IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No.D-154 of 2016

Present:
Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Khadim Hussain Tunio -

Appellant: Amanullah, through Mr. Mehfooz Ahmed Awan, advocate

Respondent: The State through Mr. Aftab Ahmed Shar, Additional Prosecutor General Sindh.

Date of hearing: *03-11-2021*

Date of announcement: 18-*11-2021*

JUDGMENT

KHADIM HUSSAIN TUNIO, J- Through captioned special criminal jail appeal, appellant has impugned the judgment dated 24.08.2019, passed by learned Special Judge CNS Sukkur in Special Case No.44/2012 Re- The State Vs. Amanullah arising out of FIR No.152/2012 registered at PS Rohri, District Sukkur for an offence u/s 9(c) of Control of Narcotic Substances Act 1997, whereby the appellant has been convicted and sentenced to suffer imprisonment for life and to pay fine of Rs.100,000/- (one lac). In case of default in payment of fine, he was ordered to undergo S.I for one year more and benefit of section 382-B, Cr.P.C was also extended to the appellant.

2. Briefly, facts of prosecution case are that on 15.07.2012, SHO/SIP Ali Murtaza Mahar, during patrolling with his staff left P.S Rohri vide entry No. 23 at about 1840 hours. After patrolling from various places, when they reached Rohri Bus Stand, at about 2140 hours, the complainant received spy

information about a truck bearing Registration No. TKG-370, parked at Old National Highway Road near date palm Market (Chuhara Mandi) which contained charas. The police party reached at the pointed out place and saw three persons sitting in the back side of the said truck, out of which two persons promptly got down from the truck and succeeded to flee whereas the third, the present appellant, was apprehended from whom four (04) plastic sacks were recovered, lying in the truck. HC Munawar Ali and PC Gul Hassan were appointed as mashirs and the sacks were opened and were found containing pieces of charas packed with plastic paper, which were counted and came out to be 150 packets. The recovered charas was weighed and each piece became 1000 grams, totaling 150 (one hundred fifty) kilograms, out of which a single piece weighing 100 grams was separated from each remaining piece of Charas and sealed separately as sample for chemical analysis while the remaining was also sealed. Such mashirnama was prepared in presence of above said mashirs thereafter, the accused and case property as well as the said truck was brought to the Police Station where such case, under CNS Act was registered against the appellant.

3. After providing necessary documents to the accused, a formal charge was framed against the accused to which he pleaded not guilty and claimed to be tried.

4. In order to substantiate the charge against the appellant, prosecution examined in all two witnesses namely complainant SHO Ali Murtaza and mashir HC Munawar Ali, who produced a number of documents in their evidence. Assistant Record Keeper/Clerk of the Court was also examined to depose in regard of the missing cash amount and mobile phone. Then the prosecution side was closed by the learned Special Public Prosecutor.

5. Statement of accused u/s 342 Cr.P.C was recorded in which the accused has denied the prosecution allegations in toto and pleaded his

innocence while deposing on oath. However, he did not examine anyone in his defence.

6. After hearing learned counsel for the respective parties, learned trial court convicted the appellant as stated supra.

7. Learned counsel for the appellant submits that appellant had been shown to be driver of the alleged Truck, however neither his license was recovered nor the verification of the Truck got verified from the Excise and Taxation department as the same belonged to the appellant or some other person. He further submits that alleged contraband was recovered on 15-07-2012 and the same was sent to Chemico-Laboratory Sukkur at Rohri through PC Ihsanullah on 30-07-2012, but PC Ihasanullah was not made as witness even was not produced before the trial Court nor such delay of 15 days has been explained to show that in whose custody for the intervening period, the alleged contraband was lying. He next submits that per evidence of the complainant, he delivered the contraband to SHO of PS, yet neither the SHO was cited as witness nor examined by the trial Court. He further pointed out that none of the PW had deposed that the appellant being driver of the Truck was found sitting over the driving seat and mere word against word has been deposed against him. He further submits that when the prosecution failed to show connectivity of the appellant with the truck; however, all the articles allegedly secured by the police were not confronted with the appellant at the time of recording statement u/s 342 Cr.P.C. He further contends that the distance between police station as well as Laboratory is not more than 400 paces, yet the delay in sending the contraband to the Laboratory consumed 15 days, is the question, which has not been thrashed out by the prosecution through evidence, even the trial Court has not considered it. Mr. Awan further submits that the entry by which the complainant had left police station for the purpose mentioned in the FIR was not produced, therefore, it could not have been ascertained whether the complainant had left police station or otherwise.

