

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:-**

Yousuf Ali Sayeed &  
Adnan Iqbal Chaudhry, JJ

**Criminal Jail Appeal No. 631 of 2019**

Appellant : Jawaad Ali, through Saleem Raza  
Jakhar, Advocate.  
Respondent : The State through Khadim Hussain,  
APG

**Criminal Jail Appeal No. 641 of 2019**

Appellant : Raj Kumar, through Amrat Kumar,  
Advocate.  
Respondent : The State through Khadim Hussain,  
APG  
Dates of hearing : 23.06.2021 and 24.06.2021

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** The captioned Jail Appeals call into question the Judgments dated 12.09.2019 (the “**Impugned Judgments**”) passed by the 1<sup>st</sup> Additional Sessions Judge (Model Criminal Trial Court), Karachi, South (the “**Trial Court**”) in Special Case Number 858 of 2019 titled as The State v. Raj Kumar and Special Case Number 916 of 2019 titled as The State v. Jawaad Ali (the “**Subject Cases**”), whereby convictions were separately recorded against both the Appellants under S.265-H Cr. P.C. for commission of offences under S.9(c) read with S.6 of the Control of Narcotic Substances Act, 1997 (the “**CNSA**”), in respect of which they were sentenced to rigorous imprisonment for 5 years and 6 months and fine of Rs.25,000/-, and in case of non-payment, to undergo simple imprisonment for 5 months more, subject to the benefit of S.382-B Cr. P.C.

2. Albeit ensuing from separate First Information Reports - being FIR Nos. 118/2019 and 120/2019 at PS Gizri, Karachi, South (collectively the “**FIRs**”) on behalf of the State through SIP Ghulam Yaseen (the “**Complainant**”), the Subject Cases significantly overlap since the arrests and seizures were shown to be proximate in time and space, with the respective Appellants ostensibly having been apprehended on 21.03.2019 when the vehicles separately being driven by them were stopped and searched at a brief interval by the same police party at about 0020 hours on that day near Saraiki Bridge, Phase-7, DHA, Karachi.
  
3. Briefly stated, the FIRs narrate that a police party deployed from the aforementioned PS headed by the Complainant was on patrol when a tip was received from a confidential informant that some members of a gang involved in car thefts from posh areas of Karachi who used to supply charas to interior Sindh and Baluchistan would be moving through the Gizri area in such stolen vehicles, laden with drugs and weapons. Therefore, the Complainant informed his superior officers and a Falcon-VIII police mobile car was called for assistance, after which they held “Nakabandi” at the Saraiki Bridge. At the aforementioned time on the stated date, two passing cars were said to have been pointed out by the informant, one being a Toyota Corolla bearing Registration No. AJA-426 (the “**Corolla**”) and the other a Suzuki Mehran bearing Registration No AQV-491 (the “**Mehran**”). Both cars were apparently stopped, with Jawaad stated to have been the sole occupant of the Corolla and Raj of the Mehran. The searches conducted are said to have yielded a unlicensed and unnumbered .30 bore pistol with 5 live bullets in the magazine from each of them, in addition to which two pieces of charas “Chittar-numa” wrapped in yellow colour plastic tape weighing 2010 grams is said to have been found on the person of Jawaad and pieces of charas wrapped in yellow colour plastic tape weighing 2110 grams recovered from the person of Raj.

4. As per the FIR, the ownership documents of the two vehicles were also said to have been found wanting with it being ascertained through the CPLC that they were stolen property, with the theft of the Corolla being the subject of FIR No. 117 of 2019 registered at PS Gizri and that of the Mehran of FIR No. 91 of 2019 registered at PS Clifton. The Appellants were thus shown to have been arrested, with both the vehicles taken into custody and quantity of charas said to have been recovered from each of them stated to have been sealed separately in two parcels and the recovered pistols also shown as being sealed similarly. The FIRs were then registered at 0255 hours on the same day, along with two other FIRs, bearing Nos. 119 and 121 of 2019 registered against the Appellants at the same PS under S.23(i)A of the Sindh Arms Act (the “**SAA**”).
  
5. The witnesses produced by the prosecution were common to both the Subject Cases, and as a single Memo of Arrest, Search and Seizure prepared by the Complainant to cover both the incidents, numerous cross references to the respective searches and arrests thus mark the Impugned Judgments. However, as will be discussed in due course, the interrelation between the matters does not end there. As such, both the Appeals were heard in tandem and by the same token are being addressed conjointly through this Judgment.
  
