

HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.104 of 2009

Present: Sajjad Ali Shah, J.

Naimatullah Phulpoto, J.

Appellant: Khan Haider through Mr. Ilamuddin Khattak, Advocate.

Respondent: The State through Mr. Shafiq Ahmed, Special Prosecutor
Anti-Narcotic Force.

Date of hearing: 27.03.2013

Date of announcement: __03.2013

JUDGMENT

NAIMATULLAH PHULPOTO, J.- Appellant Haider Khan was tried by learned Judge Special Court-I, CNS, Karachi in Special Case No.21/2006 under section 9(c) of Control of Narcotics Substances Act, 1997. Learned trial Court convicted the Appellant under Section 9(c) of Control of Narcotics Substances Act, 1997 and

sentenced him to suffer imprisonment for life and to pay fine of Rs.100,000/-. In case of default in payment of fine he was directed to suffer S.I. for 6 months more. Benefit of section 382-B Cr.PC was extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 28.01.2006 at 1700 hours ANF officials received spy information that the appellant was present at his house, situated at Muslimabad Colony, Landhi and he was in possession of narcotics. On such information, Inspector Khaliluddin of P.S., A.N.F. Karachi left the police station along with his subordinate staff and proceeded to the pointed place, entered into the pointed house where two persons were present, one person while seeing the police party slipped away but police apprehended the appellant. On inquiry appellant disclosed his name as Khan Haider son of Haider Khan, Inspector conducted personal search of the appellant in presence of mashirs and recovered shopping bag from his possession weighing 500 grams heroin powder. Police officials conducted search of the house and from a room A.N.F. officials recovered 3 bags containing charas in the shape of garda, slabs and choora from three nylon bags 33.150 kilograms and opium weighing 5 kilograms. Samples were drawn from the recovered narcotic substance in presence of mashirs. Appellant was arrested, one revolver was also recovered from the fold of his shalwar. Mashirnama of arrest and recovery was prepared in presence of mashirs HC Muhammad Aslam and PC Shaukat Iqbal. Appellant and the case property were brought to the police station where F.I.R. No.05/2006 under section 9(c) of the Control of Narcotics Substances Act, 1997 was registered against the appellant and another. During investigation 161 Cr.PC statements of PWs were recorded, samples were sent to the Chemical Examiner for analysis, report of chemical examiner was received in positive. On

conclusion of investigation, challan was submitted against the appellant under the above referred section.

3. Charge against appellant was framed under section 9(c) of Control of Narcotics Substances Act, 1997. Appellant pleaded not guilty and claimed to be tried.

4. In order to substantiate the charge, prosecution has examined the following witnesses:

1. PW-1 Khaliluddin
2. PW-2 PC Shaukat Iqbal
3. PW-3 HC Muhammad Aslam

5. Statement of appellant was recorded under section 342 Cr.PC, in which he has claimed false implication in this case and denied the recovery of narcotic substance. Appellant has further stated that no narcotic substance was recovered from his house and he was arrested from P.S. Quaidabad. Appellant stated that house in question did not belong to him. Appellant examined himself on oath in disproof of prosecution allegations. He has also examined in defence D.Ws. Habib Gul and Gulbar Khan.

6. Trial Court after assessment of evidence convicted and sentenced the appellant as stated above. Appeal has been preferred against the impugned judgment.

7. Mr. Ilamuddin Khattak, Advocate for Appellant contended that prosecution case is highly doubtful. Provisions of section 21 of the Control of Narcotics Substances Act, 1997 have been violated by the raiding party. Inspector was required to obtain a warrant for search of the house. It is further submitted that it was the case of spy information, police party had sufficient time to collect independent and responsible persons of the locality to witness the recovery proceedings. It is argued that there was no evidence that appellant led the police party to the room where narcotic bags were lying. Learned counsel for the appellant submitted that there are material contradictions in the evidence of the Inspector and the mashirs. D.Ws. have stated that house from which recovery was made did not belong to the appellant and narcotic substance has been foisted upon him. At the end of arguments learned counsel for the appellant argued that in case conviction is maintained sentence may be reduced from life imprisonment to the term which the appellant has already undergone. In support of his contentions he relied upon the case of Khan Muhammad vs. the State (PLD 2004 Karachi 681)

8. Mr. Shafiq Ahmad, Special Prosecutor, A.N.F. argued that prosecution has proved its case against the appellant. Evidence of A.N.F. officials is as good as that of any person. Not a single major contradiction has been brought on record. Huge quantity of narcotic substance was recovered from the house of the appellant as well as 500 grams heroin powder from his possession. Defence theory is afterthought. He argued that no document has been produced by the appellant to show that house did not belong to him. He has also argued that charas and heroin were sent to the Chemical Examiner promptly, report was positive. In reply to the last submission made by the learned counsel for the appellant regarding reduction of sentence he

submitted that in this case 33 kilograms charas, 5 kilograms opium and 500 grams of heroin powder have been recovered, it is not the case of reduction in sentence.

