

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. Crl. Jail Appeal No. D-137 of 2019

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &
Mr. Justice Arbab Ali Hakro**

Appellant : **Abdul Samad Langah**, through Mr.
Rukhsar Ahmed Junejo, Advocate

The State : Through Mr. Aftab Ahmed Shar,
Additional Prosecutor General

Date of hearing(s): **28-02-2024**

Date of decision: **28-02-2024**

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Appellant Abdul Samad Langah was tried by learned 1st. Additional Sessions Judge / Special Judge for CNSA (MCTC), Ghotki in Special Case No.68 of 2016, arising out of Crime No.22 OF 2016 registered at DIO Camp Ubauro and vide judgment dated 25.06.2019, he was convicted for offence under Section 9(c) of the Narcotic Substances Act, 1997 and sentenced to suffer R.I for life and to pay fine of Rs.300,000/-, in case of default, to further undergo S.I for one year more with benefit of Section 382-BCrPC, duly extended to him.

2. As per brief facts, complainant Qamaruddin Siyal, posted as Excise Inspector at DIO Camp, Ubauro, along with other staff was busy in snap checking of vehicles near Excise Check Post Kamoon Shaheed Sindh-Punjab border on 27.10.2016. He stopped a Bedford Truck registration No.QAC-1877 coming from Sadiqabad-Punjab at about 1:00 p.m, and found appellant driving it. On suspicion, he took search of the Truck and found, apart from necessary articles, 70 packets of charas, weighing one kilogram each, in a cabin on the roof of Truck. The total weight of 70 packets became 70 KGs. From each packet, 200 grams of charas as a sample for examination by chemical lab was separated and sealed. The remaining charas along with packets was put in a plastic bag and sealed on the spot. Appellant was formally arrested and then memo of arrest and recovery was prepared in

presence of Mashirs EC-Kifayat Ali and EC-Muhammad Daud. Appellant was subsequently brought at P.S. along with the recovered property and the Truck, seized under relevant memo, where FIR was registered accordingly against him.

3. During investigation, samples of charas were sent to the chemical lab, Rohri for examination and a report. Finally, on completion of investigation, the Challan was submitted in the Court for a trial, in the course of which a formal charge was framed against the appellant. He pleaded 'not guilty' and claimed trial. Hence, prosecution examined complainant as PW-1. He has produced memo of place of incident, FIR, report of chemical examiner, verification letter of documents of the Truck, departure and arrival entries etc. Second witness examined by the prosecution is EC-Kifayat Ali. The statement of appellant was recorded thereafter under Section 342 CrPC. He has simply denied the allegations and pled his innocence and false implication. The trial Court then vide impugned judgment has convicted and sentenced the appellant in the terms as above.

4. Learned defence counsel has argued that appellant is innocent and has been falsely implicated in this case; complainant and I.O is the same person which points out to his interest in the case and *mala fide* on his part to involve the appellant; there are material contradictions in the evidence of witnesses which the trial Court has completely failed to appreciate; the prosecution has not examined all the witnesses who were allegedly part of the team, and with the complainant, on the day of incident; no private person was associated as a witness to witness the recovery proceedings, hence the entire case is doubtful; the prosecution has utterly failed to establish safe custody of alleged recovered charas at P.S and its safe transmission to the office of chemical examiner; that Malkhana in charge was not examined by the prosecution, hence the case property is doubtful, and the prosecution case has become weak.

5. On the other hand, learned Additional P.G has supported the impugned judgment and has rebutted each point raised in defence by quoting an unreported judgment dated 21.09.2023, passed by this Court in Spl. CrI. Jail Appeal No.D-85 of 2018.