He further submits that chain of the offence stand broken, which creates lot of doubts into the veracity of prosecution evidence, hence appellant may be acquitted of the charge by extending benefit of doubt to him. In support of his contentions, he relied upon the cases reported as ***2019 SCMR 1300, 2020 SCMR 1373 and 2019 SCMR 2004.***

8. On the other hand learned APG for the State opposes the appeal on the ground that all the PWs had supported the case of prosecution and minor discrepancies may not be taken into consideration as due to laps of time, the PWs have not remained in consistent and the plea taken by the defence carries no weight, hence submits that by dismissing the appeal, impugned judgment may be maintained. Learned Additional P.G submits as for as application of Rules 4 & 5 is concerned, same are directory in nature, therefore are not mandatory which could be applied and followed in each and every case, therefore delay in sending sample would not affect the result of analysis. In support of his contention, he placed his reliance on the cases of ***Nasrullah Vs. The State (2011 P.Cr.L.J 277) [Peshawar], Aijaz Ali Rajper Vs. The State (2021 SCMR 1773), Faheemullah v. The State (2021 SCMR 1795 & 373), Mura Ali Vs. The State (2021 YLR 984).***

9. We have given due consideration to the arguments advanced by learned counsel for the appellant, learned Additional Prosecutor General and perused the record.

10. After perusing the record, it transpires that a huge quantity of charas *i.e.* 150 kilograms in the shape of 150 packets, each weighing 1000 grams were secured from plastic sacks in the truck the appellant was supervising/in control of. From the said 150 packets, 100 grams were separated from each packet as representative sample and placed in 150 parcels, then collectively sealed and sent to the chemical examiner through PC Ihsanullah, which is found by us being exercise sufficient to constitute forensic proof which was taken as representative sample from each packet. As far as

the contention with regard to safe custody of the property is concerned, it does not have any sanctity as the property viz. Chars so recovered from the appellant had been proved adequately by examining the complainant and mashir, 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. Ishfaque & 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 v. The State).*** We have also examined the report of Chemical Examiner available on the record and have also found that it fully corroborates the evidence of both the prosecution witnesses, whose stand is in nexus with the chemical examiner's report. It is a matter of record that the chemical examiner did not find any tampering with the sealed parcel of the contraband so recovered from the appellant, hence, the report of the chemical examiner came in positive. 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. The delay in sending of the charas, therefore, is inconsequential also because safe custody of the same during intervening period has been sufficiently satisfied. Such fact has also been fully corroborated by the chemical examiner's report wherein it was stated that *"One hundred fifty (150) sealed parcels, each bearing 02 seals. Seals perfect and as per copy sent."* Hence, the charas so recovered from the possession of the appellant has been proved to the extent of realization. Even otherwise, trial Court while awarding the sentence to the appellant has only considered the 15 kilograms of charas that were sent to the chemical examiner and not the whole quantity of 150 kilograms.

