

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.D-54 of 2012

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Appellant : Gada Ali Abro s/o Muhammad Sharif Abro,
through M/s. Asif Ali Abdul Razak Soomro &
Habibullah G. Ghouri, advocates.

Respondent : The State, through Mr. Ubedullah Malano,
Special Prosecutor, A.N.F.

Date of Hearing : 05.12.2017

Date of Judgment : 09.02.2018

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned criminal jail appeal, the appellant Gada Ali Abro has impugned the judgment, dated 03.05.2012, passed in Special Case No. 10 of 2007, arisen out of F.I.R. No. 04/2007, registered at P.S. A.N.F. Sukkur whereby he was convicted by the Special Judge (C.N.S.), Larkana under section 9(c) of the C.N.S. Act, 1997 and awarded sentence to suffer R.I. for life and to pay fine of Rs.300,000/-or in default thereof to suffer S.I for two years more. The benefit of section 382-B Cr.P.C. was, however, extended to him.

2. Brief facts, as spelt out from instant appeal, are that on 09.06.2007 Inspector/S.H.O Muhammad Afzal Asim of A.N.F P.S. Sukkur, upon receiving information that Gada Ali, who dealt in narcotics, had concealed huge quantity of narcotics in his *Otaq*, reached alongwith his subordinate staff, at about 4:00 p.m., near the gate of *Otaq* of Gada Ali and apprehended two persons, who were coming out of *Otaq* on two motorcycles. On refusal of the people of the locality to act as mashirs, ASI Aftab Ahmed and PC Abdul Rasheed were nominated as mashirs and in their presence both the accused were searched, The accused

sitting on motorcycle CD-70 SKJ-7798 disclosed his name as Abdul Raheem while the other on Hi-Speed CD-70, without registration number, disclosed his name as Gada Ali. A shopping bag containing one packet of charas was found dangling in the handle of motorcycle No.SKJ-7798, while four packets of charas in a shopping bag were secured from the other motorcycle. Thereafter, accused Gada Ali led the police party inside room of the Otaq, from where fourteen white stacks full of charas were secured. On the four packets, secured from the motorcycle, word "SANA" was printed, which was weighed as 1100 grams each (total of 4400 grams) and out of each packet, 10 grams charas was separated as samples while the remaining charas was sealed as case property. Out of fourteen bags secured from inside the Otaq, each of thirteen bags were found containing 25 foiled packets, while one bag was containing 20 packets, total 345 packets. Out of them, on 148 packets word "SANA" and on the 98 packets word "CACAO" was printed. Each of the said packets contained four slabs of charas. While on the remaining 99 packets word "FEINE" was printed and from each of the said packets, two slabs of charas were secured. The packets secured from all the bags were weighed and found to be in all 379.5 K.G. from each of them, 10 grams charas was taken as sample and the remaining were sealed separately. Both the accused were arrested under memo of arrest; they were taken to A.N.F. P.S. Sukkur, where aforesaid F.I.R. was registered against them.

3. After usual investigation, challan was submitted by A.N.F. before the learned Judge, Special Court (CNS), Larkana, who framed the charge against the accused under section 9(c) of the C.N.S. Act, 1997, to which they pleaded not guilty and claimed to be tried.

4. At trial, prosecution examined in all three witnesses. P.W-1 Muhammad Afzal Asim examined at Ex. 8, who produced Memo of arrest and recovery, F.I.R.,



4)

report of chemical examiner and memo of subsequent verification of the property at Ex. 8/A to Ex. 8/D, respectively. P.W-2 ASI Aftab Ahmed examined at Ex.9, while P.W-3 Assistant Director, A.N.F Inamullah examined at Ex. 10. Statements of present appellant/accused, under section 342, Cr.P.C, was recorded at Ex. 12, wherein while denying the prosecution's allegations; he claimed false implication in the case. He did not examine himself on oath as his own witness under section 340 (2) Cr. P.C., however, he examined Fazal Muhammad and Doulat Ali in his defence. Learned trial Court on the assessment of evidence on record, convicted the present appellant/accused and sentenced him, as mentioned above, vide judgment dated 03.05.2012. It is against that judgment; the instant Criminal Jail Appeal has been preferred by the appellant.

5. Learned counsel for the appellant has contended that the appellant has falsely been implicated in this case due to enmity as he, as well as his family members, refused to support *Wadero* (feudal lord) Altaf Khan Unar in the election; that the appellant was arrested on 06.06.2007 at about 02:00 p.m. from New Bus Stand, Larkana by three persons in civil dress, who then got him in a vehicle and brought at an office where he was locked for many days; subsequently, his arrested was shown on 09.06.2007 by the A.N.F from his Otaq; that the learned trial Court has not appreciated the evidence brought on record while recording conviction; that the learned trial Court has treated the examination in chief as gospel truth; that the prosecution witnesses have contradicted with each other in their depositions; that there is no independent evidence in the case and the prosecution has failed to furnish any plausible explanation for non-associating any person of the locality to witness the alleged recovery. In support of their contentions, the learned counsel have relied upon the case of *Maula Jan vs. The State (2014 SCMR. 862)*, Muhammad Imran vs. The

State (2011 SCMR. 1954), *Muhammad Hashim vs. The State* (PLD 2004 S.C. 856), *Munawar Ali Jatol vs. The State* (2012 M.L.D. 1763) and *Hidayatullah vs. The State* (2012 P. Cr. L. J 1927).

