

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

Cr. Appeal No.D-176 of 2019

Present:

*MR. JUSTICE NAIMATULLAH PHULPOTO
JUSTICE MRs. RASHIDA ASAD*

Date of hearing: 11.08.2020

Date of judgment: 15.09.2020

Appellant : Waheed Ahmed
Through Mr. Imtiaz Ali Chanhio, Advocate.

Respondent: The State
Through Mr. Shahzado Saleem Nahyoon,
D.P.G.

J U D G M E N T

Rashida Asad J. – Waheed Ahmed, appellant, has impugned the judgment dated 25.09.2019, passed by a Special Court, C.N.S., at Sanghar, arising out of Crime No.57/2018, registered on 18.11.2018, at P.S Chotiaryoon, for offence under section 9(c) of the Control of Narcotic Substance Act, 1997, whereby, he was convicted u/s 9(c) ibid, and sentenced to suffer seven years and six months R.I. and to pay fine of Rs.35,000/-, in default thereof, to suffer further simple imprisonment for six months and fifteen days. Appellant, however, was extended benefit of section 382-B of the Code of Criminal Procedure, 1898.

2. The brief facts, relevant for the disposal of this appeal as disclosed by Inspector Ghulam Shabbir Khoso, SHO/complainant in FIR are that on 18.11.2018 at 1630 hours, he, on spy information, apprehended the appellant near Dargah Sadho Faqeer, holding one black shopper. During his personal search, 5000 grams (5 kgs) Charas

in 10 small and big pieces was recovered from him. The samples, from each piece, were separately taken and sealed on spot in presence of mashirs. Samples were sent to Forensic Science Laboratory and positive report was received.

3. After usual investigation, challan was submitted against the accused under section 9(c) Control of Narcotic Substance Act, 1997. The learned trial court framed the charge against the accused under above referred sections on 25.05.2019, to which he pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined PW-1 complainant Inspector Ghulam Shabir Khoso at Ex.8, who produced memo of arrest and recovery, attested copy of entry Nos.21 and 24, attested copy of entry No.52 of Register-19 and F.I.R. at Ex.8/A to 8/D respectively; PW-2 PC Muhammad Mithal, mashir at Ex.9; who produced memo of inspection of place of wardat at Ex.9/A, and PW-3 SIP Muhammad Azam Arain, I.O. at Ex.10, who produced attested copy of entry Nos. 40 & 2, attested copy of entry No.23, attested copy of entry No.19, attested copy of receipt letter under which sample of charas was deposited in the office of chemical examiner and chemical report at Ex.10/A to E respectively. Thereafter, prosecution closed its' side vide statement at Ex.11.

5. Trial Court recorded statement of accused under section 342 Cr.P.C. at Ex.12, wherein he denied the prosecution allegation and professed his innocence and false implication in this case. And stated that, he is a salesman who sells cigarette and soaps, and on the day of incident, he alongwith his cousin Ghulam Nabi, when reached at Kandiyari, on Hi-Ace Van, were intercepted by some official of CIA and were taken to an unknown place; that after 3 hours he was separated and was sent to police station Chotiaryoon, where he came to know that he had been booked in this case. He further stated that he had already received threats from CIA police as well as police of Shaheed Benazirabad for his false involvement in criminal cases, as he had filed a Constitution Petition No.S-1314/2018 before the

Hon`ble High Court of Sindh, Circuit Bench, Hyderabad, seeking protection against CIA police. He produced certified copy of said constitution petition at Ex.12/A. However, he did not examine himself on oath in disproof of the allegations as required under section 340(2), Cr.P.C nor produced any witness in his defence.

6. At the conclusion of the trial, learned trial judge after hearing the learned counsel for the parties has convicted and sentenced the appellant as stated above.

