

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-71 of 2020  
Criminal Appeal No.D-79 of 2020

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro.**  
**Mr. Justice Amjad Ali Sahito.**

Date of hearing: 06.09.2022  
Date of decision: 06.09.2022  
Appellants: Through M/s Masood Rasool Babar Memon and Pervaiz Tariq Tagar, advocates  
The State: Through Mr. Shahnawaz Brohi, Special Prosecutor ANF.

JUDGMENT

**MUHAMMAD IQBAL KALHORO**, J:- A team of Anti Narcotic Force under stewardship of sub-inspector Zahoor Shah, on a tipoff, flagged down appellants, travelling in a car, in front of Ayoob Hotel National Highway Hyderabad on 19.12.2019 at 1500 hours. It found appellant Falak Sher driving the car with a plastic sack under his seat containing 8 packets of chars, each weighing 1 kg, total 8 Kgs. Appellant Ameer Ali sitting on the front seat with another plastic bag lying in front of him with 10 packets, each weighing 1 kg, and total 10 kgs. Both the bags were retrieved, properly checked, contents thereof secured, duly verified and sealed but not before separating 10 grams of sample from each packet total 180 sample weighing as many grams for sending to the office of chemical analyzer for a report. This whole episode ended with preparation of mashirnama recording detail of the incident, arrest of the appellants and registration of FIR against them.

2. After investigation, on submission of final report u/s 173 CrPC in the court, the trial started and a formal charge against appellants was framed. They decided to contest it. Hence prosecution examined 3 witnesses: Investigating Officer, Mashir and PC Aasif Ali and produced all the necessary documents viz: FIR, Memos and Entries

to support its case. Appellants in examination u/s 342 CrPC have denied the allegations but refrained from examining themselves on oath or leading any evidence in defense. Learned trial court after appreciating viewpoints of both the parties has decided the case vide impugned judgment convicting the appellants u/s 6 & 9(c) Control of Narcotics Substance Act 1997, sentencing appellant Falak for 10 years and 6 months RI and fine of Rs.50,000/-, in default, to suffer SI for 8 months more. Appellant Ameer Ali to suffer 12 years and 6 months RI and fine of Rs.60,000/-, in default, to suffer SI for 9 months more. Which, the appellants have challenged by means of the appeals in hand.

3. We have heard learned defense counsel and Special Prosecutor ANF. Points raised in defense allude to innocence of appellants, their false implication; contradictions in evidence over places visited by the ANF team; lack of confidence inspiring evidence on record; and sending only 180 grams for chemical analysis but burdening the appellants with entire property. To earn acquittal of the appellants in justification of these pleas, learned counsel in the end have relied upon the case law reported as **2020 SCMR 196, 2019 SCMR 326, 2019 SCMR 1649, PLD 1997 SC 408, 2019 YLR 51, 2018 MLD 1025, 2018 MLD 1311, 2017 YLR Sindh 1292, 2015 PCrLJ 1402**. Learned Special Prosecutor ANF by pointing out to evidence against them has supported the impugned the judgment.

4. First witness examined by prosecution is IO of the case, SIP Zahoor Shah, he has described the incident in detail: constituting the raiding party after receipt of spy information, nabbing appellants, recovery of two bags containing the charas from their car, preparation of Memo and registration of the case against them. He has also produced relevant entries recording movement of the raiding party on the fateful day, FIR, Memo of place of incident, recovery and arrest of the appellants in addition to the entry documenting deposit of property in Malkhana (Ex-3/E). PW-2, PC Manzoor Hussain (Ex.4), has fully supported the IO over all such features of the case. PW-3, PC Asif Ali, entrusted with samples for delivery in Chemical lab at Karachi, has expressed these facts in his deposition and has produced relevant entry

recording such movement besides identifying the receipt of delivery of samples obtained by him from Lab, already produced at Ex.3/F.

5. All these 3 PWs have been subjected to a considerable length of cross-examination but defense has not succeeded in creating any dent in their evidence. They have stood the ground on all salient features of the case without wavering. Their evidence, confidence inspiring as it is, in absence any record of animosity with the appellants cannot be discarded. To us, it is clear that prosecution has succeeded to prove case against the appellants beyond a reasonable doubt. Minor discrepancies do occur in the evidence of witnesses but they assume importance only when material aspects of the case are rendered doubtful. The controversy raised in defense over places covered by the raiding party before reaching place of incident is of no importance, therefore, in the present context. The defense has not otherwise pointed out to any worthwhile discrepancy in the evidence to be read with it and give its benefit to the appellants. Secondly, there is no discrepancy at all in the evidence over this point except that one witness has mentioned fewer places covered by them from the office to place of the incident than the other witnesses. It is not disputed, however, nor is it the case of the appellants, that all such places mentioned by two witnesses are in fact situated on the way from office to the place of incident.

6. The 18 samples, each weighing 10 grams, sent to chemical lab for analysis are the representative samples obtained from each packet numbering 18. Each sample represents each packet weighing 1 Kg and this simple calculation means that the appellants are responsible for entire property recovered from them. The argument raised in defense that appellants would be held responsible only for 180 grams of chars is not therefore sustainable. Even otherwise, it may be mentioned that the appellants nowhere have contested the originality or genesis of the samples to be part of the whole property. Further, in order to boost the case, and establishing safe custody of the property, an entry at Ex.3/E recording deposit of recovered property in Malkhana has been produced. Entrustment of samples to PW-3 Asif Ali and its delivery by him in lab at Karachi for analysis is also established through his evidence. The chemical report (Ex.3/G) evinces that property was received in the office next day on 20.12.2019 in a sealed

condition, found satisfactory, though PC Asif Ali, PW-3. The detail of protocol applied to test the samples has also been incorporated in the report. Safe custody of the property and safe transmission of the samples thus are verified without any trace of reasonable doubt. No inconsistency, minor or major in either deposit of the property in Malkhana or receipt of the samples in lab at Karachi has indeed been pointed out by leaned defense counsel undermining the intrinsic worth of the prosecution case against appellants.

7. When this entire incriminating evidence consisting different pieces is put to the appellants in the trial for their explanation and rebuttal u/s 342 CrPC, they simply tend to deny it and urge that their implication is a result of personal enmity and political gimmickry, the pleas, they have miserably failed to substantiate by leading any evidence in this regard. We, therefore, finding all the factors discussed above persuasive in favour of prosecution case, are not inclined to accept the appeals in hand and dismiss them, and maintain conviction and sentences awarded to the appellants vide impugned judgment.

The instant appeals are disposed of in above terms.

JUDGE

JUDGE