

IN THE HIGH COURT SINDH BENCH AT SUKKUR

Spl. Criminal Appeal No. D - 84 of 2018

Present:

Justice Zafar Ahmed Rajput

Justice Irshad Ali Shah

Appellant : Abdul Rasheed S/o Muhammad Ramzan,
through Mr. Shewak Ram Valecha,
Advocate.

Respondent : The State, through
Mr. Mohsin Ali Khan, Special Prosecutor
ANF.

Date of Hearing : 19.01.2023

J U D G M E N T

ZAFAR AHMED RAJPUT-J:- The appellant was tried by the Sessions Judge/Special Judge (CNS), Sukkur in Special Case No.189 of 2016, arising out of F.I.R. No.30 of 2016, registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 (*"the Act"*) at Police Station ANF, Sukkur. After a full-fledged trial, the learned trial Court vide its judgment, dated 25.06.2018, convicted the appellant for the offence under Section 9(c) of the Act and awarded him sentence to suffer R.I. for a period of already undergone and to pay a fine of Rs.5,000/- or, in default thereof, to undergo simple imprisonment for one month more. The benefit of Section 382-B, Cr.P.C was extended to him. It is against that judgment that the instant Criminal Appeal has been preferred by the appellant.

2. Succinctly, the facts of the prosecution case as narrated in the FIR are that, on 26.10.2016 at 1700 hours, the appellant was arrested at Salateen

Hotel near Sabzi Mandi, Shikarpur Road, Sukkur by ANF police headed by Sub-Inspector Atif Sagheer on being found in possession of 2000 grams of *charas* in presence of *mashirs* P.C. Irfan Samuel and P.C. Usman.

3. After usual investigation, ANF submitted report under Section 173, Cr.P.C. before the trial Court. A formal charge was framed against the appellant as Exh.3, to which he pleaded not guilty and claimed to be tried vide plea recorded at Exh.4. At the trial, prosecution, in order to substantiate the charge against the appellant, examined P.W-1, Sub-Inspector Atif Sagheer, complainant/I.O. at Exh.6, who produced *mashirnama* of arrest and recovery at Exh.6/A, departure entry at Exh.6/B, copy of FIR at Exh.6/C, chemical report at Exh.6/E. P.W-2, P.C. Irfan was examined at Exh.7.

4. The statement of the appellant under Section 342, Cr.P.C. was recorded at Exh.9, wherein he denied the allegation against him and claimed to be innocent. He, however, did not opt to be examined on oath or to produce any defence witness.

5. Learned Counsel for the appellant has mainly contended that the prosecution case is doubtful as only 10 grams of *charas* has been shown in F.I.R. and *mashirnama* to have been sealed separately for chemical analysis, while as per report of chemical examiner, his office received sealed parcel containing 20 grams of *charas* for analysis, which reflects that the case property separated for chemical analysis was not sent to chemical examiner but a different case property which leads to inference that in fact no recovery of *charas* was effected from the possession of the appellant and, the alleged *charas* was foisted upon him.

6. On the other hand, learned Special Prosecutor ANF has fully supported the impugned judgment and conviction of the appellant.

7. Heard the learned Counsel for the appellant as well as learned Special Prosecutor ANF and perused the material available on record with their assistance.

8. It appears from the careful reading of the evidence of prosecution witnesses that, on 26.10.2016, upon receiving information that the appellant would deliver narcotics to his customer at Vegetables Market near Salateen Hotel, P.W-1, Atif Sagheer, Sub-Inspector ANF proceeded to pointed place under Entry No.6 in official vehicle along with ANF staff and reached there at 05:00 p.m., where he arrested the appellant on being found travelling on a motorcycle along with a black coloured shopping bag, which was containing 2 K.Gs. of *charas* in 2 packets, each containing 2 slabs of *charas*. Out of them, he took out 5/5 grams of *charas* from each slab i.e. 10 grams from each packet, total 20 grams from 2 packets and sealed as sample, which were sent to chemical examiner on the very next day i.e. 27.10.2016, from where a positive report dated 10.11.2016 (*Exh.6/E*) was received.

9. Both the P.Ws. have implicated the appellant to have been apprehended on/at aforementioned day, time and place on being in possession of 2000 grams of *charas*. The evidence of P.Ws. in respect of arrest of the appellant and recovery of *charas* is consistent and confidence inspiring. There appears no material contradiction in the depositions of P.Ws. rendering the prosecution case as doubtful.

10. The contention of learned Counsel for the appellant with regard to quantity of sealed parcel appears to be contrary to evidence on record as there were total 2 packets of *charas*, each containing 2 slabs (total 4 slabs of *charas*). Out of them, 5/5 grams of *charas* from each slab were sealed by P.W-1 separately. Besides, it is also a matter of record that after registration of instant case, the appellant was arrested in another crime of same nature bearing No.03 of 2018 registered at Police Station New Foujdari, Shikarpur under Section 9(c) of the Act on being found in possession of 4500 K.Gs. of *charas* and in Crime No.11 of 2021, registered at Police Station ANF, Hyderabad under Section 9(c) of the Act, wherein he has been convicted for the said offence and sentenced to suffer R.I. for 10 years and to pay fine of Rs.2,00,000/- vide judgment dated 27.05.2022 passed by Special Judge, Control of Narcotic Substances/Model Criminal Trial Court-II/IVth Additional Sessions Judge, Hyderabad and presently he is serving out his sentence in Central Prison, Hyderabad, which reflects that the appellant is in fact a habitual offender.

11. For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording conviction and sentence to the appellant by the trial Court. Therefore, instant Special Criminal Appeal is **dismissed**.

JUDGE

JUDGE

Abdul Basit