

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Cr.A.No.423 of 2017

Before:  
Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Irshad Ali Shah

Shakeel Ahmed..... Appellant

Versus

The State..... Respondent

Date of hearings: 15.01.2020 & 04.02.2020

Date of announcement: 02.03.2020

Mr. Raj Ali Wahid Kanwar, advocate for appellant.

Mr. Habib Ahmed, Special Prosecutor for ANF.

Mr. Muhammad Ahmed, Assistant Attorney General.

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**J U D G M E N T**

**IRSHAD ALI SHAH, J:-** The appellant by way of instant appeal has impugned judgment dated 13.09.2017, passed by learned Judge Special Court No.II (Control of Narcotics Substance) Karachi, whereby the appellant for offence punishable "***under section 14/15 of the CNS Act, 1997***" has been convicted and sentenced to undergo imprisonment for life with fine of Rs.1,000,000/- (One Million) in case of his failure to make payment of fine to undergo simple imprisonment for five years.

2. The facts in brief necessary for disposal of instant appeal are that on 29.07.2013 Sub-Inspector Ali Gul of Anti-Narcotics Force Clifton, Karachi with his police party at the instance of his officers, went at KICT Seaport, Karachi for checking a Container No.TRIU-847139-7, there he met with clearing Agent Muneer Ahmed and obtained from him the documents relating to export of the said container, consignments note and commercial invoice. On enquiry the said clearing agent intimated the

said SIP that the container is owned by FM Brothers and Hameedullah Babar is its forwarding agent while its consignments is owned by Aleem Haider. He (Aleem Haider) was called at the gate of KICT Seaport, Karachi. The keys of the container were obtained from the clearing agent. It was checked upon, it was found containing 202 Kilograms of Heroin Powder, which was kept concealed in different shapes of packets in folder of 1896 Cartoons of Apples to be exported to Sri Lanka. Aleem Haider was apprehended at the spot. On enquiry he disclosed that the actual and original owner of the said consignment is Shakeel Ahmed (appellant). On search from accused Aleem Haider amongst others were recovered a receipt of Faizan Traders in name of Shakeel and photocopy of CNIC of Shakeel Ahmed. A case was accordingly registered.

3. On investigation, Aleem Haider, appellant, Javed Zia and Muhammad Illahi were found involved in above said incident, they were reported upon by the police to face trial accordingly.

4. Accused Aleem Haider after his release on bail abscond away. Appellant and co-accused Noor Feroze Khan were produced before learned trial Court by the police one after other. They were charged accordingly, to such charge they did not plead guilty.

5. The prosecution in order to prove its case against appellant and Noor Feroze Khan examined in all nine witnesses and then closed its side by way of statement filed by learned Prosecutor.

6. The appellant and co-accused Noor Feroze Khan in their statements recorded under section 342 Cr.P.C. denied the prosecution

allegation by pleading innocence, they produced certain documents to prove their innocence.

7. No witness in defence was examined by the appellant. However, co-accused Noor Feroze Khan examined Jamshed Khan in his defence to prove his innocence.

8. On evaluation of evidence, so produced by the prosecution co-accused Noor Feroze was acquitted while appellant was convicted and sentenced as is detailed above by learned trial Court by way of impugned judgment while the case against absconding accused Aleem Haider, Javed Zia and Muhammad Illahi was kept on dormant file.

9. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police otherwise he was having no connection with the alleged incident; the appellant has been taken into custody in this case by the police when he was already found arrested in some other case and no actual witness to his actual arrest has been examined by the prosecution; the alleged contraband substance has been subjected to chemical examination with the delay of about two days and the person who took the same to the Chemical Examiner has not been examined by the prosecution and co-accused Noor Feroze Khan on same set of evidence has already been acquitted by the learned trial Court. By contending so, he sought for acquittal of the appellant.

10. It is contended by learned Special Prosecutor for ANF and Assistant Attorney General that the appellant is neither innocent nor has

been involved in this case falsely by the police; it was the appellant who in collusion with absconding accused was found exporting the huge quantity of Narcotic Substance to Sri Lanka in a very technical manner under cover of Export of Apples. It was appellant who was owning the consignment. It was the appellant who provided the cartoons containing Narcotic Substance. It was appellant, who funded the transaction through Banking Channel and his case is quite different to that of co-accused Noor Feroze Khan. By contending so, they sought for dismissal of the instant appeal.