6. We have heard the parties and perused material available on record including the case law. In the lengthy arguments, raised in defence, in fact, learned counsel has not highlighted any material contradiction in the evidence of witnesses insofar as salient features of the case starting from performing duty at the relevant time to checking the vehicles at the subject place, flagging down appellant's Truck, its search and recovery of 70 packets from a cabin on the roof of Truck and appellant's utter failure to account for the same, are concerned. The complainant and Mashir both have supported each other on such facts without wavering on any one to create a room for a doubt. They have explained fully the details about their duty hours on the fateful day, proceeding to the place of incident, spotting appellant travelling in the Truck coming from Sadiqabad-Punjab, stopping it and on its checking, recovering 70 packets of charas, each weighing one KG, separating samples of 200 grams from each packet, sealing them separately from the remaining charas. In cross-examination, nothing of the sort derailing the prosecution case or depriving it of its intrinsic value qua the charge has come on record. Although, they have been subjected to a reasonably lengthy cross-examination, but except the trivial variations in describing the minuscule details involving the incident, nothing substantial endangering the prosecution case's authenticity has been brought on record. Arrest of appellant at the spot in the wake of discovery of the charas from his Truck, both stand established from the evidence of PWs. There is nothing to show that appellant has been falsely implicated in this case out of any ill-will or mala fide on the part of the complainant. His dual capacity of being I.O as well is not prejudicial to appellant as no law prohibits him from doing so.

7. As to the point of safe keeping of the recovered property at Malkhana and its safe transmission to the chemical lab, the Supreme Court in case of *Liaquat Ali and another v. The State* (2020 SCMR 1097) has held that non-compliance of the Control of Narcotic Substances (Government Analysts) Rules, 2001, which are directory and not mandatory, would not *ipso facto* imply falseness of the whole prosecution case, which, otherwise, is based on unimpeachable evidence of the witnesses giving firsthand account of the incident in unambiguous words.

8. Then in the case of *Zain Ali v. The State*, the Supreme Court vide judgment dated 29.05.2023 (CrI. Appeal No.208 of 2022) after elaborately discussing the issue of safe transmission and failure of the prosecution to examine the carrier who had delivered the property to the chemical lab for analysis has observed that record shows that parcels of samples were sealed at the spot and the same were received by the chemical examiner in a sealed condition which established safe communication of the samples. In both the aforesaid cases, the point of safe keeping of the property at Malkhana and its safe transmission in view of documents showing sealing of the property at the spot and its delivery at chemical lab with seals duly intact have been accepted by the Supreme Court and the conviction has been maintained.

9. In this case, the record shows that recovery was effected from appellant on 27.10.2016 at about 1:00 p.m, and the next day i.e. 28.10.2016 the samples were sent and received at the lab for examination. Within 24 hours, the samples, which were sealed at the spot, were thus conveyed to the lab with seals intact. There is hardly any chance of tampering with the samples in such a short period. Even otherwise, nothing substantial subverting safe custody at P.S or safe conveyance of the property to the lab, which otherwise, do not seem to have been disrupted at any moment, has even been brought up in defence except that the Malkhana in charge and carrier who took the property to the lab have not been examined. When an accused denies wholly and solely recovery of the property from him, we wonder is it open to him to question its safe transmission to the lab and safe custody at P.S. Because, both these projections are paradoxical to each other and for the most part illogical. If his case is that no narcotics was recovered from him, and the one shown in the case has been foisted upon him, the question of its safe keeping at P.S or conveyance to the lab for examination would not arise for him to raise. Unless of course, his case is that although the recovery of narcotics was effected from him, but while keeping it at P.S or being taken to the lab, it was fiddled with, with a view to strengthen the case against him.

10. Before us, there is clear cut evidence of the witnesses establishing recovery of charas from the appellant on the fateful day. The argument in defence that non-examination of Malkhana in charge shall

necessarily lead to an inference of the property being tampered with, in view of above discussion, is unsustainable and illogical. We see no reason to accept the failure of the prosecution to examine Malkhana in charge as its failure to keep the property safe at police station or suspect, in absence of such material, its tampering there. The chemical examiner's report shows that the property within 24 hours was received and seals were found intact. The safe communication from such documentary record is established and non-examination of the carrier who took the property to the lab would not undermine this established fact, and otherwise the strong case of recovery of huge property of 70 KGs charas from the appellant. We, therefore, are of the view that the prosecution has been successful in establishing its case against the appellant and the impugned judgment does not warrant any interference.

11. Accordingly, this Special Criminal Jail Appeal being devoid of any force is **dismissed** and is **disposed of** accordingly.

JUDGE

JUDGE