IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. D- 222 of 2019

Present:-
Mr. Justice Abdul Maalik Gaddi.
Mr. Justice Adnan-ul-Karim Memon

Date of hearing:	29.09.2020
Date of Judgment:	29.09.2020
Appellant:	Saleem through Mr. Taimoor Hussain Keerio, Advocate.
State:	Through Ms. Sobia Bhatti, Asst. Prosecutor General, Sindh.

JUDGMENT

ABDUL MAALIK GADDI, J- Through this Criminal Jail Appeal, appellant Saleem s/o Dilawar Rajput Oad has called in question the judgment dated 28.11.2019 passed by the learned 2nd Additional Sessions / Special Judge C.N.S, Hyderabad, in Special Case No.294 of 2018 (Re: The State v. Saleem) arising out of Crime No.195 of 2018, registered at Police Station Pinyari, Hyderabad, for an offence under Section 9(C) of Control of Narcotic Substances Act, 1997, whereby he was convicted and sentenced to suffer R.I for seven (07) years and to pay fine of Rs.3,00,000/- (Rupees Three Hundred Thousands), in case of non-payment of fine, he shall suffer S.I for one (01) year more with benefit of Section 382-B Cr.P.C.

2. Concisely, the facts as portrayed in the F.I.R are that on 12.12.2018 at 2030 hours, ASI Nazir Ahmed during patrolling arrested the accused from near Mehran ground in presence of official witnesses and recovered 20 big pieces of charas lying in blue colour shopper total weight 9820 grams from his possession. Thereafter such mashirnama of arrest and recovery was prepared after sealing the property at the spot and then took the accused and case property to PS where lodged the F.I.R against the accused on behalf of State.

3. The Prosecution in order to substantiate the charge against the appellant, examined the following four (04) witnesses:

P.W No.1: Complainant ASI Nazeer Ahmed wax examined at Ex.4, who produced roznamcha entry No.26 (departure entry)

at Ex.4/A, mashirnama of arrest and recovery at Ex.4/B, roznamcha entry No.34 (arrival entry at PS) at Ex.4/C, FIR at Ex.4/D respectively.

P.W No.2 Mashir HC Abdul Razzak was examined at Ex.5.

P.W No.3 Investigating Officer SIP Rana Abdul Razzak was examined at Ex.6, who produced the entry No.152 of register No.19 at Ex.6/A, entries No.14 and 32 at Ex. 6/B and 6/C, letter to the Chemical Examiner duly received by the Examiner Office at Ex. 6/D, Chemical report at Ex.6/E and Huliya Form and Property on one page at Ex. 6/F respectively.

P.W No.4 PC Mubrak Ali who took the case property to the office of Chemical Examiner was examined at Ex.7.

All the above named witnesses have been cross-examined by learned ADPP for State.

4. Later on, statement of accused was recorded u/s 342 Cr.P.C at Ex.9, in which he denied the prosecution allegation and claimed his innocence by submitting that he was arrested by CIA police officials from his house at the instance of his uncle which whom he has matrimonial disputes. However, he did not examine himself on oath nor give any evidence in his defence.

5. Learned counsel for the appellant has contended that the appellant has been involved in this case malafdely by the police; that the impugned judgment passed by the learned trial Court is opposed to law and facts and is also against the principles of natural justice; that appellant has been arrested at the instance of his uncle with whom he has some matrimonial disputes; that no recovery was affected from the possession of appellant and prosecution has miserably failed to establish the guilt of appellant beyond any reasonable shadow of doubt as the evidence of PWs are contradictory to each other; that no private / independent person has been made as mashir of the alleged recovery nor any efforts were taken by the police party, as such, false implication of the appellant in this case cannot be ruled out. Lastly he prayed that instant appeal may be allowed and appellant may be acquitted of the charge. In support of his contention, learned counsel has relied upon the case law reported as **The State v. Imam Bux & others** [2018 SCMR 2039], **Ikramullah v. The State** [2015 SCMR 1002], **Arzi Gul & others v. The State** [2020 P.Cr.L.J 178], **Sirajuddin v. The State** [2018 MLD 1917] and **Abdul Rehman v. The State** [2016 P.Cr.L.J Note 79].

