

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Present:

Ms. Justice Rashida Asad. J
Mr. Justice Khadim Hussain Soomro. J

Special Criminal Appeal No.D-69 of 2021

Appellant: Syed Rehman son of Shams-ul-Qamar Pathan.
Through Mr. Iftikhar Ali Arain, Advocate.

Special Criminal Jail Appeal No.D-73 of 2021

Appellants: 1. Tehseenullah son of Bakhtiar Pathan.
2. Syed Rehman son of Shams-ul-Qamar Pathan.

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

Date of Hearing: 29-08-2023

Date of Judgment: 13-09-2023.

JUDGMENT

KHADIM HUSSAIN SOOMRO, J. Through this judgment, we intend to dispose of captioned appeals. Special Crl. Appeal No.D-73 of 2021 was filed by appellants Tehseenullah Pathan and Syed Rehman Pathan through Senior Superintendent Central Prison Sukkur from Jail, while Special Crl. Appeal No. D-69/2021 was filed by the appellant, Syed Rehman Pathan, through his counsel. Both the above appeals arise out of one and the same Crime bearing No. 01/2021, offence u/s 9 (C) CNS Act, 1997, registered at Excise Police Station Sukkur. The appellants have impugned the judgment dated 01-10-2021 passed by learned IIIrd Additional Sessions Judge MCTC, Sukkur, whereby they have been convicted for the offence punishable u/s 9 (C) of CNS Act and sentenced to suffer Imprisonment for life and to pay fine of Rs. 100,000/- each and in default whereof to serve out S.I for 01 year more with benefit of Section 382-B Cr.P.C.

2. Brief facts of the case are that on 15-03-2021 at 0500 hours, near City School Sukkur situated at Indus Highway, Taluka and District Sukkur,

Excise Inspector Najeeb-ur-Rehman arrested accused Tehseenullah Pathan and Syed Rehman and recovered 50 kilograms charas, which were concealed in secret cavity inside the Fuel Tank of Mazda Truck bearing Registration No. TKB-581 in the presence of mashirs ED Abdul Majeed and EC Sajid Ali. On personal search, cash Rs. 5000/- along with CNIC was recovered from accused Tehseenullah, while cash Rs. 1500/- along with CNIC was recovered from accused Syed Rehman. The registration book of the vehicle was also secured from the Dashboard of the said Truck, such mashirnama of arrest and recovery was prepared at the spot, and then the accused and recovered property were brought to Excise Police Station. The complainant registered the FIR against the accused on behalf of the State. After the usual investigation, the case was challaned.

3. After supplying the case a paper, to the accused, the formal charge was framed against them by the learned trial Court, to which they did not plead guilty and claimed to be tried vide their pleas recorded at Exh.2.

4. During proceedings, the complainant Najeeb-ur-Rehman Domki expired. In this regard, the statement of the process server was recorded, who produced his death certificate. The prosecution, in order to substantiate its case, examined PW/mashir ED Abdul Majeed at Ex. 4, who produced all the material documents in support of the prosecution case. PW/02 EC-Nadeem was also examined at Ex. 5. Thereafter, learned State Counsel closed the prosecution side of evidence vide statement Ex.12.

5. The accused, in their statements recorded under section 342 Cr.PC have denied the allegations levelled against them by pleading their innocence. However, neither accused examined themselves on oath nor led any evidence in their defence.

6. The learned trial Court, on evaluation of the material brought on record and hearing counsels for the parties convicted and sentenced the appellants/accused through the impugned judgment, as discussed above.

7. Per learned defence counsels, the appellants are innocent, and they have falsely been implicated in this case by the Excise Police party in order to show their efficiency; that appellant Tehseenullah is the driver of Mazda Truck, while appellant Syed Rehman was the cleaner of said vehicle and they were unaware about Charas which lying in its secret cavity; that complainant who is star witness of the incident has expired; that the Chemical Examiner's report violates test protocol, losing its legal sanctity; that there are significant inconsistencies in the testimony of prosecution witnesses; that safe custody or transmission of Charas to the Chemical Examiner has also not been established; that the testimony of such interested witnesses has no legal standing. Last but not least, they argued that the prosecution had not proved its case against the appellants; hence, the appellants are entitled to acquittal. Learned counsel has relied upon the case law reported as 2021 SCMR 451 (Mst. Sakina Vs The State), 2015 YLR 2163 [Sindh] (Shafquat Mehmood Vs. The State), 2021 SCMR 363 (Qaiser Khan Vs. The State through Advocate General Khyber Pakhtunkhwa, Peshawar, 2012 YLR [Sindh] (Sherzad Pathan Vs. The State), 2010 P.Cr.L.J 348 [Peshawar] (Bashir Khan Vs. The State), 2021 SCMR 380 (Gulzar Vs. The State), 2022 P.Cr.L J 1779 [Sindh] (Jawab Ali and another Vs The State), 2016 MLD 2057 [Lahore] Haqnawaz Vs. The State and another) and PLD 2020 Supreme Court 132 (Hussain Shah and others Vs. The State).

