

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No. D- 217 of 2010

BEFORE :

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah

Appellants : Mir Afzal & Shah Ji through
Syed Tariq Ahmed Shah, Advocate

Respondent : The State through Ms. Sana Memon A.P.G.

Date of Hearing
& Decision : 11.11.2020

ORDER

MUHAMMAD SHAFI SIDDIQUI, J.- The appellants being aggrieved of the judgment dated 10.8.2019 passed by learned 1st Additional Sessions Judge, Shaheed Benazirabad, whereby they for an offence punishable under Section 9(c) C.N.S. have been convicted and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.100,000 and in case of default in payment of fine to undergo simple imprisonment for one year, have preferred this appeal on the common facts and grounds.

2. Brief facts of the case are that an FIR No. 02 of 2007 registered at police station Excise Shaheed Benazirabad on 7.2.2017 at 1215 hours by Excise and Narcotics Inspector Abdul Razaq Mirani, Circle Nawabshah on behalf of the State, stating therein that while they were on their daily routine inspection along with EC Ghulam Mustafa, EC Mubarak Ali, EC Ali Raza, EC Ghulam Shabbir and DEC Sain Bux for random checking of the vehicles on National Highway Sakrand. In pursuance of this routine checking they stopped the Truck bearing No. LS 3917 and on search found a secret cavity therein at the overhead cabin of truck in which 40 bundles of charas were found lying wrapped in wrappers of various colours. The bundles were checked and it was discovered that out of them 24 bundles of charas were available in the shape of rods while remaining 16 bundles of charas was available in the shape of slabs. Each bundle was weighed to be 1000 grams and the total weight of all the bundles came to 40 kilograms. 100 grams of

charas was then obtained from each bundle separately as sample and separately sealed in 'Khaki' envelope for the purpose of chemical examination while remaining charas was separately sealed in plastic bag. Mashirnama of arrest and recovery was prepared with the signatures of the mashirs. The accused along with the case property were then taken to the office of Excise and Narcotics Shaheed Benazirabad where the subject FIR was lodged.

3. The I.O in pursuit of conducting the investigation submitted charge sheet of the instant case in the court of Special Judge, Narcotics / District & Sessions Judge Shaheed Benazirabad which is triable by Special Court constituted under CNS Act 1997. The prosecution in order to prove the offence registered as the subject FIR examined two witnesses i.e. PW-1 Excise Inspector Abdul Razaq who is also the complainant and Investigation Officer. His examination / evidence is available as Ex. No.3. He produced mashirnama of arrest and recovery at Ex. 3-A, Daily Entries No. 1 & 2 dated 7.2.2017 as Ex.3-B, FIR 3-C, letter addressed to Chemical Examiner as 3-D, Report of Chemical Examiner as Ex. 3-E. Evidence of P W-2 EC Mubarak (mashir) was recorded as Ex.4. Vide Statement at Ex.5 A.D.P.P. for the State closed the prosecution side.

4. On conclusion of evidence of these two witnesses the Statement of the appellants as required under Section 342 Cr.P.C. were recorded as Ex. 6 & 7 respectively in which both the appellants denied the prosecution allegations by stating that the charas has been foisted upon them by Excise Police. However the appellants did not examine themselves on oath under Section 340(2) Cr.P.C. nor produced any witness in defence. While the matter was concluded in this way, an application under Section 540-A Cr.P.C. for recalling and re-examining both the witnesses was filed as per learned counsel some material questions were not put to the witnesses during trial; therefore, by consent that application was allowed and both the witnesses were recalled and re-examined to the extent of production of case property and the defence was allowed to cross-examine the P.Ws.

5. We have heard learned counsel and perused the material available on record.

6. The primary argument of appellants' counsel was that the complainant found 40 packets of different colours in the said cavity wherein he found pieces of charas in the shape of rods and slabs; however, it was not clarified as

to whether each packet containing one or more pieces of rods and /or slabs / Patti, thus the appellants' counsel has made an attempt to demonstrate a case that in case there were more than one slabs or rods then apparently the samples drawn from those packets was not from all the rods and slabs within those packets. It is further alleged that it was not specifically disclosed by them that they were only one rod / slab or more than one rods or slabs in each packet. Since it was an ambiguity, according to the counsel, the witnesses were recalled and the 40 bundles were produced as Article 1-A to 1/X and 1/AA to 1/PP consisting of 24 bundles of charas in the shape of rods and 16 bundles of charas in the shape of strips /slabs.