6. Conversely, learned Asst. Prosecutor General appearing on behalf of State has fully supported the impugned judgment by submitting that prosecution has fully established the guilt of appellant beyond any reasonable shadow of doubt. She has further contended that all the prosecution witnesses have fully supported and corroborated the version of each other and there is no contradiction in their version on material particulars of the case hence, the impugned judgment does not call for any interference.

7. We have heard the learned counsel for the parties at a considerable length and have gone through the documents and evidence so brought on record.

8. From perusal of record it appears that complainant ASI Nazir Ahmed has deposed that on 12.12.2018, he along with his sub-ordinate staff left police station for patrolling and during patrolling when they reached near Village Laloo Lashari, spy was met with him and informed that one person is selling charas at Mehran ground on such information they proceeded towards pointed place and when they reached at the pointed place they saw that one person was standing there therefore, the police party after encircling apprehended the accused / appellant. Due to non-availability of private person, police party took personal search of the appellant in presence of HC Abdul Razzak and PC Ghulam Hussain and recovered 9820 grams charas which was lying in blue colour shopper in 20 big pieces. Thereafter, mashirnama of arrest and recovery was prepared and case was challaned under the aforementioned crime. The statement of PWs was recorded u/s 161 Cr.P.C and sample of the allegedly recovered charas was sent to Chemical Examiner for its analysis through PC Mubarak Ali on 13.12.2018 and such positive report was received. The Complainant ASI Nazir Ahmed was cross examined by the counsel for appellant and in his evidence he denied the suggestion of having foisted the charas upon the appellant. He also denied the suggestion of having registered a false case against the appellant.

9. We have also examined the evidence of mashir HC Abdul Razzak (available at Ex.5) and also perused the evidence of Investigating Officer SIP Abdul Razzak Rajput (available at Ex.6) and so also the evidence of mashir PC Mubarak Ali (available at Ex.7), through whom the case property was sent to chemical examiner. These witnesses though cross examined by the counsel for appellant at length but they remained unshaken.

10. We have carefully perused the evidence of prosecution witnesses and have found that they have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison and all the salient features regarding interception of the huge quantity of charas as well as steps taken subsequently. The chemical report is positive one and containing all the information with regard to receiving parcel of charas and is found by us as exercise sufficient to constitute forensic proof. We have also examined the report of chemical examiner available on the record at Ex.6-E, and have also found that it corroborates the evidence of all the police officials, who have stand juxtaposition with the chemical report. It is a matter of record that charas was recovered from the exclusive possession of the appellant on 12.12.2018 while the same was received by chemical examiner on 24.12.2018 for its analysis and did not find any tempering with the sealed parcel of the contraband so recovered from the appellant. However, the delay in sending the case property for chemical analysis has been plausibly explained by the prosecution by producing malkana entry at Ex.6/A. Learned counsel for the appellant has also failed to point out any piece of evidence showing that the property was tempered during the period of receiving and sending it to Chemical analysis.

11. The contention of the learned counsel for the appellant that the evidence of the PWs is not reliable as the same suffers from the material contradictions and inconsistencies has no force until and unless some cogent and reliable evidence is brought on record, which may suggest that the appellant is innocent or his act is beyond any doubt. The contradiction in the testimony of PWs being urged by learned counsel for the appellant appear to be minor in nature and those seem to be not fatal to the case of prosecution. It is well-settled principle of law that minor discrepancies in the evidence of raiding party do not shake their trustworthiness as observed by the Honourable Apex Court in the case of "**The STATE / ANF v. MUHAMMAD ARSHAD** (2017 SCMR 283). So far as the defence plea raised by the appellant that charas has been foisted upon him at the instance of his uncle with whom he has some matrimonial disputes; therefore, the uncle of appellant in order to take revenge has booked him in this case in connivance of complainant. However, in this connection no tangible evidence is brought on record to prove this fact.