6. On the other hand, learned Special Prosecutor, A.N.F. has maintained that the appellant is nominated in the F.I.R. by name; that the charas in huge quantity was recovered from the possession and Otaq of the appellant; that the offence committed by the appellant is heinous one being against the society; that non-association of any person of the locality to witness the search and recovery is not fatal to prosecution case. He has referred to the case of *Muhammad Sarfraz vs. The State and another* (2017 SCMR 1874), *Faiz Muhammad vs. The State* (2009 SCMR 1403), *Muhammad Yousif vs. The State* (2013 P.Cr.L.J. 1642), *Muhammad Shakoor vs. The State* (2013 P.Cr.L.J. 1633) and *Nazar Hussain and another vs. The State* (2007 YLR 1601).

7. We have heard learned counsel for appellant and learned Special Prosecutor, A.N.F. and scanned the material available on record.

8. From the perusal of the record, it transpires that the prosecution's case rests upon the evidence of S.H.O. Muhammad Afzal Asim (complainant and I.O) and ASI Aftab Ahmed (mashir), which is supported with the positive report of chemical analyzer. Both the witnesses have given full account of arrest of appellant from the pointed place and recovery of charas and have supported fully the contents of F.I.R (Ex.8/B) and memo of arrest and recovery (Ex. 8/A) as well as corroborated the evidence of each other, which establishes that on 09.06.2007, the appellant was apprehended while coming out of his Otaq on motorbike along with co-accused and from him four packets of charas were recovered weighing 4400 grams and then from his pointation 379.5 K.G. charas

was recovered from his Otaq, which total comes to 383 kilo and 900 grams. Further, complainant/I.O took separate representative samples from the recovered charas. As per Chemical Analyzer's report (Ex.8/C), total 350 khaki paper envelopes, each bearing one seal, were received for analyses. All the seals were intact, which after the analyses declared as charas. Both P.Ws also identified the appellant and case property to be the same present/available before the trial Court at the time of recording their evidence and, during their lengthy cross-examination, defence has failed to shatter the truthfulness of their evidence, thus their testimony remained unshaken. As such, the prosecution has successfully proved the charge against the appellant.

9. As regard the contention of learned counsel for the appellant that no person from the locality was associated to witness the recovery, suffice it to say that Section 25 of C.N.S. Act, 1997 has excluded the provisions of section 103 Cr.P.C. In the case of *Muhammad Khan vs. The State (2008 SCMR 1616)*, the Hon'ble Apex Court has been pleased to observe that police witnesses are as good and respectable as other public witnesses and their statements cannot be discarded merely for the reason that they are the police employees. In the case of *Zafar vs. The State (2008 SCMR 1254)*, the Hon'ble Apex Court has observed that police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police officials and non-inclusion of any private witnesses is not a serious defect to vitiate the case. Thus, neither the alleged recovery of the charas could be held as doubtful due to non-association of any person of the locality to witness the search or recovery nor the depositions of P.Ws loses its evidentiary value merely on the grounds that the P.Ws are officials of A.N.F.

4

10. It may be observed that the appellant has failed to point out any animosity or ulterior motive on the part of complainant for his so-called false implication and foisting upon him the huge quantity of charas i.e. 383 kilo and 900 grams. Mere assertion of appellant/accused that he was involved falsely in the case due to political enmity is of no consequence being after thought. Such defense plea has neither been suggested to the prosecution witnesses during their cross-examination nor did even the appellant state so in his statement recorded under section 342 Cr.P.C. So also, DWs Fazal Muhammad and Doulat Ali have not uttered even a single word regarding any such political rivalry, rather DW Fazal Muhammad has deposed that the appellant was apprehended by the officials of A.N.F., Sukkur from Larkana town, while DW Doulat Ali has stated that he was present at bus stop, Larkana when some army officials arrested the appellant, hence, the DWs have contradicted each other on the point of arrest of appellant, which leads to inference that in fact none of the DWs was present at the relevant place. In the case of *Anwar Shamim and another vs. The State (2010 SCMR 1791)*, the Hon'ble Supreme Court has observed that it is duty and obligation of accused to prove the plea taken by him in his defence in terms of Article 121 of Qanun-e-Shahadat, 1984. Furthermore, section 29 of C.N.S. Act, 1997 cast burden upon the accused to establish his innocence absolving him from the allegations of recovered substance, while prosecution has only to show by evidence that accused was in physical custody or directly concerned with recovered narcotic substance. The case-law referred by the learned Counsel for the appellant being on distinguishable facts are not applicable in present case.

11. Considering the above facts and circumstances, we are of the view that prosecution has succeeded to bring the guilt of accused at home and appellant has failed to point out any non-reading of the evidence or any material illegality



8

or serious infirmity committed by the trial Court while passing impugned judgment, which does not call for any interference, hence same stands maintained. Consequently, instant criminal jail appeal stands dismissed being devoid of any merit.

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JUDGE

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Approved by us.

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14-02-2018
JUDGE