

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio*

Criminal Appeal No. 181 of 2021

Appellant: Shaikh Imran son of Shaikh Abdul Ghani and Adeel son of Abdul Majeed through Mr. Aftab Ahmed, advocate.

Respondent: The State through Mr. Habib Ahmed, Special Prosecutor ANF.

Criminal Appeal No. 189 of 2021

Appellant: Muhammad Sharif son of Muhammad Shafi through Mr. Saifullah, advocate.

Respondent: The State through Mr. Habib Ahmed, Special Prosecutor ANF.

Criminal Appeal No. 216 of 2021

Appellant: Iftikhar Ali son of Noor Muhammad through Mr. Qadir Khan, advocate.

Respondent: The State through Mr. Habib Ahmed, Special Prosecutor ANF.

Date of hearing: 24.01.2022

Date of Judgment: 28.01.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J- By this common judgment, we intend to dispose of captioned criminal appeals filed by the appellants Shaikh Imran, Adeel, Muhammad Sharif and Iftikhar Ali whereby they have challenged the judgment dated 06.03.2021 (*impugned judgment*) passed by Special Court-I (CNS) Karachi in Special Case No. 126 of 2017 as they are the outcome of one and same FIR bearing crime No. D0307005/2017 registered with Police Station ANF-II for the offence punishable u/s 9(c) Control of Narcotic Substances Act 1997 (*CNS Act 1997*). Through the impugned

judgment, the appellants were convicted for the offence punishable u/s 9(c) CNS Act 1997 and were sentenced as follows:-

“Accused Shaikh Imran son of Shaikh Abdul Ghani and Adeel son of Abdul Majeed are convicted and sentenced under section 9(c) CNS Act 1997 to suffer rigorous imprisonment for 8 years and to pay fine of Rs. 40,000/- (*Rupees forty thousand*) each and in case of default in payment of fine, they shall undergo simple imprisonment for seven months with the benefit of Section 382(b) Cr.P.C.

Accused Iftikhar Ali son of Noor Muhammad and Muhammad Sharif son of Muhammad Shafi are convicted and sentenced under section 9© of CNS Act 1997 to suffer rigorous imprisonment for life and to pay fine of Rs.100,000/- (*Rupees one lac*) each and in case of default in payment of fine, they shall undergo simple imprisonment for one year with the benefit of S. 382(b) Cr.P.C.”

2. Precisely, facts pertaining to Crime No. D0307005/2017 are that on 24.01.2017, SIP Ibrahim Aziz, after receiving information regarding the presence of narcotic dealers Adeel, Muhammad Sharif, Iftikhar and Shaikh Imran, formed a raiding party and apprehended the present appellants and recovered 6 kilograms of charas from Shaikh Imran, 6 kilograms of charas from Adeel, 33 kilograms of charas and 2300 grams of heroin from Muhammad Sharif and also recovered 33 kilograms of charas from appellant Iftikhar along with 5700 grams of heroin, in total 78 kilograms of charas and 8 kilograms of heroin. ASI Zaheer Iqbal and PC Asif were appointed as mashirs of arrest and recovery. Thereafter, the case property and the accused were brought to PS ANF, hence this FIR.

3. After usual investigation, challan was submitted against the appellants. A formal charge was framed against them by the trial Court to which they pleaded not guilty and claimed to be tried. In order to substantiate its case, prosecution examined three witnesses namely PW-1 **SI Ibrahim Aziz**, the complainant and investigating officer (*IO*), PW-2 **ASI Zaheer Iqbal**, mashir of arrest and recovery and PW-3 **PC Iftikhar**, who delivered the recovered contraband to the office of the chemical examiner. Prosecution also produced a number of documents and other items in evidence. Statement of accused were recorded under section 342 Cr.P.C. wherein they denied the allegations levelled against them and claimed

their innocence while alleging that they were picked up by Rangers and then handed over to ANF Police and that said news was also aired by News-One channel. They also examined DW-1 **Fahmida**, mother of appellant Adeel, DW-2 **Shaikh Sohail**, brother of appellant Shaikh Imran, DW-3 **Naseem Begum**, mother of appellant Muhammad Sharif, DW-4 **Noshad Ali**, mother of appellant Iftikhar and DW-5 **Muhammad Imtiaz Khan**, Bureau Chief of News-One channel.