9. We have examined the prosecution evidence minutely. Inspector Khaliluddin has deposed that on 28.01.2006 at 1700 hours on spy information he left the police station along with his subordinate staff, vide entry No.16 and proceeded to the pointed place. He two persons in the house, one person slipped away, however, he apprehended the present appellant and conducted his personal search in presence of mashirs HC Muhammad Aslam and PC Shaukat Iqbal. On his personal search he secured revolver from his possession and 500 grams heroin powder. He separated 50 grams heroin powder for sending to the chemical examiner. Inspector has further stated that he conducted search of the house and found 3 nylon bags and one carton. The nylon *kattas* were opened, from one *katta* 23 packets and 29 rods of charas were recovered, recovered packets were weighed and each packet was weighing 1 kilogram charas. Charas was 23.300 kilograms and recovered rods of charas were weighing 200 grams. Samples were taken from each parcel and sealed separately. Weight of each sample was 50 grams. Second nylon *katta* contained small size pieces of charas. One black colour plastic was also secured from *kata*, containing charas, garda and puries weighing about 6.500 kilograms, while garda was weighing about 2.500 grams and puries weighing about 450 grams. 50 grams charas was separated from garda as sample while 50 grams from small pieces. The puries were also sealed separately. In third nylon *katta* there was opium weighing 5 kilograms. 50 grams opium was taken as sample. Recovered opium was sealed and signed. There was another carton from which one Kalashnikov, two magazines and 31 live rounds were recovered. Appellant was arrested, mashirnama was prepared in presence of the mashirs. F.I.R. was lodged against the accused on behalf of the State under section 9(c). Samples were sent to the

Chemical Examiner, positive report was produced in evidence. In the cross-examination Inspector has denied the suggestion that house did not belong to the appellant and denied that narcotic substance has been foisted upon him.

10. PW-2 PC Shaukat Iqbal has deposed that on 28.01.2006 he left police station along with S.I. Khaliluddin and other staff members and conducted raid at the house of the appellant. One person made his escape good and present appellant was arrested. Heroine, charas, opium and weapons were recovered. Heroin was recovered from possession of appellant, opium, charas and weapon were recovered by S.I. Khaliluddin in his presence. Samples were drawn, appellant was arrested. He was made as mashir, co-mashir was HC Muhammad Aslam. He was cross-examined by learned defence Counsel but nothing favourable to the appellant came on record.

11. PW-2 ASI Muhammad Aslam has deposed on 28.01.2006 he was posted at A.N.F. Clifton, on the same date he along with S.I. Khaliluddin and other staff members left the police station and on spy information raided the house of the appellant. There were two persons inside the house but one person succeeded to run away. Appellant was arrested, 500 grams heroin and pistol were recovered from his possession. During search of the house, opium and charas were recovered, samples were drawn, narcotic substance was weighed and sealed at the spot. He was made as mashir. He was also cross-examined by the learned defence counsel. He denied the suggestion that he was deposing falsely against the accused. He has also denied the suggestion that appellant was arrested from P.S. Quaidabad where he was called by PC Shaukat Iqbal.

12. We have also examined statement of accused recorded on oath and evidence of defence witnesses. Appellant in his evidence on oath stated that narcotic substance has been foisted upon him. On 28.01.2006 he was present at his house situated at Muzzafarabad Colony, Karachi, ASI Saleh Muhammad of P.S. Quaidabad called him and he was arrested. Appellant in his statement has stated that he is innocent, prior to this case 4/5 narcotic cases were registered against him in which he has been acquitted.

13. DW Habib Gul has stated that he is owner of the house, situated at Muslimabad Colony and he had rented out the said house to one Gulbar Khan about 6 years back. Appellant resides in Muzzafarabad Colony, Karachi, he has been falsely implicated in this case.

14. DW Gulbar Khan has deposed that he resides in the house situated in Muslimabad Colony, no raid was conducted at his house.

15. Evidence of complainant S.I. Khaliluddin of A.N.F. inspires confidence and it is trustworthy. He has given minor details of recovery in evidence. During cross-examination, no mala fide on the part of the complainant has been alleged, evidence of the complainant is corroborated by the positive chemical report. Mashir of recovery has also fully supported the complainant on all material particulars, not a single major contradiction in the evidence of the police officials has been brought on the record to discard their testimony. For the satisfaction of the Court departure entry has also been produced in the trial Court to show that police party had actually left for the purpose of raid to the house of the appellant. As regards to the contention of the

learned defence counsel that search warrant was not obtained, it may be lapse on the part of the investigation officer but the same would not be fatal to the prosecution case and whole prosecution evidence would not be discarded on this ground alone. No mala fide or enmity has been suggested against the prosecution witnesses. Therefore, there is no reason to disbelieve their version. As regards to the defence theory it is the case of the prosecution that huge quantity of the narcotic substance was recovered from the house of the appellant, burden shifted upon appellant to satisfy the Court that house did not belong to him. No documentary proof in his statement recorded under section 342 Cr.PC has been produced by him. DW Habib Gul has stated that house in question belongs to him but he has stated that he did not know the house number and gali number of the said house, which clearly shows that defence theory is improbable and afterthought. We have no hesitation to hold that prosecution has proved its case against the appellant beyond any shadow of doubt. As regard to the submission of the learned advocate for the appellant for the reduction of sentence from imprisonment for life to the term already undergone, Lahore High Court in the case of ***Ghulam Murtaza and another Vs. the State PLD 2009 Lahore 362*** has laid down sentence policy according to the quantity of narcotic substance. The said judgment has been upheld by the Honourable Supreme Court of Pakistan in the case of ***Ameer Zeb Vs. the State PLD 2012 SC 380***. In the case of Ghulam Murtaza (*supra*) sentence in the case of recovery of charas more than 10 kilograms would be imprisonment for life. Therefore, even no case for reduction of sentence is made out. Learned trial Court has already taken the lenient view and judgment is based upon sound reasons and it is maintained. Consequently, appeal is without merits and the same is dismissed. These are the reasons for our short order announced by us today morning.

JUDGE

JUDGE

Gulsher/PA