7. Despite this on re-examination of the witnesses appellants' counsel has not put a single question that each of such packet containing more than one rods or strips / slabs in order to create a doubt. Insofar as the production of 40 samples are concerned, they have failed in the second attempt as well and perhaps they have realized while the articles were reproduced in the re-examination of the witnesses that each packet actually contain one rod or slab and nothing beyond that. It is only because when articles were produced as above he found his case as defenceless.

8. Insofar as the alleged contradiction of a red envelopes are concerned, the I.O sealed them in a brown envelope which were sent for examination to the Chemical Examiner whereas after chemical examination those samples were re-sealed in the red envelope and hence there is no such contradiction on this count as well.

9. The I.O Abdul Razaq stated in his evidence that he sent the samples / parcels to the Chemical Examiner on 9.2.2017. He himself deposited such parcels while he himself drove to Chemical Examiner office at Karachi. Test performed on received items were sufficient to meet the statutory requirement of Section 6 of the Control of Narcotic Substance (Government Analyst) Rules 2001.

10. Insofar as this statement is concerned it is further argued by the appellants' counsel that the report of the Chemical Examiner disclosed that it was received on 10.2.2017. There is indeed no contradiction on this count as well as the incident took place in the afternoon. They left the place of incident at about 1500 hours for the office. The office was around 25 kms away from check post. The truck was brought by EC Sain Bux who was also a driver and

they found the office locked by shift Incharge; then around 1700 hours he reached at the circle office and made entry and lodged FIR and the statement of witnesses was recorded on the same day after lodging of the FIR. It was perhaps too late on 9.2.2017 when he left his office for Karachi and undoubtedly the Chemical Examiner received the parcel on 10.2.2017. There is no inordinate or unexplained delay in sending the subject samples for chemical examination. Under the law 72 hours are required and the time as consumed by the I.O is within the frame of law. He received 40 sealed 'khaki' envelope parcels with perfect seals as per copy sent and the result of the examination disclosed that parcels No. 1 to 24 containing charas rods whereas parcel Nos. 25 to- 40 also containing charas pieces.

11. There is not even minute contradiction let alone any material contradiction which may compel us to interfere in the findings of the trial court while convicting the appellants / accused. The judgments cited by the learned counsel for the appellants are distinguishable on facts and circumstances. In the case reported in **2018 SCMR 2039** it was a case where the Hon'ble Supreme Court observed that the samples of the alleged drug must be saved in safe custody and undergo safe transmission from the place of recovery till it is received at the narcotic testing laboratory. Insofar as the instant case is concerned prosecution has established that the chain of custody was unbroken, unsuspecting and indubitable safe and secure.

12. Insofar as the case of Taimoor Khan reported in 2016 SCMR 621 is concerned same is not applicable as there is no challenge to the authority and competence of the chemical Examiner, as far as their qualification and experience is concerned as notified by the Federal government. Similar is the case of Ikramullah v. State (2015 SCMR 1002) since a challenge met by the prosecution in the instant case was that the report prepared by the government analyst was not prepared in the prescribed manner and consequently it could not qualify to be called a report in the context of Section 36 of the Control of Narcotic Substance Act 1997, so as to be treated as conclusive proof of recovery of narcotic substance from the accused persons. There is no such challenge in the instant case. Insofar as the case of Ameer Zeb v. The State (2012 SCMR 380) is concerned the parameters as observed in the judgment were maintained as samples were drawn from each packet containing single rod or slab and hence the requirements were met.

13. The case of the appellants was considered on the touch stone of the judgments of Honourable Supreme Court referred above and consequently no interference is required. The prosecution has proved its case beyond reasonable doubt, hence the appeal in hand is dismissed.

JUDGE

JUDGE

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