

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.615 of 2019

**Present:**

- 1. Mr. Justice Abdul Malik Gaddi**  
**2. Justice Mrs. Kausar Sultana Hussain**

*Faheemullah son of Ghulam Nabi ..... Appellant*

*V e r s u s*

*The State ..... Respondent*

1. For orders on office objection a/w reply of Adv. At flag "A".
2. For hearing of main case.
3. For hearing of MA No. 1003 of 2019.

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

Date of hearing : 07<sup>th</sup> July, 2020.  
Appellant through : Mr. Ahteshamullah Khan, Advocate  
The State through : Mr. Abrar Ali Khichi, Addl. P.G.

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**Kausar Sultana Hussain, J.**:- The instant appeal has been preferred under Section 410 Cr.P.C. against the impugned judgment dated 30.8.2019, passed by learned Sessions Judge, Karachi-West in Sessions Case No. 98 of 2019, arising out of FIR No.495 of 2018 at Police Station Peerabad, West, Karachi, under Sections 6/9 (c) of C.N.S Act, 1997, whereby the appellant was convicted under Section 265-H(ii) Cr.P.C and sentenced him to suffer R.I. for 07-years and 06-months and also to pay fine of Rs. 35,000/-, in case of default to pay fine he shall suffer S.I. for 06-months and 15-days more with benefit of section 382(b) Cr.P.C. Through the captioned appeal, the appellant has prayed to set aside the impugned judgment on the facts and grounds averred in the memo of appeal.

2. Compendium of facts mentioned in the FIR are that on 21.12.2018 at 05:30 hours during the course of patrolling, complainant / SIP Misri Khan of police station Peerabad had arrested the appellant / accused from main road near Al-Watan Hotel, Banaras Chowk, Orangi

Town, Karachi and recovered 5080 grams of *Chars* from his possession in presence of mashirs namely HC Muhammad Bux and PC Venigas, as such, instant FIR under Section 6/9 (c) of C.N.S Act, 1997 was registered against him at police station Peerabad. The investigation was conducted by the I.O/SIP Ghulam Mustafa of police station Peerabad (investigation branch), Karachi and after completing all legal formalities charge sheet was submitted before the competent court of law.

3. The charge against the appellant was framed by the learned trial Court on 19.3.2019, to which the appellant pleaded not guilty and claimed to be tried. At the trial prosecution examined at the most 3 PWs namely Misri Khan SIP / complainant (Pw-1 at Exh.3), HC Muhammad Bux (Pw-2 at Exh.4) and Investigating Officer ASIP Ghulam Mustafa (Pw-3 at Exh.5). The accused in his statement recorded by the learned trial Court under section 342 Cr.P.C. (Ex.7) has simply denied the allegations imposed by the complainant against him and claimed himself as innocent and prayed for justice. The appellant / accused neither examined himself on Oath nor produced any witness in his defense in disproof of the charge. Learned trial Court after assessment of evidence and documents on record convicted and sentenced the appellant as stated in the introduced paragraph of this judgment.

4. Arguments advanced by the learned counsel for the appellant and Additional Prosecutor General, Sindh are considered. We have also gone through the material available on record including the impugned judgment.

5. Mr. Ahtashamulah Khan, the learned Counsel representing the appellant submitted that the learned trial Court has not considered that the case of the prosecution is fraught with material contradictions and decided to convict the appellant without examination of independent witnesses. The learned counsel for the appellant has further submitted that the conviction is not according to law as the complainant has failed

to associate a single private witness of the alleged incident, which is clear violation of section 103 Cr.P.C. He further argued that there are material contradictions in the depositions of all three prosecution witnesses examined by the learned trial Court. He further argued that the learned trial court only believed one sided version of the prosecution. Lastly, he contended that appellant is innocent and has falsely been implicated in the above case and prayed that impugned judgment being not sustainable in law be set aside and appellant may be acquitted.

6. In contra, Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh while supporting the impugned judgment submits that the prosecution has fully established its case against the appellant beyond reasonable doubt by producing consistent/convincing and reliable evidence and the impugned conviction and sentenced awarded to the appellant is the result of proper appreciation of evidence brought on record, which needs no interference. Lastly, he prayed that this appeal may be dismissed.