4. Trial Court, after considering the material available before it and hearing the counsel for respective parties, passed the impugned judgment and sentenced the appellants as stated supra.

5. Learned counsel for the appellants jointly contended that the judgment passed by trial court is against the criminal administration of justice; that the impugned judgment is perverse and shocking; that the trial Judge while awarding the conviction has not considered the contradictions made in the evidence of the PWs; that no independent witness has been cited by the prosecution and all the PWs are ANF officials; that safe custody of the allegedly recovered contraband has not been established; that the plea of appellants does not bear their signatures; that the complainant himself conducted the investigation of the case; that ASI Iftikhar's 161 Cr.P.C statement was not recorded; that the place of incident was situated in a thickly populated area, but no independent mashir was made a party to the various mashirnamas; that the trial Court made several errors in paragraph 37 to 39 while observing that the recoveries were made from a secret cavity of a coach. In support of their contentions, learned counsel has cited the case law reported as *Muhammad Mansha v. The State* (1997 SCMR 617), *Loung v. The State* (1999 PCrLJ 595), *Akhtar Ali v. The State* (2009 PCrLJ 50), *Nazeer Ahmed v. The State* (PLD 2009 Karachi 191), *Mst. Jameela and another v. The State* (PLD 2012 Supreme Court 369), *Muhammad Qasim v. The State* (2018 PCrLJ(N) 67), *The State through Regional Director ANF v. Imam Baksh and others* (2018 SCMR 2039) and *Abdul Ghani and others v. The State and others* (2019 SCMR 608).

6. Conversely, learned Special Prosecutor ANF supported the impugned judgment while contending that the appellants were apprehended after receipt of spy information and from their possession, huge quantities of narcotic substance were recovered; that the offence committed by the appellants is a heinous one and against the society; that contradictions, if any in the evidence of the PWs, are minor in nature; that safe custody of the narcotic substance from recovery to dispatch for chemical examination has been proved by the prosecution; that paragraph 37 to 39 of the impugned judgment contain typographical errors and are copy-pasted, hence the errors are inconsequential. In support of his contentions, he has placed reliance on the case law reported as *Abdul Majeed v. The State* (2008 MLD 314), *Mushtaq Ahmad v. The State and another* (2020 SCMR 474), *Shabbir Hussain v. The State* (2021 SCMR 198), *Aijaz Ali Rajpar v. The State* (2021 SCMR 1773) and *Shafaullah Khan v. The State* (2021 SCMR 2005).

7. We have heard the arguments advanced by the learned counsel for the appellants as well as learned Special Prosecutor ANF and have gone through the entire evidence available on the record.

8. A perusal of record shows that the raiding party, headed by complainant SIP Ibrahim Aziz, apprehended the appellants on 24.01.2017 after receiving spy information from a special informer at Manzil Gas Station near Gul Ahmed Factory. From their possession, they recovered a total of 78 kilograms of charas and 8 kilograms of heroin in the shape of packets. The complainant admittedly tried looking for private mashirs of the locality, but nobody agreed; therefore he appointed ASI Zaheer Iqbal and PC Asif. The recovered charas was weighed on an electronic scale available with them. 10 grams of charas from each packet was separated from the total quantity and sealed on the spot for chemical examination whereas the entire amount of heroin was sealed alongside it for chemical examination as well. We have found that the prosecution witnesses have provided an uninterrupted chain of facts ranging from arrest and seizure to forensic analysis of the contraband. They are in comfortable unison on all the salient features regarding interception of the charas and heroin as well as all the steps taken thereafter. All the witnesses have unanimously

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. Contraband so recovered from the appellants have been proved by examining the complainant (PW-1), mashir of the arrest and recovery (PW-2) and the police officer responsible for the delivery of the contraband to the chemical examiner (PW-3). The recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken to the chemical examiner. Furthermore, narcotics were sealed on the spot, had remained sealed in the malkhana before being transported to the chemical examiner. Seals on the same parcels delivered were found intact by the chemical examiner, further proving safe custody and transmission of the same. Reliance, in this respect, 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)**. The narcotics were sent to the chemical examiner promptly on the next day of recovery. To further prove safe custody, Form No. 22-70 of the Malkhana register is also produced at Ex. 19 which shows that the narcotics were deposited in the malkhana by the complainant who is also the malkhana incharge. 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. All necessary protocols were followed in the chemical report which further supports the prosecution case.