8. On the other hand, learned Additional Prosecutor General Sindh, while supporting the impugned judgment, has submitted that the prosecution has proved its case against the appellants who were found transporting a huge quantity of Charas, which was recovered from the secret cavities of the Mazda; that the Excise Police had no reason to foist such a huge quantity of narcotics on the appellants, he prayed for the dismissal of the current criminal appeals. In support of his contention, he placed his reliance on cases reported as 2008 SCMR 1254 (Zafar Vs. The State), 2022 SCMR 1097 (Liaquat Ali and another Vs. The State, 2018 P.Cr.L.J [Sindh (Hyderabad Bench)] (Budho and 2 others Vs. The State), 2021 SCMR 198 (Shabbir

Hussain Vs. The State, unreported cases of Zain Ali Vs. The State in Crl. Appeal No.208 of 2022 passed by Hon'ble Supreme Court of Pakistan and unreported case of Mumraiz Khan and another Vs. The State Crl. Jail Appeal No.D-97 of 2019 passed by this Bench.

9. We have given anxious consideration to the arguments of both sides and perused the entire material available before the Court with their assistance and the case law cited at the bar.

10. No doubt, the complainant of the case has investigated the matter, but due to his death, he could not be examined. We have examined the evidence of P.W./Mashir ED Abdul Majeed, who deposed that he is an eyewitness/mashir in this case. On 15-03-2021, he was posted as E.D. at P.S. Excise Sukkur Town. On the same day on receipt of spy information, he, along with Excise Inspector Najeeb-ur-Rehman Domki and EC Sajid Ali, Ec Irsahd, EC Nadeem, EC Muhammad Qasim left P.S. vide entry No. 1 at about 0100 hours on Govt. Mobil No. GSB-5005. When they reached Indus Highway near City School Sukkur, where they waited for the pointed vehicle. At about 5:00 a.m., a Mazda Truck was coming from Shikarpur Side. It was stopped, and they noticed its/Registration No.TKB-581. They saw two persons sitting in the said Mazda Truck. They got alighted from the Truck. He and EC Sajid Ali acted as mashirs. The driver of the said Truck disclosed his name as Tehseenullah, son of Bakhtiar Khan by caste Pathan, R/O Chansalabad, District Char-Sada; the second person disclosed his name to be Syed Rehman son of Shams-ul-Qamar by caste Pathan, R/O Chorsa-Sawat, he introduced himself to be the cleaner of the said Truck. On personal search of driver Tehseenullah, cash of Rs. 5000/-his original CNIC was recovered, whereas 1500 rupees were recovered from cleaner Syed Rehman and his original CNIC. They saw that the Fuel Tank of the Said Mazda Truck was excessive from normal size. Such a Fuel Tank was removed and put down. It was checked, and found a secret cavity inside it, which contained multiple colour packets. All the packets were taken out of the secret cavity. All the packets were counted, which became 50 in number. Each packet contained two slabs of charas. Each slab was weighed separately and became 500 grams, and each packet became 01 kilogram and

in total, 50 kilograms of charas were recovered in the shape of 50 packets. Thereafter, 25 packets were put in one plastic Katta, and the other 25 packets were put in another plastic Katta. Both the same plastic sacks, each containing 25 packets, were sealed separately for chemical examination. On checking the Dashboard of said Mazda Truck, one page of the registration book in the name of one Sherzada, son of Kasham Zada, by caste Pathan, R/O Mominabad Karachi, was found lying. Such mashirnama was prepared by Inspector Najeeb-ur-Rehman Domki in his presence as well as in the presence of EC Sajid. They put their signatures on it. Thereafter, they brought the accused together with case property, i.e. recovered charas, Truck, and personal belongings of the accused at P.S. Excise Sukkur Town. Inspector Najeeb-ur-Rehman lodged such an FIR. His 161 Cr. P.C. statement was recorded by I.O Inspector Najeeb-ur-Rehman. Thereafter, on the same day, he brought the case property, i.e. recovered charas, to the Chemical Laboratory at Rohri. He further admits that Inspector Najeeb-ur-Rehman Domki has expired. He worked with him, and he knew his signature and handwriting. He produced FIR at Ex. 4/A, and identified the signature and handwriting of deceased Inspector Najeeb-ur-Rehman Domki. He produced an attested copy of Roznamcha entry No. 01 & 02 at Ex. 4/B and C, He produced mashirnama of arrest and recovery at Ex. 4/D, which bears his signature as well as the signature of Inspector Najeeb-ur-Rehman Domki. He produced a letter with regard to depositing the case property at the Chemical Laboratory at Ex. 4/E and recognized that it is the same and correct. He also recognized that the case properties and accused persons were present in the court. PW/2 EC Nadeem was examined, who almost supported the case of prosecution and corroborated the version of PW/1 Mashir ED Abdul Majeed.

