

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Appeal No.D-82 of 2020

Present:

Mr. Justice Mehmood A. Khan, J

Mr. Justice Khadim Hussain Tunio, J

Appellant: Khushi Ram @ Bhomoon Son of Jagdesh @ Mohan,
through Mian Taj Muhammad Keerio, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant
Prosecutor General, Sindh.

Date of hearing: 12.08.2021

Date of decision: 17.08.2021

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- Through instant Criminal Appeal, appellant namely Khushi Ram alias Bhomoon has impugned the judgment dated 13.10.2020 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court Umerkot in Special Case No. 07 of 2020, emanating from Crime No.07 of 2020 registered at P.S Chhore whereby he has been convicted and sentenced to suffer R.I for six years and six months for committing an offence under section 9(c) of the CNS Act, 1997 and to pay fine of Rs.30,000/-, in case of default of which, he shall further suffer six months more simple imprisonment, however benefit of section 382-B Cr.P.C was extended to him.

2. In nutshell, the facts of the prosecution case are that on 29.02.2020 police party from P.S. Chhor headed by SHO/SIP Sultan Ahmed Keerio along with his subordinate staff; vide *Roznamcha* entry No. 06 at 1330 hours, left P.S for patrolling within the jurisdiction. During patrolling, they apprehended accused namely Khushi Ram alias Bhomoon from Chhor-Dhoronaro road near Unarabad who was riding a black colored 125 motorcycle and they secured a black colored shopper which was lying on the motorcycle and found three

black colored packets inside, each containing two equal sized pieces of Chars. Each packet was weighed and found being 1000 grams Chars, totaling to 3000 grams and cash of Rs.300/- from his possession in presence of mashirs for which present F.I.R was lodged.

3. After registration of the FIR and conducting the investigation in the case, the Investigating Officer submitted challan against the accused. After compliance of Section 265-C Cr.P.C, a formal charge was framed to which appellant pleaded not guilty and claimed to be tried.

4. At trial, in order to substantiate the charge, prosecution has examined PW-1 complainant SIP Sultan Ahmed Keerio at Ex.3, PW-2 PC Liaquat Ali at Ex.04 and PW-3 SIP Mumtaz Ali at Ex.05, who produced numerous documents through their evidence. Whereafter, the prosecution's side was closed.

5. Statement of accused under section 342 Cr.P.C was recorded in which accused has denied the allegations leveled against him and pleaded his innocence while stating therein that he is a resident of Khai Town Taluka Khipro and SIP Sultan Ahmed Keerio was also posted at P.S Khai where he was already arrested by him at the instance of landlord Wahid Mari; the said landlord was annoyed upon accused when he asked his landlord to settle their account. He further stated that SIP Sultan Ahmed, after his transfer at P.S Chhor, falsely involved him in this case at the behest of aforesaid landlord Wahid Mari. However, appellant did not examine himself on oath as required under section 340(2) Cr.P.C nor examined any witness in his defence.

6. After hearing the learned counsel for the respective parties, the appellant/accused was convicted by the learned Trial Court as stated in the *supra* para.

7. Learned counsel for the appellant has argued that the impugned judgment is opposed to the law and facts of the case; that the learned trial Court has erred in sentencing the appellant; that the impugned judgment relies on the testimony of police officials which remains unsupported by

independent sources; that the appellant is a resident of Khai Town where SIP Sultan Ahmed Keerio was also posted and the appellant has been falsely involved in this case on the behest of landlord Wahid Mari; that although the appellant was arrested from a thickly populated area, no one from the public was taken as a recovery mashir; that the Chars slabs produced in Court are not the same as the size mentioned by the witnesses was square in shape whereas the ones present in Court are rectangular; that the malkhana in-charge of the seized contraband has not been examined; that the chemical report is not issued on the prescribed performa as per Rule 5 and 6 of the Narcotic Substance (Government Analysis Rule-2001); that the complainant and prosecution witnesses have made material contradictions in their depositions; that the shopkeeper from whom the scale was obtained to weigh the Chars was not examined. In support of his arguments, he has referred the case law reported as *2021 SCMR 363, 2019 SCMR 930, 2019 SCMR 608, 2016 YLR 2085, 2014 YLR 1236* and *2013 P.Cr.L.J 1237*.

8. Learned Assistant Prosecutor General on the other hand has opposed the acquittal plea of the appellant and supported the impugned judgment while arguing that the contradictions in the evidence of the PWs are minor in nature; that the chemical examiner report is in the positive. She has referred the case law reported as *2019 SCMR 2061*.

9. Having heard and perused the record.

10. Perusal of the record reveals that the complainant, ranked SHO and posted at police station Chhor left the station along with his sub-ordinate staff in a government vehicle when at about 1420 hours, they reached Chhor-Dhoronaro connector road near Unarabad and saw a person riding a black 125 motorbike riding towards them, identified as the appellant who tried to escape however was unsuccessful. He was inquired of his name and the registration of the motorbike to which he said he did not possess one and disclosed his name to be Khushi Ram. A black shopper was recovered from his possession wherein three black packets were found having "BEST COFFEE" engraved on them. Each packet was found to be containing two

equal sized pieces of Chars wrapped in white plastic shopper which had "Gumnam 2020" engraved in gold on them. After weighing the same, each packet was found to be 1000 grams, totaling to 3000 grams. From his further personal search, three notes of Rs. 100/- were found which were also seized. The case property was brought back to the police station and the investigation was entrusted to SIP Mumtaz Ali Babar along with the case property who deposited the same in the malkhana under entry available at Ex. 5-C.

