IN THE HIGH COURT OF SINDH AT KARACHI.
Criminal Appeal No. 100 of 2002

PRESENT : **Mr. Justice Shabbir Ahmed**.
Mr. Justice Muhammad Sadiq Laghari.

JUDGMENT

Date of hearing: 18.12.2002
Appellant: Zafar through Mr. M.Ilyas Khan Advocate .
Respondent : The State through Mr. Shoib Ashraf, Special Prosecutor, ANF.

MUHAMMAD SADIQ LAGHARI, J: Appellant Zafar was tried and convicted by the learned Judge Special Court , Narcotic Substance, Karachi division, for an offence punishable under Section 9 (c), Control of Narcotic Substances Act, 1997, vide Judgment dated 15.4.2002. He was sentenced to suffer Imprisonment for life and to pay fine Rs.100,000/= (Rupees One Lac), in default whereof to undergo R.I. for one year more, with benefit of Section 382-B, Cr.P.C.

2. The prosecution case is that on 16.2.1999, a Mobile Party of Anti-Narcotic Force led by S.I. Sayed Liaqat Ali Zaidi, on the pointation of an informer, intercepted a person available at Bus Stop, Main Sher Shah Chorangi, having a Nylon bag in his hand. That person introduced himself as Zafar son of Kadir Bux, resident of Dawood Khan Goth, near Muhammadan Football Ground, Malir City, Karachi. On checking, the bag was found containing 11 balls of opium weighing one kilogram each. The substance was seized and the appellant Zafar taken into custody. 100 grams of opium was drawn from each ball as sample for chemical examination and sealed separately.

3. It is said that during interrogation, appellant Zafar made a disclosure about the presence of his associate at Pankha Hotel with a huge quantity of opium. After preparation of the Mashirnama of arrest and recovery, the party of Anti-Narcotic Force took appellant Zafar with them and proceeded towards the Pankha Hotel, On the pointation of appellant Zafar, a person having a Nylon bag in his hand was

intercepted and 12 Kgs of opium recovered from his possession. The captive was Fazal Ahmed. After drawing samples from the opium and preparation of mashirnama of arrest and seizure both the captives and property were brought at Police Station ANF-II, where separate cases were registered against them

4. After investigation, the appellant was sent for trial and the learned Judge, Special Court Narcotic Substances, Karachi Division, convicted him as mentioned above. The conviction and sentences have been appealed against.

5. It was argued by Mr. Muhammad Ilyas Khan, the learned Advocate representing the appellant that despite information in advance, the seizing officer did not associate with them any private person for witnessing the recovery and arrest, therefore, the evidence of two Anti-Narcotic Force Officials in a case for an offence punishable with imprisonment for life, could not be believed. He also contended that the story advanced by the prosecution in respect of the arrest of the appellant and recovery from him, appears to be concocted one as in Karachi one can get bus of his destination within ten minutes maximum and no one would keep standing at bus stop for about an hour. Arguing further, the learned Advocate contended that the prosecution evidence on record does not prove the production of the bulk of the opium before the learned Trial Judge nor it was proved through the evidence before the Trial Court that the total weight of the opium , allegedly recovered from the appellant, was 11 kgs. That simply saying that on weighment of the opium, at the time of the alleged recovery, its total weight was found to be 11 kgs, cannot be accepted as proof of the total weight of the substance i.e. opium. The next contention of Mr. Muhammad Ilyas Khan was that, clauses (a), (b) and (c) of Section 9 of the Control of Narcotic Substances Act, 1997 provide different sentences for possessing different quantities of Narcotic Substance. Clause (c) of the Control of Narcotic Substance Act, 1997 provides for imprisonment for life as minimum punishment for possessing

purely Narcotic Substance more than 10 kgs. According to him, if 11 kg is accepted to be the weight of entire substance then also it is not to be taken as the weight of pure or actual opium, therefore, the case of the appellant can , at the most, fall under section 9 (b) of the Control of Narcotic Substances Act, 1997, for which the maximum punishment is 7 years imprisonment.