11. Mashir ED Abdul Majeed produced all important and material documentation connected to the matter; as a result, the appellant Tehseenullah, being the driver and Syed Rehman, being the cleaner of the Mazda Truck, was found accountable for transporting a huge quantity of Charas in his Mazda. The established principle of law is that an individual

occupying the driver's seat of a vehicle bears the responsibility for the transportation of narcotics. They possess knowledge about the contraband material laying in the vehicle and both appellants were present inside of the vehicle, from where huge quantity of Charas was recovered. It does not make difference of exclusive possession and they are equally responsible for it. Moreover, when an individuals are operating a vehicle, and, exerting control and ownership over it. Consequently, any items present within the vehicle would also fall under their control and ownership. Reference in this context can be made to the case of Muhammad Noor Vs. The State(2010 SCMR-927).Similarly, in the case of Nadir Khan Vs. The State (1988 SCMR-1899), further reliance in this context is placed upon the case of Kashif Ameer Vs. The State (PLD 2010 SC1052).

12 . The appellant, Tehseenullah, was operating the vehicle at the time of interception, during which a substantial amount of a narcotic substance was recovered from a concealed compartment within said vehicle. Following this recovery, a report was obtained from the Chemical Examiner, confirming that the material collected was identified as charas. The prosecution witnesses who deposed about the alleged recovery were public servants and lacked any apparent motive to falsely implicate the aforementioned appellants /accused in the present case and foist huge quantity of narcotics upon them. The aforementioned witnesses were consistent in their statements that fully implicated the appellants in the alleged offence. No evidence has been presented by the defence that raises doubts about the credibility of the aforementioned witnesses.

13. With respect to the arguments advanced by learned counsel for the appellants, that the prosecution has not adequately demonstrated the safe custody and transportation of Charas from the point of recovery to the office of the Chemical Examiner. It is noteworthy that the defence did not suggest the potential tampering with the case property either at the police station office or during its transmission to the Chemical Laboratory while cross-examining the Prosecution Witnesses (PWs). On 15-03-2021, Charas was recovered from Mazda and subsequently transported to the Chemical

Laboratory on the same day without any delay. This transfer of case property was facilitated by Inspector Najeeb-ur-Rehman, who acted as the complainant, with the assistance of ED Abdul Majeed. The prosecution has produced the chemical report at Ex. 05/A, so the safe chain of custody of the recovered narcotics can be safely stated to be unbroken. The reliance can be made in the most recent case of Zain Ali V/S The State, Criminal Appeal No. 208/2022. Further Reliance is placed on the case of Faisal Shahzad Vs. The State [2022 SCMR 905] and Ajab Khan Vs. The State [2022 SCMR 317].

14. With respect to the contentions put up by the appellant's counsel regarding the alleged violation of Section 103 of the Criminal Procedure Code (Cr.PC), it is pertinent to cite Section 25 of the Control of Narcotics Substance Act 1997, which states as follows:-

“25. Mode of making searches and arrest.— The provisions of the Code of Criminal Procedure, 1898, except those of section 103 Cr.P.C shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of section 20, 21, 22 and 23 to all warrants issued and arrest searches made under these sections.

15. It indicates that the applicability of Section 103 of the Criminal Procedure Code (Cr.P.C.) in drug cases has been excluded, and the absence of any private witness does not constitute a significant fault that would render the conviction illegal. Individuals naturally hesitate to give testimony against those involved in drug trafficking due to the fear of potential threats.

16. When considering the evidentiary value of police officers, it is important to acknowledge their competence, and testimony should not be sacked only on the basis of their professional affiliation. It is well settled that evidence of the police personnel is required to be treated in the same manner as the testimony of any other witness, and there is no principle of law that without corroboration by the independent witnesses, their testimonies cannot be relied upon. The reliance can be made in the most recent case of Zain Ali V/S The State, Criminal Appeal No. 208/2022.

17. The evidence adduced by the prosecution is clear and confidence aspiring, and there is no suggestion that the witnesses testified against the accused/appellants with ill intent or malicious motives. It is highly improbable that the Excise police officials would fabricate or falsely implicate the appellants by foisting such a substantial amount of narcotics substance (50 K.G).