9. Learned defence counsel contended that evidence of the police officials is not trustworthy and that no independent or private person has been cited as a witness, as such the prosecution case is doubtful. This contention however has very little merit to it. There is no universal rule that evidence of an interested witness per se must be invariably corroborated by independent evidence. 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)*. Moreover, S.103 Cr.P.C. is excluded for offenses

falling under the Control of Narcotic Substances Act 1997 by virtue of Section 25 of that Act which principle was enunciated by the Hon'ble Apex Court in the case of *Muhammad Hanif v. The State* (2003 SCMR 1237). Even otherwise, it also appears rather unbelievable that such a huge quantity of charas and heroin could be foisted on the appellants without any reason to falsely implicate them. Reliance in this respect is placed on the case of *The State v. Abdali Shah* (2009 SCMR 291) and *Mushtaq Ahmed v. The State* (2020 SCMR 474). With regard to the contention regarding the violation of S. 21 and 22 of the CNS Act 1997, it is a settled principle of law that said sections are directory in nature and not mandatory, therefore violation of the same would not vitiate the whole investigating which otherwise, in this case, is conducted while observing all necessary protocols. In this regard, reliance is placed on the case of *Muhammad Younas and others v. Mst. Parveen alias Mano and others* (2007 SCMR 393). It would also be pertinent to note here that the inconsistency pointed out by the defence counsel in the impugned judgment in paragraphs 37, 38 and 39 are inconsequential to the guilt of the appellants, that being so because the said paragraphs can at most amount to typographical errors or error in copy-pasting and would hold little, if any, legal worth when placed in juxtaposition with the evidence on record which we are re-assessing. The last contention made by the defence counsel was that the pleas of the appellants were never signed by them and that they had never made any plea before the learned trial Court. At this point, it is observed that not only is a presumption of truth attached with the record kept and maintained by the Court, it is also not tantamount to an illegality that would vitiate trial by not obtaining signature or thumb-impression of the appellants over the same which is otherwise curable under S. 535 Cr.P.C. Had the plea been of guilty, prejudice would have been caused to the appellants which would not have been curable u/s 535 Cr.P.C as the same means an admission of all the facts furnished by the prosecution, however the plea of not guilty does not prejudice the case of the appellants in any manner. Reliance in this respect is placed on the case of *Ghulam Rasool v. The State* (1992 MLD 2455).

10. As far as the defence plea raised by the appellants is concerned, the same appears to be an afterthought, which has rightly been disbelieved by the learned trial Court. The appellants have failed to provide any valid proof such as news clippings from News-One TV to ascertain that they had been arrested by Rangers. Moreover, the appellants examined four witnesses, one related to each of the appellant. Each one of these four defence witnesses, while asserting that the appellants were arrested by Rangers also admitted that they had, at no point, considered filing a motion before a Court of law for their recovery from the alleged “illegal confinement” by Rangers nor had any of them approached any Rangers higher-ups to ensure the safe return of the appellants. As far as DW-5 namely Muhammad Imtiaz Khan is concerned, he stated that he being the Bureau Chief at News-One TV had come across the news clipping of the arrest of the appellants by Rangers personnel, however in his cross-examination admitted that he had come across this information by another reporter and that he had made no efforts to confirm the same “news”. As such, belated arrangements made by the appellants of well-wishers to testify in their favour fails to override positive evidence pointing towards their culpability. In this respect, reliance is placed on the case of *Ibrarullah v. The State* (2021 SCMR 128).

11. For what has been discussed above, we find that the prosecution has successfully proved its case against the appellants beyond a reasonable doubt; therefore the impugned judgment requires no interference by this Court. Hence, it is hereby maintained and the instant criminal appeals being meritless are dismissed.

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