7. Learned counsel for the appellant has mainly contended that the appellant is innocent and he has been falsely implicated in the instant case; that the report of Forensic Science Laboratory is vague as it shows that I.O had sent the case property through H.C. Arshad whereas, the I.O deposed that the same was sent through PC Talib, as such this report has no legal value. It is argued that so far the route of the patrolling is concerned, evidence of the complainant and I.O. is to some extent different regarding the places; it was day time incident and case was of spy information, but SHO failed to associate any respectable person of the locality to witness the recovery proceedings; that neither Malkhana incharge was examined nor the person who had taken charas to chemical examiner; appellant has no criminal history; accused had filed constitution petition against CIA police Nawabshah, but unfortunately it was dismissed on account of non-prosecution and SHO PS Chotiaryoon arrested the appellant and charas has been foisted upon him. On the point of safe custody and safe transportation of the narcotics to chemical examiner, the learned counsel placed reliance on the case reported as Abdul Ghani & Others Vs. The State (2019 SCMR 608) and Ali Akbar Vs. The State (2020 YLR 503).

8. Learned D.P.G. argued that SHO has produced Roznamcha entry No.23 to prove the safe custody of the charas at Malkhana; that it is the nature of the criminals to file petition against the police before indulging in the criminal activities; that section 103, Cr.P.C. is not applicable in the narcotics cases and prosecution has proved its case against the appellant. It is further argued that evidence of police

officials is as good as of private persons unless malafide is apparent on record. In support of his contentions, learned D.P.G. placed reliance on the cases reported as Mushtaq Ahmad Vs. The State (2020 SCMR 474) and Ameen Vs. The State (2017 MLD 1514).

9. We have heard the parties at length and scanned the material available on record prudently. It would be appropriate to have a glance upon the relevant portions of the evidence adduced by the prosecution.

10. P.W-01 Inspector Ghulam Shabbir, who is complainant in this case and P.W-02 PC Muhammad Mithal, the mashir of the recovery memos, both narrated the same facts leading to the recovery of charas weighing 500 kilograms. We have observed that statements of P.Ws Complainant Ghulam Shabbir and PC Muhammad Mithal are coherent and inspire confidence. They have corroborated each other on all material points viz. date, time and place of recovery of contraband, quantity and the manner in which recovery was effected. Evidence of police officials is corroborated by positive report of chemical examiner.

11. The defence failed to bring on the record in the cross-examination of the prosecution witnesses that charas has been foisted upon the appellant. There was no reason whatsoever as to why the police would falsely implicate the appellant. As far the defence plea is concerned, the appellant used to sell cigarettes and soap and on relevant day along with his cousin Ghulam Nabi was proceeding to Karachi from Shahdadpur in a van and when reached at Kandiyari, CIA officials in civil dress took them to unknown place and after snatching his mobile phone and cash handed him over to police where he came to know that he had been involved in this case falsely. The appellant had failed to produce his cousin Ghulam Nabi as defence witness to show that they were abducted by CIA officials nor he named the police officials. Constitution Petition No.S-1314/2018 was filed by appellant against police of P.S B-Section, District Shaheed Benazirabad, but instant case was registered at P.S Chotiaryoon,

District Sanghar. Moreover, constitution petition filed by appellant was dismissed by this court on 12.09.2018 on account of non-prosecution.

12. All the prosecution witnesses have given a consistent version, which proves the recovery of the contraband from the appellant. Their evidence is not rendered untrustworthy only on account of their being official witnesses. The contention that no private person had been associated to witness the recovery and as such, the recovery was false, is devoid of force as by virtue of section 25 of the Control of Narcotic Substances Act, 1997 application of section 103, Cr.P.C. is excluded in Narcotics cases and even statements of police officials cannot be discarded merely on account of absence of a witness from the public; people seldom come forward to perform their civic responsibilities and, thus, absence of support from the public does not diminish value of their testimony, fortified by a ring to truth. Reliance is placed upon an unreported judgment of Honourable Supreme Court in Criminal Petition No.18/2019, wherein it is held that “*Reluctance by the public to stand in aid of law is symptomatic of abysmal civic apathy which cannot be allowed to be used as an escape route from justice. Being functionaries of the Republic, both of them are second to none in status; their official acts and declarations are statutorily presumed as intra vires and unless proved contrarily and in the absence of any flaw or discrepancy in their depositions, their testimony cannot be conditioned by additional riders.*” Reliance is further placed upon a case reported as **Abdul Wahab and another vs. The State (2019 SCMR 2061)**, wherein the Honourable Supreme court has held as under:

3. Prosecution case is, primarily, structured upon statements of Izhar Ali Shah, ASI (PW-1), Muhammad Ayub (PW-2) and Abdul Haq, Inspector (PW-4); we have gone through their statements and found them in a comfortable unison, despite flux of time, on all the salient aspects of the prosecution case, in terms of interception of the petitioners and recovery of contraband, they are consistent, straightforward and confidence inspiring and their statements cannot be discarded merely on account of absence of a witness from the public; people seldom come forward to

perform their civic responsibilities and official witnesses are no less credible or trustworthy provided their statements rang true, as is the case in hand.

13. As regards to the safe custody / transmission to the chemical examiner is concerned, the complainant has deposed that he deposited the case property in Malkhana of the police station and produced such entry in order to prove the safe custody of the case property. We have also perused the report of chemical examiner, which shows that he received one sealed white cloth parcel with three seals and the seals were perfect. Learned counsel for the appellant has failed to point out anything from the record to establish that the said parcel was ever tampered with and was not safely transmitted to the chemical examiner rather the evidence led by the prosecution as well as the report of the chemical examiner established that the parcel received by the said agency, remained intact. Defence counsel failed to put up question from police officials about tempering with case property.

14. Adverting to the contention of learned counsel for the appellant that contradictions in the testimonies of prosecution witnesses shall necessarily be resolved in favour of the defence. We are in agreement with the learned counsel for the appellant to the extent of the proposition that contradictions in the statements of prosecution witnesses are always fatal to the prosecution case. But irrespective of veracity of the defence version, a distinction is always to be made between minor inconsistencies or variance in the testimony of witness from the contradiction in the evidence. Only such statement shall be termed as contradictory, which are either destructive of each other or they are totally different to the extent that two versions cannot be reconciled. Such contradiction shall always lead to the benefit of defence, however, the variance of testimony of witnesses or inconsistencies on the point shall not lead to such conclusion, which are not material in nature and do not introduce or suggest a totally different version to the prosecution case. The minor discrepancies in the instant case are not of such nature which could bring the case

within the exception supra. In rendering this view, we are supported by the reported judgment of Hon'ble Supreme Court **Sarfaraz alias Sappi v. The State(2000 SCMR 1758)**. Relevant portion whereof is reproduced hereunder:--

"In the cross-examination of both the PWs i.e. Ahmed Khan and Sakhawat Hussain their above version was not shaken at all inasmuch as concerning the incriminating portion of their testimonies there was no sufficient impeachment. Resultantly, we have to form a positive opinion that incriminating portion of the evidence is consistent, coherent, trust worthy as well as natural i.e. free from any exaggeration. However, we may mention here that if in cross-examination intrinsic value of incriminating evidence of a witness has not been shaken his statement cannot be discarded for minor contradictions reference may be made to the case of Mushtaq alias Shaman v. The State PLD 1995 SC 46".

15. So far the evidence of police officials is concerned, it has been held by the Honourable Supreme Court of Pakistan in an unreported judgment passed in Criminal Appeal No.319-L of 2017 on 27.06.2019, in the case of **Qari Muhammad Ishaq Ghazi v. The State** that the police officials who testified in the witness-box had seemingly no axe to grind, otherwise, found by us in a comfortable unison with one another. Police officials are as good witnesses as any other and their evidence is subject to same standard of proof and principles of scrutiny as applicable to any other category of witnesses; in the absence of any animus, infirmity or flaw in their depositions, their statements can be relied without demur.

16. The upshot of the above discussion is that, conclusion drawn by the trial court is squarely founded on proper appraisal of prosecution evidence and on our own independent analysis, we have not been able to find space to entertain any hypothesis other than appellant's guilt.

17. Resultantly, Criminal Appeal No.D-176 of 2019 is devoid of force, which is accordingly dismissed, as a consequence whereof, the conviction and sentence awarded upon the appellant by the learned trial court in terms of judgment dated 25.09.2019 are maintained.

JUDGE

JUDGE

Ali Haider