18 In the present case, no evidence was presented to establish animosity between the complainant, the other witnesses, and the accused. Consequently, in the absence of such evidence, it is reasonable to consider the credibility and reliability of the prosecution witnesses. Moreover, prioritizing procedural formalities over the successful prosecution of a crime is not justifiable. Additionally, if an accused individual is found to have a connection to the crime, a mere procedural oversight or an allegation of improper investigative practices would not provide any assistance to the accused. The Hon'ble Supreme Court of Pakistan in the case of Ghulam Qadir Vs. The State reported in (PLD 2006 SC-61) has held that; -

“S.9(c)---Appreciation of evidence---No acquittal on technicalities---Court in such like cases are supposed dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities.”

19. It is also settled that slight contradictions, inconsistencies, embellishments, or enhancements on trivial matters, which do not affect the fundamental aspects of the prosecution's case, should not be made a ground on which the evidence can be rejected in its entirety. The court is required to establish its assessment regarding the reliability of the witness and record a finding as to whether his deposition is trustworthy. Minor discrepancies in the testimony of a witness should not be classified as enhancements, as they may simply represent elaborations on the witness's previous statement.

20. Despite the fact that the investigation officer and other prosecution witnesses are Excise Police Officials, they have no animus or rancour against the appellants to foist such a large quantity of narcotics substance

against him. The defence has not shown any proof of hatred towards the prosecution witnesses. Although the investigating officer and other prosecution witnesses are Excise Police Officials, there is no evidence to suggest that they harbour any personal bias or ill will towards the appellants, leading them to falsely implicate them in the significant quantity of narcotics. The defence has failed to provide any substantiation of animosity against the witnesses produced by the prosecution. In cases involving large amounts of drugs, the absence of hostility or other justifiable basis for fake involvement would also be factors weighing against the accused. The reliance is made in case of Salah-ud-Din vs. The State, reported in (2010 SCMR1962), wherein the Hon'ble Supreme Court of Pakistan has held that:-

“....No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reasons...”

21. On re-appraisal of the evidence of the prosecution witnesses, we find it confidence-inspiring and trustworthy; appellants Tehseenullah being the driver and Syed Rehman being the cleaner of the Mazda Truck bearing registration No.TKB-581 was transporting (50 kilograms) a huge quantity of Charas. They were arrested on 15-03-2021 at about 0500 hours during snap checking near City School Sukkur situated at Indus Highway, Taluka and District Sukkur. The version of the mashir ED Abdul Majeed has been fully corroborated by co-mashir of arrest and recovery, namely EC Nadeem, who is also one of the eyewitnesses of the incident, which is substantiated with the memo of arrest and recovery (Exh.04/D). On the same day, the case property was handed over to ED Abdul Majeed, who delivered the same to the Chemical Laboratory on the same day through a letter produced at Ex. 4/E. The complainant himself recorded the statements of witnesses u/s 161 Cr.PC. The report Chemical Analyzer was submitted at Ex. 06/A, which received positive

22. The appellants have not produced any solid evidence contradicting the fact that they had no awareness of the Charas being in the Mazda Truck in which they were boarded, being its driver and cleaner. It cannot be believed that the driver and cleaner were unaware of the contents and goods being conveyed by them or present in the side of the fuel tank of Mazda in which they were boarded for going to Karachi. The close examination of the entire prosecution evidence, namely the recovery of a large quantity of narcotics, recovered in broad daylight, sealed at the spot in a plastic Katta [nylon bag] and send them to the Chemical Examiner, the report of the Chemical Examiner, and the evidence of the prosecution witnesses, leaves no room to conclude that the appellant is a true perpetrator.. In this respect, we would like to refer to a decision issued by the Supreme Court in the matter of. Muhammad Noor Vs. The State reported in 2010 SCMR 927, wherein the Hon'ble Court observed as under:

8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same; therefore, it would be under his control and possession. Hence, whatever articles lying in it; would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:--

The next point raised by the learned Counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Code. The learned Counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned Counsel is without force on the fact of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicates. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable. Another reference can be made Adil Ahmed v. Deputy

Collector, C & CE 1991 SCMR 1951. Rab Nawaz v. The State PLD 1984 SC 858. of Nadir Khan v. State 1988 SCMR 1899

23. Based upon the above discussion and while relying upon the Hon'ble Apex Court case laws, we are of the unanimous view that the prosecution has successfully established its case against appellants Theseenullah and Syed Rehman beyond the shadow of any reasonable doubt. Consequently, the instant criminal appeals merit no considerations, which are dismissed and the impugned judgment passed by the learned trial Court is hereby maintained.

JUDGE

JUDGE

Nasim,/P.A