11. We have considered the above arguments and perused the record.

12. At the very outset, it may well be said that the gravity of the offence (s) of such like nature has got impact not only upon the public at large as well as upon our national image. It is settled proposition of law that in the case of exporting or smuggling of narcotics substance; if the case, *otherwise*, stands proved then technicalities of procedural nature or otherwise should be overlooked.

13. In case of **Ismaeel Vs. The State (2010 SCMR-27)**, it has been observed by Honourable Apex Court that;

*“... It is now settled proposition of law by flex of time that in the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be overlooked in the larger interest of the country, if the case stands otherwise proved the approach of the Court should be dynamic and*

*pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of cases. The Court should consider the entire material as a whole and if it is convinced that the case is proved then conviction should be recorded notwithstanding procedural defects as observed by this Court in Munawar Hussain's case 1993 SCMR-785."*

14. At this juncture, while appreciating the *peculiar* facts of instant case, it is said that in such like cases, the prosecution has only to show by evidence that the accused has dealt with the narcotic substance or has physical custody of it or is directly concerned with it, then presumption would be that accused has committed the offence unless the accused proves *otherwise*.

15. In case of **Muhammad Noor and others Vs. The State (2010 SCMR-927)**, it has been observed by the Honourable Apex court that;

*"The above section expressly cast a duty upon the Court to presume in a trial under the Act that the accused has committed the offence under the Act unless contrary is proved. If the case is of possession of narcotic drugs then first prosecution has to establish the fact that the narcotic drugs were secured from the possession of the accused then the Court is required to presume that the accused is guilty unless the accused proves that he was not in possession of such drugs. Therefore, it is necessary for the prosecution to establish that the accused has some direct relationship*

*with the narcotic drugs or has otherwise dealt with it. If the prosecution proves the detention of the article or physical custody of it then the burden of proving that the accused was not knowingly in possession of the article is upon him. The practical difficulty of the prosecution to prove something within the exclusive knowledge of the accused must have made the Legislature think that if the onus is placed on the prosecution the object of the Act would be frustrated. It does not mean that the word 'possess' appearing in the section 6 of the Act does not connote conscious possession. Knowledge is an essential ingredient of the offence as the word "possess" connotes in the context of section 6 possession with knowledge. The Legislature could not have intended to mere physical custody without knowledge of an offence, therefore, the possession must be conscious possession. Nevertheless it is different thing to say that the prosecution should prove that the accused was knowingly in possession. It seems to us that by virtue of section 29, the prosecution has only to show by evidence that the accused has dealt with the narcotic substance or has physical custody of it or directly concerned with it, unless the accused proves by preponderance of probability that he did not knowingly or consciously possess the article. Without such proof the accused will be held guilty by virtue of section 29, Act 1997. Reliance is placed on cases of Inder Sain v. State of Punjab (AIR 1973 SC-2309)"*

16. Having referred to above legal position, now is said that it is the case of prosecution that 202 Kilograms of contraband substance was kept concealed in the cartons containing apples and it was destined for

Sri Lanka. The contraband substance so secured on chemical examination was found to be Heroin Powder. The appellant apparently has no dispute on such recovery. His dispute is only to the extent that he being innocent has been involved in this case falsely by the police. It has been stated by complainant SIP Ali Gul that on information and at the instance of his high ups, with his police party he went at Seaport KICT Karachi. There on search from the subject container, he secured 202 Kilograms of the Heroin Powder, which was found kept concealed in Cartons of Apples. It was destined for Sri Lanka. On inquiry it was intimated to him by Clearing Agent Munir Ahmed that said consignment is owned by Aleem Haider. He was apprehended at the spot (now is absconding after cancellation of his bail by the Honourable Supreme Court of Pakistan). On enquiry he intimated to the complainant that the said consignment is actually owned by the appellant. On search, a receipt of Faizan Traders issued in name of Shakeel together with the CNIC copy of Shakeel Ahmed were secured from Aleem Haider. On the basis of such disclosure and recovery, the appellant was joined in the investigation. As per P.W. Manzoor Nazeer he arranged for the Top Boxes for containing Apples, at the instance of Shakeel and he was paid for the same through Online Transaction. As per SIO Inspector Maqsood Ahmed, the appellant has also provided funds to the tune of lacs of rupees to absconding accused Aleem Haider to be used by him for exporting/smuggling the contraband Heroin Powder to Sri Lanka by way of cartons containing Apples. It has also come on record that accused Shakeel Ahmed was also found involved in such like cases in Pakistan. The evidence which has been