7. We have heard the learned counsel for the parties and have gone through the record of this case with their assistance and due care and caution. The learned counsel for the appellant has emphasised on the point while advancing his arguments that the appellant has falsely been involved in this case due to malafide intention of police of Police Station Peerabad as on 20.12.2018 H.C. Abdul Waheed @ Dabang forcibly taken the appellant from his house and also took from there an amount of Rs. 1,13,000/-, gold ornaments and other valuable things in Police Mobile in presence of several persons and then falsely implicated him in this case. While perusing the cross-examination of all three prosecution witnesses it transpired that not a single query was made by the learned defence counsel from any witness of this case in respect of alleged abduction of the appellant and taking valuable articles by the

police from his house while taking him forcibly in Police Mobile of Police Station Peerabad. Besides this, the appellant while recording his statement under Section 342 Cr.P.C neither produced any such witness in support of his version nor examined himself on Oath, therefore, such plea of his abduction seems after thought, hence has no evidentiary value in the eyes of law. Record shows that the appellant was caught red handed by the complainant and Chars (narcotic) weighing 5080 grams contained in blue colour shopper bag was recovered from his exclusive possession for which the complainant SIP Misri Khan prepared memo of arrest and recovery (Ex.3/B). The I.O ASIP Ghulam Mustafa visited the place of occurrence on pointation of the complainant, prepared its memo (Ex.3/E), sent the recovered Chars for Chemical Analysis on 24.12.2018 through letter (Ex. 5/A) and later he received its report issued by the Incharge Chemical Examiner (Ex.5/B). We have gone through the said report of Chemical Examiner and found that per Director Laboratories and Chemical Examiner to Government of Sindh, Karachi one sealed parcel containing 05.080 KG Chars of greenish brown hard pieces was received to them on 24.12.2018 sent by the SHO of Police Station Peerabad, Karachi and on Micro Scopic Examination it was found "Horn / claw shape trichomes of cannabis plant". Its chemical test was performed which shows that resin test for cannabis and fast blue B, salt test were positive. Recovery witnesses remained consistent on each and every material point including date, time and place of occurrence, quantity of recovered narcotics and the manner in which recovery was effected and no material contradiction in their statements was pointed out by the learned counsel for the appellant. The prosecution witnesses appeared in Witness Box had no animosity or ill will towards the appellant, hence they had no motive to falsely implicate the appellant. The statements of the prosecution witnesses were further corroborated by the report of the Chemical Examiner. Arguments advanced by the learned counsel for the

appellant on that point that the case property was sent to the chemical examiner with some delay, therefore, the question of tampering in the property could not be ruled out. We are not impressed with this argument on the ground that firstly there is no delay in sending the samples for examination. Besides Rule 4 and 5 of the Control of Narcotic Substance Government Analysis Rule, 2001, coupled with the fact that no consequence was provided for their breach made the said rule advisory and not mandatory. The Hon'ble Supreme Court in the judgment reported in 2017 SCMR, 1874 was pleased to observe that:

*“Although there was a minor delay in sending the sample parcels to the Punjab Forensic Science Agency but the rules to that effect are directory and not mandatory. There is nothing on record to establish that the said parcels were ever tampered with rather the evidence led by the prosecution established that the parcels received by the said agency, remained intact”.*

8. The learned counsel for the appellant raised plea during his arguments that no private person was cited as witness of the alleged recovery of Chars from the possession of the appellant. We are of the view that the alleged incident took place in pitched dark night, therefore, securing the private mashirs for the complainant was not possible, rather substantial in volume/weight, cannot be possibly foisted upon the appellant to victimize him. All the prosecution witnesses including those of recovery have been found by us well within tone with one and other, no documentary evidence on record to show that the appellant has any enmity with the police party. Appellant could not furnish any plausible explanation for his false implication in this case. The circumstances established that the appellant was involved in the offence.

9. The learned trial Court had correctly observed that the prosecution had proved its case beyond any shadow of doubt against the appellant.

10. It was also observed by us that the conviction of the appellant is based on cogent reasons.

11. In view of forgoing reasons, there appears no cogent ground on the basis of which the impugned judgment can be found to be suffering from any defect in law. Consequently, appeal is dismissed alongwith listed applications.

12. The above are the reasons of our short order dated 07.07.2020.

Faheem/PA.

J U D G E