

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

*Mr. Justice Khadim Hussain Tunio
Mr. Justice Arbab Ali Hakro*

Criminal Jail Appeal No.D-102 of 2020

Appellant : Manzoor Ali son of Allah Dino through
Mr. Ghulamullah Chang, Advocate

The State : Through Mr. Agha Abdul Nabi, Special
Prosecutor ANF.

Cr. Appeal No.D-116 of 2020

Appellant : Muhammad Ali son of Meharram Ali,
Through Syed Shahzad Ali Shah, Advocate

The State : Through Mr. Agha Abdul Nabi, Special
Prosecutor ANF.

Date of hearing : **27.07.2023**

Date of Judgment : **03.08.2023**

JUDGEMENT

ARBAB ALI HAKRO, J.- Through this single judgment, we intend to dispose of Criminal Jail Appeal No.D-102 of 2020 and Criminal Appeal No.D-116 of 2020 filed by the appellants / convicts Manzoor Ali and Muhammad Ali against their conviction and sentence under Section 9(c), Control of Narcotics Substances Act, 1997 (“**the Act of 1997**”), awarded by Model Criminal Trial Court-I / Special Judge (C.N.S), Hyderabad vide judgment dated 12.11.2020, as under:-

(1) MANZOOR ALI

Life Imprisonment with fine of Rs.200,000/- and in case of default of payment of fine, to further undergo six (06) months' S.I.

(2) MUHAMMAD ALI

Imprisonment of twelve years and six months with fine of Rs.60,000/- and in case of default of payment of fine, to further undergo 09 months' S.I.

2. The prosecution story, as narrated in F.I.R No.05 of 2020 lodged by Inspector Naeem Khan is that on 11.03.2020, the high-ups of the ANF received spy information that narcotic dealer Manzoor Kandhro and his henchman would come with a huge quantity of narcotics in a car No.ALL-922 via National Highway Jacobabad, Hyderabad and will pass from Ayoub Hotel Hyderabad between 04:00 p.m. to 05:00 p.m. to deliver narcotics to his customer. Upon receiving the information, a raiding party comprised upon the complainant and other officials of ANF was formed and they along with informer arranged a picket (Nakka) near Ayoub Hotel, Hala Naka Hyderabad. At about 5:00 p.m., the pointed vehicle was seen coming towards Hala Naka with two persons which was stopped. On enquiry about their identities, the driver told his name as Muhammad Ali son of Moharram Ali, whereas, the person sitting on the rear seat disclosed his name as Manzoor Ali son of Allah Dino Kandhro. On inquiry about narcotics, after some hesitation, the person sitting on the driving seat produced 10 (ten) packets containing chars beneath the driving seat, which were weighed, each packet was of one kilogram, total 10 kilograms. The other person took out one plastic sack (katta) lying in his feet, which was checked and found containing 20 (twenty) packets of chars, each weighing one kilogram, total of 20 kilograms. Five packets of opium wrapped in the yellow plastic tape were also recovered from the sack, which were weighed, each packet was of one kilogram, total 05 kilograms. On their personal search, one CNIC, driving license, running paper, one China mobile phone and cash Rs.900/- were secured from Muhammad Ali, while colour copy of CNIC, one China mobile phone and cash Rs.1500/- were secured from Manzoor Ali. Samples took from each packet of contraband material for chemical analysis as well as remaining case property were sealed on the spot. The appellants were arrested under a memo. Thereafter, the appellants, together with the car and above mentioned recoveries were taken to Police Station ANF Hyderabad, where formal F.I.R. was registered.

3. After completion of investigation by Ins. Naeem Khan, challan was submitted against the appellants before the trial Court. On indictment, the appellants pleaded not guilty and claimed trial. To prove the charge, the prosecution examined two witnesses i.e. the complainant namely, Ins. Naeem Khan / PW-1 and PC Asif Ali / PW-2. After that, the appellants were examined under Section 342

Cr.P.C, wherein they professed their innocence, denied all the allegations leveled against them and prayed for acquittal. They did not opt to depose within the scope of Section 340(2), Cr.P.C. nor adduced evidence in defence.

4. After conclusion of trial, the appellants were convicted and sentenced in terms as mentioned above. Hence, these appeals.