brought on record by the prosecution prima facie indicates that the appellant was actually involved behind the scene of the alleged offence.

17. Of course there is no independent witness to the incident. The explanation to such omission has been provided by the complainant. As per him none was found ready to act a mashir to the recovery of contraband substance, which appears to be reasonable. The evidence of the police officials even otherwise could not be discarded only for the reason for his being public servant until and unless some malafides is alleged and then is proved against him. The police personnels who was witnesses in this case, apparently were having no reason or ill will to involve the appellant in this case falsely.

18. Needless to say that evidence of *official* witness could not be disbelieved merely for the reason that he is official witness because *normally* private persons do avoid to become witness against the accused in such like cases.

19. In case of **Zafar Vs. The State (2008 SCMR-1254)**, it has been held by the Honourable Apex Court that;

*“---S. 9(c)---Evidence of police officials---Competence--- Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police employees”.*

20. Even otherwise, in absence any *malice* or *ill motive* the evidence of one cannot be disbelieved, if same otherwise qualifies test of



being **'confidence inspiring & natural'** because it is not the status of a person but his *evidence* which has to prevail in all circumstances.

21. The appellant in his statement recorded u/s 342 Cr.P.C. on one hand has pleaded his ignorance for absconding accused Aleem Haider and other hand admitted that he has provided funds to him but those were for purchase of property. No stranger could be funded for any deal. The transfer of the fund by the appellant to Aleem Haider obviously were used by him for exporting/smuggling Heroin Powder on behalf of the appellant.

22. It is true that co-accused Noor Feroze Khan has been acquitted by the learned trial Court by way of impugned judgment but there could be made no denial to the fact that his case was different to that of the appellant, which is reflected of the following observation of learned trial Court;

*"Furthermore I/O Maqsood Ahmed Mahar at the one hand deposed that he was not aware about the house of accused Noor Feroz and at the other hand he deposed that he filed second charge sheet containing the address of the accused Noor Feroz. Amazingly no any official from ANF raided at the house of accused Noor Feroz for arrest in this serious case of huge quantity of heroin and admittedly in the modern age of technology, surely the institution of ANF well equipped with the modern technology being an institute for eradication of the narcotics and its activities and it was an easy task to arrest him (Noor Feroz) when it was in the knowledge of the I/O regarding the address of the accused even Inspector Maqsood Ahmed Mahar failed to produce any kind of notice*

*under section 160 Cr.P.C. issued at the address of the accused Noor Feroz mere relation with the co-accused Shakeel Ahmed and some transactions in the account it does not mean that he was involved in the commission of crime until and unless prosecution proved the contrary and prosecution miserably failed to produce any cogent and sufficient evidence against the accused Noor Feroz regarding his involvement in the commission of crime. May be accused Noor Feroz involved, but for this purpose sufficient material and cogent evidence was required, which is lacking against the accused Noor Feroz.”*

23. In case of **Muhammad Raheel @ Shafique v. State (PLD 2015 SC-145)**, it has been held by Hon’ble Court that;

*“5. thus, their acquittal may not by itself be sufficient to cast a cloud of doubt upon the veracity of the prosecution’s case against the appellant who was attributed the fatal injuries to both the deceased. Apart from that the principle of falsus in unofalsus in omnibus is not applicable in this country on account of various judgments rendered by this Court in the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant”.*

24. The conclusion which could be drawn of the above discussion would be that the prosecution has been able to prove its case against the appellant beyond shadow of doubt for exporting/smuggling contraband Heroin Powder to Sri Lanka.

25. Having concluded above, we find no merit in the instant appeal, it is dismissed accordingly.

JUDGE

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