11. From a careful scrutiny of the evidence of the witnesses, we 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 on all the salient features regarding interception of the huge quantity of charas as well as all the steps taken subsequently. P.W-2 HC Munawar, who has acted as mashir of the case has affirmed the facts as deposed by P.W-1 SHO Ali Murtaza. He has also reaffirmed that the case property was separated for the chemical examiner's analysis. The witness was also cross-examined and during cross-examination, he also denied the suggestions in *toto* that the accused was not arrested from the place of incident at the time of his arrest. He has also denied that he is deposing falsely against the accused at the behest of his superior. At the time of the arrest, the accused was seated on the truck and from next to him, plastic sacks were recovered wherefrom 150 kilograms of charas was recovered. 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 evidence is brought on record which may suggest that the appellant is innocent and that his case is beyond any shadow of doubt. The alleged contradictions in the evidence of PWs No.1 & 2 being urged by the learned counsel for the appellant appear to be minor in nature, which are ignorable and seem to be not fatal to the prosecution case. It is well-settled proposition of law 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 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. Further, the minor discrepancies in the evidence of raiding party do not shake

their trustworthiness as expressed by the Honourable Supreme Court in the case of ***STATE/ANF v. MUHAMMAD ARSHAD (2017 SCMR 283)***.

12. As far as the defence plea of the appellant is concerned, same is of no consequence to his state. The appellant failed to examine anyone who could have corroborated his version of events and so also the fact that his father had come to meet him. He has failed to disclose any reason as to why he'd be implicated by the police on the basis of enmity with a third party. It is an admitted position that the appellant was arrested by the police officials and from his exclusive possession a huge quantity of charas was recovered and it would be enough for a person of prudent mind to realize that such huge quantity of contraband could not be foisted upon the accused. In this respect, 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)*** and in the case of ***HUSSAIN SHAH and others v. The STATE (PLD 2020 Supreme Court 132)***. So far as, 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, is concerned, which has no force as such contention raised by learned Counsel could have been considered when the evidence of police officials is based upon untruthfulness casting uncertainty, enmity and 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. 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 upon

without demur. In this respect, reliance is placed upon the case of ***IZZAT ULLAH and another v. The STATE (2019 SCMR 1975),*** 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 a 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 exhaustive analysis of the prosecution case and concurred in their conclusions regarding petitioners' guilt and we have not been able to take a different view than concurrently taken by them. Petitions fail. Dismissed."*

13. As far as the contention of the learned counsel for the appellant that there is 15 days delay in sending the sample to the chemical examiner is concerned. It has been held by the Honourable Supreme Court of Pakistan in case of Tariq Mehmood Vs. the State through Deputy Attorney-General, Peshawar, (PLD 2009 S.C 39), which reads as under;

> *"The rules have placed no bar on the Investigating Officer to send the samples beyond seventy two hours of the seizure, receive the F.S.L. report after fifteen days and the report so received to place before the trial Court. The very language employed in the rules and the effects of its breach provided therein have made the rules directory and not mandatory. These rules cannot control the substantive provisions of the C.N.S.A. and to be applied in such a manner that its operation shall not frustrate the purpose of the Act under which these are framed. Further, failure to follow the rules would not render the search, seizure and arrest under the C.N.S.A. an absolute nullity and non-est and make the entire prosecution case doubtful, except for the consequence provided in the rules. In directory provisions substantial compliance is sufficient and even where there is no compliance at all, the act is not invalidated by such non compliance if the act otherwise is done in accordance with law. The delay otherwise in sending the incriminating articles to the concerned quarter for*

> *expert opinion cannot be treated fatal in the absence of objection regarding the same having been tampered with or manipulated. There is no allegation of the appellant that the property was tempered with during the process of transit or the remaining property was not charas. It was for the appellant to have taken such plea before the trial Court but the appellant did not do so. However, we have examined the chemical Analyzer's report and found that the sealed packets were received by him which contained the signatures of marginal witnesses. In the absence of any allegation of tempering with the property, the arguments of learned counsel for the appellant is not sound."*

14. Consequently, the appellant/accused has failed to point out any illegality or infirmity in the impugned judgment which is hereby upheld. Resultantly, instant Special Cr. Jail Appeal is dismissed. The conviction and sentence awarded to the appellant are hereby maintained. However, the benefit of S. 382-B Cr.P.C is also maintained.

JUDGE

JUDGE

Ghulam Muhammad / Stenographer