5. At the very outset, learned counsel(s) for the appellants contended that the appellants are wholly innocent and have been falsely implicated in this case by the ANF Police; that there are material contradictions in the evidence of the P.W(s) which renders such evidence unreliable; that no independent witness has been cited by the prosecution; that police officials namely HC Iqbal Hussain, PC Gul Sher, Incharge Malkhana, as well as Incharge Police lockup, have not been cited in the case as prosecution witnesses and that for any or all the above reasons the appellants should be acquitted of the charge by extending them the benefit of doubt. While concluding the arguments, learned counsel relied upon the case laws reported as **2023 MLD 875, 2023 SCMR 139 and 2023 YLR 737.**

6. Learned Special Prosecutor ANF, while supporting the impugned judgment, contends that a huge quantity of contraband substance was recovered and the ANF officials had no animus with the appellants or any reason to foist such a huge quantity of narcotics upon them from their source. He has further contended that the prosecution witnesses were reliable, trustworthy, they supported the prosecution case and that there were no material contradictions in their evidence; as such, the appeals are liable to be dismissed. In support of his contentions, he has relied upon the cases of **The State/ANF v. Muhammad Arshad (2017 SCMR 283]**, **Abdul Wahab & another v. The State (2019 SCMR 2061)**, **Muhammad Rasool v. The State (2022 SCMR 1145)** and **Mst. Fauzia v. The State (2022 YLR Note 141).**

7. We have considered the arguments put forth by the learned counsel(s) representing the appellants, the learned Special Prosecutor for Anti-Narcotics Force (ANF). Additionally, we have thoroughly examined the record contained within the case file.

8. The prosecution case against the appellants was that the ANF had received prior information that a huge quantity of

narcotic drugs was going to be transported in the vehicle. The ANF officials had therefore posted a picket, arrested the appellants and recovered the narcotics.

9. Complainant Inspector Naeem Khan and Constable Asif Ali furnished the ocular account of the occurrence. While appearing as PW-1, the former reiterated the same story of the arrest of appellants and recovery of narcotics from their possession, as set forth by him in the FIR. While appearing as PW-2, the latter deposed that in his presence, complainant Inspector Naeem Khan apprehended the appellants and recovered the contraband substance. After separating samples, an arrest & recovery memo was prepared in his presence, which bears his signature as its marginal witness. Both the above named prosecution witnesses have been subjected to lengthy cross-examination, but nothing beneficial to the defence could be extracted from their mouths. They remained steadfast in their position and provided mutual support concerning all substantive aspects of the incident, including the exact day, date, time, and location of the occurrence, as well as the method and procedure followed during the appellants' arrest and the retrieval of narcotics from their possession. The recovered narcotics were kept in safe custody from the time of their recovery till the time when they were sent for chemical analysis, and no suggestion of tampering with the same has even been made. The samples from every packet of the substance recovered in this case were taken in a prescribed manner and sealed on the spot, remaining sealed property was deposited in the malkhana for which a malkhana entry of Register No.19 has been produced. Furthermore, per the chemical examiner's report, the samples were received in intact condition, which rules out any question of tampering. It was, in fact, the examiner who had broken the seals to open the sealed contents, and on their analysis, they were found and certified to be chars and opium. The recovered contraband narcotics have been produced before the trial Court. Nothing in black and white is available on file to show any ill will or enmity of the P.Ws with the appellants so as to suggest their false implication. So far as the contention of learned defence counsel that the evidence of ANF officials is not trustworthy and that despite advance information, no independent or private person has been cited as a witness, therefore, the case of the prosecution is doubtful, is concerned, same has no force as such contention raised by

learned counsel could have been considered when the evidence of ANF officials was based upon untruthfulness casting uncertainty, enmity and ambiguity. Both the witnesses examined at trial had no animus with the appellants. During lengthy cross-examination by the learned defence counsel from them, no dent was caused in the consistency of their version, and thus it remained unshaken and inspired confidence. Further, the recovery made in this case was in a huge quantity i.e. 30 (thirty) K.Gs of chars, and 05 (five) K.Gs of opium. The appellants were from other districts, i.e. Sanghar and Larkana; thus, the ANF officials of Hyderabad, *prima facie*, had no reason to foist massive quantities of chars and opium upon them. In this context, we are fortified by the dictum laid down by the Apex Court in the case of **Hussain Shah and others v. The State (PLD 2020 Supreme Court 132)**, wherein it was held that;

