IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Criminal Appeal No. 494 of 2020

Appellant(s):	Nadeem Ahmed through Mr. Salahuddin Panhwar, advocate.
Respondent:	The State through Mr. Abrar Ali Khichchi, Additional Prosecutor General.
Date of hearing:	04.03.2022
Date of announcement:	11.03.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J- Through captioned criminal appeal, the appellant Nadeem Ahmed son of Muhammad challenged the judgment dated 31.10.2020 *(impugned judgment)* passed by I[st] Additional Sessions Judge/Model Criminal Trial Court (MCTC)/Special Court (CNS) Karachi Central in Special Case No. 340 of 2020, outcome of FIR bearing crime No. 144/2020 registered with Police Station Nazimabad for the offence punishable u/s 6/9(c) Control of Narcotic Substances Act 1997 *(CNSA 1997)*. Through the impugned judgment, the appellant was convicted and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.25,000/-, in default whereof to suffer further imprisonment for 5 months and 15 days more; although benefit of S. 382(b) was extended to him.

2. Precisely, facts pertaining to Crime No. 144/2020 are that on 08.06.2020, SIP Khursheed Ahmed along with his subordinate staff was patrolling when he received spy information regarding an individual selling charas at the sewer located near Diamond CNG Station, Nazimabad 3. Police party headed by SIP Khursheed reached

at the pointed out place and apprehended an individual that they deemed suspicious. After appointing ASI Masroor Hayat and PC Abid as Mashirs due to non-availability of private witnesses; the complainant conducted the search of the blue shopper that the apprehended individual was carrying which was found containing three packets of charas which were then weighed on a digital scale and became 3000 grams. On his further search, two black touchscreen mobile phones a brown wallet, original CNIC, driving license, cash amount of Rs.2,200/-, two currency notes; a Bahrain Dinar and a Saudi Riyal and a digital weighing scale were also recovered. The recovered 3000 grams of charas was sealed on the spot and prepared such memo of arrest and recovery. Nadeem was arrested, brought back to the police station where FIR was lodged against him.

3. After usual investigation, a challan was submitted against the appellant. A formal charge was framed against him by the trial Court to which he pleaded not guilty and claimed to be tried. In order to substantiate its case, prosecution examined four witnesses namely PW-1 **Muhammad Arshad**, PW-2 **Khursheed Khan**, PW-3 **Masroor Hayat** and PW-4 **Muhammad Sarfaraz**. Prosecution also produced a number of documents and other items in evidence which were duly exhibited. Statement of accused was recorded under section 342 Cr.P.C. wherein he denied the allegations levelled against him. However, he neither examined himself on oath nor produced any evidence in his defence to disprove the charge.

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

5. Learned counsel for the appellant argued that the judgment passed by trial court is perverse and shocking and against the criminal administration of justice; 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 at the time of arrest and recovery and all the witnesses are police officials; that the alleged 3000 grams of charas were managed and foisted on the appellant; that the appellant was instead arrested by Rangers and then handed to the police where he was falsely implicated in the present case; that only a single slab was taken by the chemical examiner; that the chemical examiner did not follow the proper protocols at the time of testing; that the safe custody of the narcotics has not been established. In support of his contentions, he has cited the case law reported as ***Ameer Zeb v. The State*** **(PLD 2012 SC 380)**, ***Mst. Nasreen Bibi v. The State*** **(2014 SCMR 1603)**, ***Shaukat Ali alias Billa v. The State*** **(2015 SCMR 308)**, ***The State v. Imam Baksh*** **(2018 SCMR 2039)**, ***Abdul Ghani v. The State*** **(2019 SCMR 608)**, ***Muhammad Naeem v. The State*** **(PLD 2019 SC 669)** and ***Mst. Razia Sultana v. The State*** **(2019 SCMR 1300)**.

6. Conversely, learned Additional Prosecutor General supported the impugned judgment while contending that the appellant was apprehended after receipt of spy information and from the appellant 3000 grams of charas were recovered; that the offence committed by the appellant 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 the prosecution witnesses have fully implicated the present appellant, as such he prays that the instant criminal appeal, being meritless, be dismissed. In support of his contentions, he has placed reliance on the case law reported as ***Abdul Wahab v. The State*** **(2019 SCMR 2061)**, ***Mushtaq Ahmed v. The State*** **(2020 SCMR 474)** and ***Shabbir Hussain v. The State*** **(2021 SCMR 198)**.

7. We have heard the arguments advanced by both the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence available on the record.

