failed to prove any enmity with police official. He prayed for dismissal of appeal. In support of his case he relied upon 2022 SCMR 1097.

6. We have heard the learned counsel for the appellant as well as learned Additional P.G and have also perused the material available on record.

7. From the perusal of record, which includes evidence of prosecution witnesses, it appears that on 29.03.2021 patrolling police party headed by Complainant SIP Muhammad Siddique left the police station at 1700 hours for patrolling in the area under departure entry No.17, produced at **Ex.04/A** and during snap checking of suspicious people the appellant/accused, who was coming on motorcycle from Talhar side was caught hold of at about 1800 hours and conducted his search and from the polythene bag lying on the tank of

motorcycle they recovered two pieces of Chars weighing 1985 grams, as such he was arrested at the spot and such memo was prepared, which was produced at **Ex.04/B**. The police then brought the accused and case property at police station at 1920 hours and recorded such arrival entry bearing No.24, which was produced at **Ex.04/C** and FIR was registered against appellant/accused, which was produced at **Ex.04/D**. The aforesaid documents exhibited at Ex.4/A to 04/D prove the departure and arrival of police party and arrest of appellant/accused at the spot on the fateful day.

8. Record further reveals that after registration of FIR, it was entrusted for investigation to SIP Adam Khan alongwith custody of accused/appellant and recovered case property, who on same day recorded the statements of witnesses, as required by Section 161 Cr.P.C and deposited the case property in Malkhana through WHC Bisham Khan under entry No.19, which was produced at **Ex.06/A**. On next day viz: 30.03.2021 IO left the Police Station alongwith mashirs for site inspection under entry No.08, which was produced at **Ex.06/B** and prepared such memo and returned at police station under entry No.11, which was produced at **Ex.06/C**. On 31.03.2021 IO sent the case property for chemical examination through HC Imtiaz Ali, who left the PS under entry No.6 and returned under entry No.24, which were produced at **Ex.06/D & 06/E**. The Investigation Officer has also collected the previous criminal record of the appellant/accused and also written letter to Chemical Examiner and sought report, which he produced at **Ex.06/F and 06/G**.

9. The exhibition of aforesaid documents proves the chain of events. The authors and witnesses of aforesaid documents were put to a lengthy cross-examination, however, they remained consistent, except some minor contradictions. Therefore it can be safely held that prosecution has proved its case through chain of events, hence minor contradictions can be ignored by taking guidance from the recent decision of Hon'ble Supreme Court reported in 2023 SCMR 190, whereby the Hon'ble Apex Court has held as under:

“.....Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the Courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored”.

10. As far as arguments of learned counsel that case property was sent with delay of two days and its safe custody was not proved by the prosecution are

concerned, we have gone through the relevant record. The letter written by the I.O to Chemical Examiner (**Ex.06/F**) reveals that entire recovered case property viz: 1985 grams was sent for chemical examination, which has further been certified by the report of Chemical Examiner (**Ex.06/G**), which reveals that it was received by him through HC Imtiaz Ahmed on 31.03.2021. Report of Chemical Examiner further reveals that the case property was received by him with due protocols. The report is in positive, which proves that entire case property, recovered from the appellant/accused was chars. We have also gone through the Control of Narcotic Substances (Government Analysts) Rules, 2001. Rule 4(2) of the said Rules provides that sample may be dispatched for analysis under the cover of a test memorandum specified in Form-I at the earliest, but not later than seventy two hours of the seizure. Since the appellant/accused was arrested with contraband on 29.03.2021, which was admittedly received in the office of Chemical Examiner on 31.03.2021, as such there is no undue delay in sending the case property, as it was sent within 48 hours.

11. As regards the safe custody of case property, record reflects that after registration of FIR it was handed over to Investigation Officer, who on same day deposited it in Malkhana through WHC Bisham under entry No.34 (**Ex.06/A**). On 31.03.2021 it was taken out of the Malkhana and sent to Chemical Examiner through HC Imtiaz Ahmed under entries Nos.06 and 24 (**Ex.06/D & 06/E**). The receiving of case property at the office of Chemical Examiner through HC Imtiaz Ahmed is seconded by the report of Chemical Examiner (**Ex.06/G**). The Incharge of Malkhana WHC Bisham Khan and HC Imtiaz Ahmed, through whom the case property was sent for chemical examination, were duly examined by the prosecution to prove the chain of custody. Both these witnesses through documentary evidence confirmed the deposit of case property in Malkhana and its receiving at Chemical Examiner Officer and they remained consistence during cross-examination. Therefore, the chain of safe custody is also proved.

12. The appellant has failed to prove his false implication in the present case, as there is nothing on record which may establish that there was any enmity of appellant/accused with police party. The appellant has also failed to produce any witness in his defense nor he examined himself on Oath.

13. For the foregoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellant, therefore, the impugned judgment dated 02.08.2021, passed by the learned Special Judge for Control of Narcotics Substance/MCTC Tando Muhammad Khan in Special Case No.10 of 2021 [**Re: The State versus Ghulam Muhammad @ Gul**], outcome of

Crime No.41 of 2021 registered at P.S Tando Ghulam Hyder for offence punishable under Section 9(c) of CNS Act, 1997 is strictly in accordance with law, hence requires no interference by this Court, as such same is hereby maintained and in result whereof the present appeal, having no merits, is dismissed, however, the benefit of Section 382-B Cr.P.C, as provided to the appellant/accused by the learned trial Court through impugned judgment is maintained. The appellant, who vide Order dated 18.01.2022 was released on bail is called absent. The bail bond of the appellant is cancelled. Let NWB be issued against appellant through SHO concerned with direction to cause his arrest and send him to concerned prison to serve out remaining portion of sentence. Notice also be issued to surety as required by Section 514 Cr.P.C through SHO concerned. Let copy of this judgment be sent to SSP concerned for information and compliance.

JUDGE

JUDGE

Sajjad Ali Jessar