12. It has been observed that nothing has come on record during lengthy cross examination of all PWs that they had enmity with the

appellant to falsely implicate him in this case. In such a situation their evidence cannot be said to be an evidence of interested person to falsely implicate the appellant in this case by managing such a huge quantity of narcotics. In this context, reliance can be placed from the case of Muhammad Irshad v. The State (2007 SCMR 1378) wherein it has been held that "The recovery was proved by the members of raiding party who had no personal reason to involve the petitioner in false case".

13. Admittedly, the appellant was arrested by the police and from his possession a huge quantity of charas was recovered and it would be enough for a person of prudent mind that how such a huge quantity of contraband, the cost whereof would be in thousands of rupees, can be foisted upon accused. At this juncture, we are fortified by the dictum laid down in the judgment dated 08.01.2020 passed by the Honourable Supreme Court in the case of **SHAZIA BIBI v. THE STATE** (Jail Petition No.847 of 2018).

14. It has been argued by learned counsel for the appellant that Investigating Officer has produced computerized copies of all departure and arrival entries before the trial Court, however, perusal of R&P shows that same have been produced in original shape. It has further been argued by learned counsel for the appellant that no where the date and time are mentioned in the entry No.152 (Malkana) whereas perusal of said entry shows that date i.e. 12.12.2018 has been mentioned in the top of the said entry. So far as the contention raised by counsel for appellant with regard to violation of Section 21 of CNS Act, 1997, we are not convinced with the said contention as in the present case investigation has been carried by SIP Rana Abdul Razzak therefore, the argument advanced by learned counsel for the appellant has no force. It is settled proposition of law that each and every criminal case has to be decided on its own merits. In this context we are fortified by the case of **MUHAMMAD FAIZ alias BHOORA** versus **The STATE and another** (2015 S C M R 655).

15. It has further been argued by learned counsel for the appellant that the whole case of the prosecution hinges upon the evidence of official witnesses as the place of incident is thickly populated area and no private person was asked to act as mashir of event therefore, as per him the case of the prosecution is doubtful. We are not satisfied with the argument of learned counsel for the appellant, as the incident took place at night time and place of incident as per record does not appear to be a thickly populated area, however, such argument could have

been considered when the evidence of police officials is based upon untruthfulness casting uncertainty, enmity and ambiguity. The police officials are good witnesses as any other private witness and their evidence is subject to same standard of proof and the principles of the scrutiny as applicable to any other category of witnesses; in absence of any animus, infirmity or flaw in their evidence, their testimony can be relied without demur. Reference in this regard may be made from the case of **IZAT ULLAH and another v. THE STATE**, wherein the Honourable Apex Court has observed as under:-

> *"3.....Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in comfortable unison: being functionaries of the republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trustworthy, as in the case in hand. Both the courts below have undertaken an exhausting analysis of the prosecution case and concurred in the their conclusions regarding petitioners' guilt and we have not been able to take a different view then concurrently taken by them. Petitioners fail. Dismissed."*

16. Same view has also been taken in the case of **HUSSAIN SHAH and others v. THE STATE** (PLD 2020 Supreme Court 132), wherein the Honourable Supreme Court of Pakistan has held as under:-

> *"3. Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical examiner had declared that the recovered substance was Charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witnesses had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which could possibly be used to doubt the veracity of the said witnesses.*

17. As regards the case law cited by learned counsel for the appellant, the facts of the same are quite distinguishable to the facts of the present case hence did not find applicable.

18. For the forgoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellant; therefore, the impugned judgment dated 28.11.2019 passed by the trial Court having been rightly passed, requires no interference by this Court; hence, is hereby maintained and the appeal in hand being meritless is **dismissed** along with pending application[s], if any.

JUDGE

JUDGE

Hafiz Fahad