8. A perusal of the record suggests that the appellant, after receipt of spy information, was apprehended by the complainant who was given the exact location of his presence; that being Diamond CNG Station next to the sewer. He was apprehended and a blue coloured shopper was found on him. From the shopper, police officials recovered a total of 3 kilograms of charas. The total quantity of charas was sealed on the spot for chemical examination. 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 as well as all the steps taken thereafter. All the witnesses have unanimously deposed that the case property in Court is the same and were never cross-examined on this point by the appellant or the defence counsel at the time of trial. Contraband so recovered from the appellant Nadeem has been proved by examining the complainant ASI Khursheed Khan (PW-2), mashir of the arrest and recovery ASI Masroor Hayat (PW-3) and ASI Muhammad Arshad (PW-1), the malkhana in-charge. The recovered charas was kept in safe custody from the time of its recovery to the time when it was taken to the chemical examiner which is proved by producing entry No. 69/2020 at Ex. 3/A. Furthermore, narcotics were sealed on the spot, had remained sealed in the malkhana before being transported to the chemical examiner on 06.01.2015 which is admitted by PW-1 Muhammad Arshad, the malkhana in-charge, who also admitted that he had *"received the case property in sealed condition"*. Seals on the same

parcels delivered were found intact by the chemical examiner too, further proving safe custody and transmission of the same. Reliance, in this respect, is placed on the case of ***Zahid and another v. The State*** **(2020 SCMR 590)**. The narcotics were sent to the chemical examiner within two hours of the recovery *i.e. 08.06.2020 at 1420 hours* whereas the recovery was made at 1315 hours. The narcotics were deposited in the malkhana by the complainant who then took the same out to deliver them to the chemical examiner himself. 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. Learned counsel for the appellant contended that not all protocols were followed by the chemical examiner which is untrue as a perusal of the chemical examiner's report shows all the tests that were carried out, the manner in which they were carried out and how 10 grams of sample was consumed from each packet which also debunks the argument of the counsel for the appellant regarding the chemical examiner only taking sample for testing from one packet. In this respect, reliance is placed on the unreported judgment dated 01.03.2022 passed by the Hon'ble Supreme Court in ***Criminal Petition No. 762 of 2018*** **(Abdul Rasool v. The State)**, wherein it was observed that:-

> *"3.We have examined the* ***forensic report that contains a detailed description of analysis undertaken by the chemical examiner by mentioned each test, carried out to confirm the narcotic character of the samples****. Relevant witnesses appeared to establish safe custody of the contraband as well as transmission of samples to the laboratory; the argument does not hold water."*

9. Learned counsel for the appellant also contended that evidence of the police officials is not trustworthy and that no independent or private person had 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 principles of 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)**.

10. As far as the defence plea raised by the appellant is concerned, appellant has given stereotypical answers in his statement of accused and has raised no specific plea besides false implication after his arrest by Rangers for which no animus has been alleged or proved against the prosecution. Suffice it to say that nothing was brought on record to suggest the occurrence that the appellant was arrested by the Rangers and then handed to the police nor was any complaint made by any of the relatives or neighbours of the appellant to any higher authorities regarding the appellant's arrest by Rangers nor did the appellant present any evidence to justify his claim. Mere assertion of appellant that he had been involved falsely in the narcotics case, in absence of any tangible evidence, was of no consequence nor did it create any doubt about the recovery of narcotics. The appellant was bound to establish the defence plea agitated by him by adducing tangible evidence and such allegation in absence of sound evidence, could not be considered in view of Article

121 of Qanun-e- Shahadat, 1984. It was observed by the Hon'ble Apex Court in the case of ***Anwar Shamim and another v. The State*** **(2010 SCMR1791)** that it is duty and obligation of an accused person to prove the plea taken by him in his defence in terms of Article 121 of Qanun-e-Shahadat, 1984. More so, S. 29 of CNSA, 1997, casts burden upon an accused to establish his innocence and absolve himself from the allegations of the recovered substance. Prosecution only has to show, by tangible evidence, that accused has dealt with narcotics substance or has had physical custody of it or was directly concerned with it, unless accused proves by preponderance of probability that he did not knowingly or consciously possess the articles; without such proof, accused can be held guilty by virtue of S. 29 of the CNSA, 1997. Therefore, prosecution has successfully discharged its burden in proving the recovery of the narcotics from the appellant Nadeem.

11. For what has been discussed above, we find that the prosecution has undoubtedly proven the guilt of the appellant beyond reasonable shadow of doubt. As such, conviction and sentence awarded to the appellant, vide impugned judgment, are upheld. Therefore, instant criminal appeal, being devoid of any merit, is dismissed.

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