

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

Cr. Appeal No.D-177 of 2019
[Ghulam Nabi versus The State]

BEFORE:

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

Appellant : Through Mr. Mallag Assa Dashti advocate

The State : Through Mr. Abdul Waheed Bijarani A.P.G

Date of hearing: 14.03.2023

Date of judgment: 16.03.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: Through instant appeal, appellant has impugned the judgment dated 25.09.2019, passed by learned Special Judge for Control of Narcotic Substance Sanghar in Special Case No.125 of 2018 [**Re: The State versus Ghulam Nabi**], outcome of Crime No.95 of 2018 registered at P.S Shahpurchakar for offence punishable under Section 9(c) of CNS Act, 1997, whereby he was convicted and sentenced to undergo Imprisonment for Life with fine of Rs.1,00,000/- and in case of failure in payment of fine, he was directed to further suffer Simple Imprisonment for one year, 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 18.11.2018 he was arrested by the patrolling police party headed by Complainant SIP Muhammad Ali Dahraj alongwith a Car at Nawabshah-Shahpurchakar road and from trunk (Diggi) of said Car 20 kilograms of Chars was recovered, hence aforesaid FIR was registered against him.

3. After registration of FIR I.O conducted the investigation and on its completion challan was submitted before the concerned trial Court. Then copies of the case were provided to the appellant/accused at **Ex.04** and Charge was framed against him at **Ex.05**, to which he pleaded not guilty and claimed trial vide his plea at **Ex.06**. In order to prove the charge, prosecution examined four witnesses at **Ex.07 to 10**, who produced and recognized certain documents at **Ex.07/A to 10/A**. Thereafter prosecution closed its side at **Ex.11** and the statement of appellant/accused under Section 342 Cr.P.C was recorded at **Ex.12** 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 trial Court finally after hearing the parties convicted and sentenced the appellant/accused, as noted above, vide impugned Judgment at **Ex.13**, 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 learned trial Court has failed to discuss the material contradictions in the evidence of prosecution witnesses; that there was no independent witness of the alleged incident, however, same has not been considered by the learned trial Court; that alleged recovery has been foisted upon the appellant by concocting a false and managed story; that the case property was sent with delay; that while passing the impugned judgment the learned trial Court has committed serious illegalities; that prosecution case is not free from doubts; that safe custody of alleged contraband is not proved, as Malkhana Incharge was not examined. He prayed for acquittal of accused. In support of his contentions, he relied upon (i) 2023 SCMR 139, (ii) 2022 SCMR 1627, (iii) 2022 SCMR 1052, (iv) 2022 SCMR 864, (v) 2022 SCMR 1422, (vi) unreported Orders dated 11.10.2021 and 28.02.2022 passed by Hon'ble Supreme Court in Cr. Petition No.114 of 2018 and Cr. Appeal No.241 of 2020 respectively, (vii) 2022 P Cr.L.J Note 15, (viii) 2022 P Cr.L.J 492, (ix) 2023 YLR 242, (x) 2023 YLR 153, (xi) 2022 P Cr.L.J 961 and (xii) 2017 P Cr.L.J 409.

5. Learned Assistant 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 as well as safe transmission has been proved which lead to a positive chemical report; that appellant/accused has failed to prove any enmity with police officials. He prayed for dismissal of appeal.

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 18.11.2018 patrolling police party, headed by Complainant SIP Muhammad Ali, left the police station at 1200 hours for patrolling in the area under departure entry No.04, produced at **Ex.07/B** and during patrolling they on suspicion intercepted the appellant/accused, who was coming on a Car through a road from Nawabshah towards Shahpurchakar, and during checking 40 pieces of chars weighing 20 kilograms was recovered from trunk (Diggi) of said Car, as such he was arrested at the spot and such memo of

arrest and recovery was prepared, which was produced at **Ex.07/A**. Record further reflects that a small quantity from each recovered piece of contraband was separated for chemical analysis and remaining quantity was sealed at the spot. The police then brought the accused and case property at police station at 1430 hours and recorded such arrival entry bearing No.06 (**Ex.07/B**) and FIR was registered against appellant/accused, which was produced at **Ex.07/E**, while the recovered case property was deposited in police Malkhana under entry No.108, which was produced at **Ex.07/C**. The aforesaid documents exhibited at **Ex.7/A** to **07/C** prove the departure and arrival of police party as well as arrest of appellant/accused at the spot on the fateful day. The author and witness of said documents were examined at **Ex.07** and **08**, they deposed on parallel lines, as that of FIR. They were put to test of lengthy cross-examination, however, remained consistent.

8. Record further reveals that after registration of FIR, it was entrusted for investigation to Inspector Javed Ahmed alongwith custody of accused/appellant and recovered case property, who on same day left the police station for site inspection under entry No.09 (**Ex.08/B**) at 1500 hours and prepared such memo, which was produced at **Ex.08/A** and also recorded the statements of witnesses under Section 161 Cr.P.C. On 20.11.2018 he sent the samples of recovered contraband for chemical examination through HC Gulab Khan under the cover of letter dated 20.11.2018 (**Ex.09/C**), report of which came in positive, which was produced at **Ex.10/A**. It appears that after arrival at Police Station the recovered case property was deposited in Malkhana and such entry was exhibited as **Ex.07/C**, as such safe custody of recovered contraband is duly proved. So far as safe transmission is concerned, record reflects that on 20.11.2018 the case property was taken out of the Malkhana and it was handed over to HC Gulab Khan for its deposit in the office of Chemical Examiner. The said HC was examined at **Ex.09**, who deposed that after receiving case property he left the police station under entry No.34 at hours 0740 (**Ex.09/A**) hours and deposited the recovered case property in the office of Chemical Examiner and then returned to police station under entry No.12 at 1840 hours (**Ex.09/B**). Receiving of case property in sealed condition through HC Gulab Khan is duly established by the report of Chemical Examiner (**Ex.10/A**), hence safe transmission is also proved.

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 is concerned, we have 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 18.11.2020, which was admittedly received in the office of Chemical Examiner on 20.11.2020, as such there is no undue delay in sending the case property, as it was sent within 48 hours.

11. 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.

12. 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 25.09.2019, passed by learned Special Judge for Control of Narcotic Substance Sanghar in Special Case No.125 of 2018 [**Re: The State versus Ghulam Nabi**], outcome of Crime No.95 of 2018 registered at P.S Shahpurchakar for offence punishable under Section 9(c) of CNS Act, 1997, is strictly in accordance with law and requires no interference by this Court, as such same is hereby maintained. Resultantly 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.

JUDGE

JUDGE