6. The learned Special Prosecutor, ANF, defended the conviction and sentence, arguing that it is none of the requirements of the law to join a private person in the process of arrest and recoveries. He further contended that it is general trend that private persons hesitate and decline to join the police party while proceeding to intercept a narcotic carrier or dealer. According to him, the Anti-Narcotic Force Officials are as good witnesses as any one else and the conviction can be based on their evidence, if, it is found satisfactory otherwise. That in present case two witnesses namely Inspector Ghulam Abbas and Sub-Inspector Sayed Liaqat Ali Zaidi have deposed against the appellant and their evidence does establish the recovery of opium from his possession. He also referred to the report of Chemical Examiner confirming that the samples sent for examination, were opium. Regarding the objection about the proof of the total quantity of the stuff/substance, the learned Special Prosecutor contended that when the witnesses deposed that the total weight was 11 Kgs and their evidence was not challenged it stands proved that the opium recovered from the possession of the appellant was 11 Kgs.

7. As regards the absence of private witnesses, the Anti-Narcotic Officials had admittedly not joined any of the private persons with them while proceeding to the place, indicated by the spy/informer, but that fact, by itself, does not justify doubting the evidence of Anti-Narcotic Officials who are also competent to testify. Both of the PWs namely Inspector Ghulam Abbas and Sub-inspector Sayed Liaqat Ali Zaidi of Anti-Narcotic Force have deposed that after receiving the information, they took the

informer with them, proceeded towards Sher Shah round about Bus Stop and intercepted the appellant who was carrying a Nylon Bag. On checking, the bag was found containing 11 balls of opium . According to them, the weight of each ball was 1 Kilogram, from which 100 grams were drawn as sample and sealed separately. Both of the were subjected to a lengthy cross-examination but nothing such was extracted from them which could make their evidence doubtful. On the contrary, a suggestion was made to P.W. Sayed Liaqat Ali Zaidi that the investigation revealed that the appellant was carrier and was promised to be paid Rs.5000/= for transportation of opium from Balochistan to Karachi and absconding accused Malang was the owner of the opium. This suggestion was agreed to by the witness. In fact, the suggestion in cross-examination amounts to an admission of the recovery of the opium from the appellant. In view of these facts, the direct evidence of the above named two officials of Anti-Narcotic Force does establish the recovery of opium from the possession of the appellant.

8. The contention about the purity is also devoid of substance. It is not based upon any thing in the evidence. On the contrary the evidence specially the report of Chemical Examiner clearly contends that the samples examined chemically were the opium. Defence also did not challenge the purity of the opium in any form.

9. On the question of production of the stuff the contention of Mr. Ilyas Khan is not correct. The evidence of PW Ghullam Abbas clearly shows that the Balls of opium were produced before the Court as Article C. Other witness Syed Liaquat Ali also had seen that property and claimed it to be the same.

10. It is true that stuff produced before the Court was not weighed there and the evidence of prosecution witness on that point was believed but their seems no justification to take an exception to the finding of the learned trial Court in that respect, specially when the defence did not question the evidence of the witness relating to the weight

of the substance. No question at all was put to them in that respect when each of them deposed expressly that the total weight of the stuff was 11 kgs.

11. In the last a word about the defence witness Abdul Latif Taxi Driver. Although he deposed that 2 ½ years back at 1:30 P.M. three persons out of whom one had Kalashankove had come in a car at Shaheen Coach Service and taken two persons namely Fazal and Zafar from there. This evidence does not carry any weight merely for the reason that the appellant did not claim in his statement under Section 342 Cr.P.C. that he was taken from the office of Shaheen Coach Service and the event was witnessed by Taxi Driver Abdul Latif.

12. The result of above discussion is that the prosecution evidence proves the guilt of the appellant and the learned trial Court rightly convicted. Consequently the appeal fails and is dismissed.

JUDGE

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