6. Following the usual investigation, the matters were challaned and sent up before the Trial Court, where the Appellants came to be charged in the Subject Cases under S.9(c) of the CNSA on account of a contravention of Section 6 thereof, to which they pleaded not guilty and claimed trial.

7. Of the several officials said to have comprised the police party on the given day, the Prosecution examined only the Complainant and one of the Mashirs to the arrest and recovery, namely PC Fayaz Hussain, with the Complainant producing the departure entry, Memo of Arrest and Recovery, FIRs, arrival entry and Memo of Site Inspection. In addition, SIP Naeemuddin, the Investigating Officer (“IO”) of the FIRs, was produced as the third and final prosecution witness, who produced a receiving copy of his letters to the Chemical Examiner, the Chemical Examiner’s reports, and the letters issued by him for obtaining the CRO of the Appellants as well as the reports forthcoming in that regard.
8. Based on the testimony of those witnesses and the documentary evidence produced by them, the Trial Court arrived at the conclusion that the prosecution had successfully proven the charge in each of the Subject Cases, with a finding of guilt accordingly being recorded against the Appellants in terms of the Impugned Judgments and their being sentenced in the manner aforementioned. Being aggrieved, the Appellants have preferred the captioned Jail Appeals through the Superintendent, Central Prison, Karachi.
9. Learned counsel for the respective Appellants assailed the Impugned Judgments, contending that the so-called facts narrated in the FIRs were a fabrication and that the evidence produced by the prosecution was marred by gaps and inconsistencies, rendering the same inadequate to support a conviction, with the prosecution having failed to establish safe custody as well as transmission of the samples to the office of the Chemical Examiner. Specifically, it was pointed out that the Appellants had been acquitted in the cases registered against them under the SAA and it was contended that the credibility of the Memo of Arrest and

Recovery had thus been rendered doubtful in as much as it documented the impugned recovery of both drugs and weapons in the cases against the Appellants under the CNSA and SAA, with the recovery of weapons shown therein already having been adjudged to be doubtful. Furthermore, it was also pointed out that the same witnesses had been produced by the prosecution during the course of the trials in the cases against the Appellants under the SAA, with it being contended that as their testimony had been disbelieved in those cases, the witnesses had thus lost their credibility and their testimony could, *a fortiori*, scarcely be given any greater weightage for purpose of the Subject Cases. It was further pointed out that whilst the Appellants had been convicted at trial in the cases under S.381-A PPC ensuing from FIR Nos. 91/2019 and 117/2019, Raj Kumar had then been acquitted on appeal in respect of the theft of the Mehran whereas Jawaad's appeal against the 1-year sentence awarded to him at trial for theft of the Corolla vide judgment dated 30.10.2019 had been dismissed on 13.08.2020 as being time barred, and the sentence had since been served out by him.

10. While dissecting the prosecution's evidence, it was pointed out by learned counsel that 11 witnesses had been cited on behalf of the prosecution at the time of submission of challan but only three of those witness had then been called/produced, and even their testimony was rife with contradictions.
11. Conversely, the learned APG defended the Impugned Judgment, albeit with little conviction and enthusiasm, relying primarily on the Reports of the Chemical Examiner to contend that the samples received had been found to be charas and that it was not unbelievable that private persons had not been available so as to bear witness to the incident keeping in mind the time thereof.

12. Having considered the arguments advanced in light of the record, it is readily discernible that there are multiple inconsistencies afflicting the evidence of the prosecution witnesses in the Subject Cases, with some of the material contradictions being as follows:
- (a) The Complainant merely mentioned that the police party had patrolled through Khayaban-e-Abbasi (in Phase VII Ext), whereas PC Hussain stated that they had patrolled through Phase IV and VII of DHA.
  - (b) While the Complainant stated that 5 to 6 vehicles had been checked prior to the arrest of the Appellants, PC Hussain said that they did not check any other vehicle except for the Corolla and Mehran.
  - (c) Per the Complainant, there was an interval of about 10 to 15 minutes between the arrival of the first vehicle (i.e., the Corolla) and the second vehicle (i.e. the Mehran), whereas PC Hussain confirmed that both vehicles arrived simultaneously at the place of incident.
  - (d) The Complainant deposed that it was he who had conducted the search of Jawaad, whereas PC Hussain contrarily stated that it was he who had done so.
  - (e) The Complainant deposed that 2 pieces of charas wrapped in yellow colour plastic tape were found tied around the abdomen of Raj Kumar with a cloth strip, whereas PC Hussain stated that 1 packet of charas in the shape of 1 similarly wrapped piece was so recovered.
  - (f) The Complainant stated that private witnesses were not available at the time of arrest and recovery, whereas PC Hussain stated that the Complainant asked one or two passers-by to act as witnesses, but they refused.
  - (g) HC Pehlwan who was a witness to the Memo of Arrest, Search and Seizure and was also present at the time of sealing of the parcels of alleged charas was dropped as a witness by the prosecution.