“...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. Both the courts below had undertaken an exhaustive analysis of the evidence available on the record and had then concurred in their conclusion regarding guilt of the said appellant having been proved beyond reasonable doubt and upon our own independent evaluation of the evidence we have not been able to take a view of the matter different from that concurrently taken by the courts below vis-a-vis the said appellant”.

10. The evidence of the official witnesses, even otherwise, could not be discarded only because they belonged to the Police department. Another factor to be borne in mind is that people from the public do not cooperate to act as mashir in the cases of the present nature owing to fear of the offenders. In the case of **Salah-u-Din V. State (2010 SCMR 1962)**, it was held by the Apex Court that;

“Reluctance of general public to become witness in such like cases by now has become a judicially recognized fact and there is no way out but to consider

the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard.

11. Moreover, in narcotics cases, the association of mashirs from the public has been excluded by Section 25 of the Act of 1997. Reference in this context can be made to the case of **Muhammad Hanif vs State (2003 SCMR 1237)** wherein the Apex Court, while dealing with a similar argument observed that;

“.....the contention concerning violation of Section 103 Cr.P.C seems to be fallacious when examined in the light of provisions as contained in Section 25 of the Act which provides exclusion of Section 103 Cr.P.C. Even otherwise, the reluctance of general public to become witness in such-like cases has by now become a judicially recognized fact that there was no option left but to consider the statement of an official witness as no legal bar has been imposed in this regard.”

12. Furthermore, in cases of the present nature, evidence is not to be weighed in the golden scales as held by the Apex Court in the case of **Ismaeel vs State (2010 SCMR 27)**, in which it was observed that;

“The standard of proving the case under special law is different in case the special law is read as a whole while comparing with the general law. It is a settled principle of law that special law excludes the general law as law laid down by this court in Ziaur Rehman’s case PLD 1973 SC 49 and Mian Muhammad Nawaz Sharif’s case PLD 1993 SC 473. Acts like this which not only bring disgrace to the country’s name but also are deteriorative to the society and atrophic to the youth who develop and carve the future of the country and mould the destiny of the Nation. Such illegal and indecent activities are converting our younger generation into drug addicts, giving birth to a never ending cycle of enormities which not only cripple a society but also ruins the destiny of so many families in just a blink of an eye. Therefore, the courts approach should be dynamic and should overlook the technicalities in the large interest of the country and public welfare”.

13. As regards the plea of false implication raised by the appellants, suffice to say that they have neither produced any evidence nor material to support it. Moreover, it was hard to believe that for roping somebody in a case, nearly a mound of narcotics worth lacs of rupees be planted upon them. Thus the plea of appellants, besides being unsubstantiated, appeared unworthy of belief.

14. On our evaluation of the evidence, we find it confidence inspiring and trustworthy; the appellants, while transporting the huge quantity of Chars viz. 30 K.Gs and opium viz. 05 K.Gs in a car bearing registration No.ALL-922 were arrested near Ayoub Hotel Hyderabad, and the version of PW-1 complainant/Ins. Naeem Khan has been fully supported by the PW-2, i.e. mashir of arrest and recovery PC Asif Ali which has been corroborated by the material documents, including the memo of arrest and recovery, FIR, Malkhana Entry, roznamcha entries of departure and arrival showing their movement, positive chemical examiner's report and no enmity, ill-will or grudge as alleged has been proved against the prosecution's witnesses to implicate the appellants falsely.

15. Considering the above facts and circumstances of the case, we are of the considered view that the prosecution has succeeded in bringing the guilt of the appellants at home, and the learned counsel for the appellants has failed to point out any material illegality or infirmity committed by the trial Court while passing the impugned judgment which is based on proper appreciation of evidence; therefore, the same does not call for any interference. Accordingly, both these appeals are **dismissed** being devoid of merits.

JUDGE

JUDGE

Hafiz Fahad