11. We have found that the prosecution witnesses have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison on all the salient features regarding interception of the Chars as well as all the steps taken subsequently. Entire recovered quantity of 3 KGs of Chars was referred to the chemical examiner for analysis and report, which is found by us being exercise more than sufficient to constitute forensic proof. At the time of arrest, the accused was available in the driving seat of the motorbike from which the black shopper containing 3 kilograms of Chars were secured; therefore he was responsible for the same. We have also examined the report of chemical examiner available on record and found that it fully corroborates the evidence of all the prosecution witnesses. It is a matter of record that Chars was secured from the black shopper available on the appellant's motorbike on 29-02-2020 and same was sent to chemical examiner for analysis within 72 hours on 02.03.2020, who did not find any tampering with the sealed parcel of the contraband so recovered from the appellant, hence, the report of chemical examiner came in positive. There is a 2 days' delay in sending the Chars to the chemical examiner, even otherwise, same has been explained by the prosecution to the extent that the safe custody of the property during intervening period has been established as the Chars was deposited in the malkhana for safe-keeping and entry from Register 19 is available for the same at Ex. 5-C as well. Moreover, all the witnesses have deposed that the case property in Court is the same and they were at no point cross-examined on the same point by the defence counsel alleging tampering with the same. The case property for the chemical examiner was sent through PC Liaquat Ali, who was

examined by the prosecution as P.W-2. Such fact has also been fully corroborated by the chemical examiner's report wherein it was stated that "01 sealed cloth parcel containing black plastic shopper which contains 03 black colour packets each labeled as Best Coffee contains two dark brown pieces each wrapped in white plastic golden dye in print Gumnam 2020." Hence, the charas so recovered from the possession of the appellant has been proved to the extent of realization. The contention of the learned counsel for the appellant that the evidence of PWs is not reliable as the same suffers from material contradictions and inconsistencies, has no force at all until and unless some cogent and reliable substance is brought on record which may suggest that the appellant is innocent and that his case is beyond any shadow of doubt. It is well-settled proposition of law that due to flux of time, 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 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 the cases. The defence counsel could not point out any material discrepancy in the evidence of the eye-witnesses, besides a few minor ones as the one stated above. 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 any procedural defect. Moreover, the minor discrepancies in the evidence of raiding party do not shake their trustworthiness as expressed by the Hon'ble Supreme Court in case of *STATE/ANF v. Muhammad Arshad (2017 SCMR 283)*.

12. Furthermore, the contention of learned counsel that the evidence of Police officials is not trustworthy and that no independent or private person has been cited as witness, therefore, per him the case of the prosecution is doubtful has no force as such contention raised by learned counsel could have been considered when the evidence of Police officials was based upon untruthfulness which casted uncertainty, established enmity and created ambiguity. As far as their testimonies are concerned, there is no universal rule that evidence of an interested witness *per se* must be invariably corroborated

by independent evidence. If that were the case, then why would the Courts at all take into account the testimony of interested witness? If no other independent witness is available in the case, it would result in a grave discourage of justice to insist upon independent corroboration. Excise Police officials are as 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 upon without demur. Reliance is placed on the case of *HUSSAIN SHAH and others v. The STATE (PLD 2020 Supreme Court 132)* wherein the Hon'ble Supreme Court of Pakistan has held as under:-

“3.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.”

13. As far as the defence plea of the appellant is concerned, same is of no consequence to his state. The appellant failed to examine any witnesses so as to corroborate his story. Safe custody of the property was also established as the property viz. Chars so recovered from the appellant had been proved adequately by examining the complainant, mashir and the police official responsible for delivery *i.e. PW-2 PC Liaquat Ali*, even otherwise, they were not cross-examined on this part. Same goes for contention with regard to the delay in sending the sample to the chemical examiner. In this backdrop, reliance is placed on the case law reported as *The State v. Ishfaq & others (2018 SCMR 2039)*. Furthermore, per the chemical examiner's report, the seals were received in intact condition which rules out any question of tampering and it was in fact the examiner who had broken the seals to open the sealed contents. Further, reliance is placed on the recent Judgment dated 03.03.2020 in *Jail Petition No.712 of 2018 (Re: Zahid and Riaz Ali Vs. The State)*.

14. The Hon'ble Apex Court has been pleased to observe in the case of *Matiullah v. The State (Crl. Petition No. 18 of 2019)*, which reads as under:-

“The witnesses comfortably responded the cross-examination and the learned counsel has not been able to point out any flaw or discrepancy in their narratives either on salient features of the case or matters collateral therewith; they are in a unison that inspires confidence and, thus, absence of support from the public does not diminish value of their testimony, fortified by a ring to truth. Reluctance by the public to stand in aid of law is symptomatic of abysmal civic apathy which cannot be allowed to be used as an escape route from justice. Being functionaries of the Republic, both of them are second to none in status; their official acts and declarations are statutorily presumed as intra vires and unless proved contrarily and in the absence of any flaw or discrepancy in their depositions, their testimony cannot be conditioned by additional riders.

Forensic report sufficiently details tests applied for determination of narcotic character of the contraband, carried out on the samples transmitted from safe custody and as such is not violative of ‘protocol’ directed by the rules.”

15. For what has been discussed above, we are of the considered view that the prosecution has undoubtedly proven the guilt of the accused beyond reasonable shadow of doubt. Learned counsel for the appellant has failed to point out any material or procedural illegality in the impugned judgment or any infirmity committed by the learned trial Court. Therefore, the conviction and sentence awarded to the appellant through the impugned judgment are maintained and present Criminal Appeal is **dismissed**.

JUDGE

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