(e) The arrest of the Appellants and recovery of charas from their possession is said to have taken place on 21.03.2019 at around 0010 hours, with the Memo of Arrest and Seizure said to have been prepared by the Complainant on the spot showing the occurrence as spanning from 0020 to 0130 hours. As per the Complainant, the police party then returned to the PS, where the investigation was entrusted to the IO and relevant papers were handed over to him, with the time of registration of the FIR's being entered as 0255 hours. The depositions of the prosecution witnesses narrate that the IO then left the PS at the place of incident at 0315 hours, accompanied by the Complainant and PC Hussain, and conducted a site inspection at 0400 hours so as to return to the PS at 0430 hours, with the relevant entries produced by the IO reflecting such departure and arrival. However, the matter is clouded by the deposition of the IO that his duty timings on the day were from 0800 hours to 2000 hours and the fact that the Memo of Inspection shown as having been prepared on the spot bears a time of 0900 hours.

13. Furthermore, the IO stated that he received the case property from SIP Ghulam Yaseen on 21.03.2019 and sent the same for chemical analysis the next day (i.e. on 22.03.2019), but did not place anything on record to show where the recovered charas was kept during that intervening period. Indeed, no malkhana entry was produced, nor was the officer in charge of the malkhana called upon to depose as to safe custody of the charas. The FIRs are also silent as to the custody of the recovered charas and even the letter shown to have been addressed by the IO to the Chemical Examiner is bereft of a reference number, with it also being acknowledged by the IO during cross-examination that the Appellants had not been implicated in any other narcotics case. As such, the chain of custody remains shrouded in uncertainty, which is of particular significance as the sanctity of the chain is absolutely imperative for the Chemical Examiner's Report to have any real probative value.

14. If any authority is needed in that regard, one need look no further than the Judgment of the Honourable Supreme Court in the cases reported as The State through Regional Director ANF v. Imam Bakhsh and others 2018 SCMR 2039, as well as a more recent Judgment in Criminal Appeal No.184 of 2020, titled Mst. Sakina Ramzan v. The State, where it was held that:

“The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.”

15. Under the circumstances, the inconsistencies identified between the deposition of the witnesses for the prosecution, coupled with the uncertainty surrounding the chain of custody and acquittal of the Appellants in the cases under the SAA, raise significant doubt as to the veracity of the prosecution’s case. The acquittal of the Appellants in those cases under the SAA assumes particular significance by virtue of the fact that they and the Subject Cases essentially arise from the same incident, with the arrest of the Appellants and alleged recovery of unlicensed weapons and charas being commonly



documented under a single Memo. Hence the acquittal in those cases would of itself serve to create an element of doubt for purpose of the matters at hand, with the judgment of a learned Division Bench of this Court in the matter reported as Abdul Ghafoor v. The State 2013 P.Cr. LJ 1185 serving as a case in point - it having been held as follows:

“No doubt, if the joint recovery under same mashirnama is tried by two competent Courts, the findings of the one trial Court are not binding on the other trial Court, however in view of conflicting opinion of two competent Courts in respect of same document a doubt is created and it is not necessary that there should be many circumstances creating doubt but a slightest doubt in the prosecutions case is sufficient to entitle the accused to be acquitted of charge”.

16. Indeed, it is well settled that the presumption of innocence and standard of proof beyond a reasonable doubt are fundamental tenets of a criminal trial, and even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of the accused entitles him to that benefit, not as a matter of grace or a concession, but as a matter of right. We are fortified in this regard by the Judgments of the Honourable Supreme Court in the cases reported as Muhammad Akram v. The State 2009 SCMR 230 and Tariq Pervez, v. The State 1995 SCMR 1345. As such, for an accusation underpinning a charge to crystallize into a conviction, the same has to be proven as per the prescribed standard through legally admissible evidence that is sufficiently probative in that regard.
  
17. That being so, the Impugned Judgments cannot sustain. Hence the Appeals are allowed, with the Appellants being acquitted of the charge and the conviction and sentence thereby awarded to them in the Subject Cases being set aside.

18. Apropos the outcome, it is directed that the Appellants be released from custody forthwith, unless required in connection to some other case.

JUDGE

JUDGE