

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No.D-80 of 2013

PRESENT:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Muhammad Iqbal Kalhoro,

Appellant : Zahid Ali Chandio, through Mr. Muhammad Tarique Metlo, Advocate.

Respondent : The State, through Mr. Sardar Ali Shah, Assistant Prosecutor General.

Date of hearing: 29-11-2016.

Date of Judgment: 29.11.2016.

J U D G M E N T.

Muhammad Iqbal Kalhoro, J.- Appellant was tried by learned Sessions/Special Judge for CNS, Larkana in Special Narcotic Case No.04/2013 bearing crime No.158/2012 registered at Police Station Market, Larkana for the offence under Section 9(c) of Control of Narcotic Substances Act, 1997 and was convicted and sentenced vide impugned judgment dated 23.10.2013 to suffer imprisonment for ten (10) years and to pay fine of Rs.50,000/- (fifty thousand) or in default whereof to suffer simple imprisonment for six (6) months more.

2. As per precise allegations, the appellant was arrested on spy information from the road leading towards Jinnah Bagh near Little Fox School, Larkana on 30.12.2012, at 0600 hours and from him 6.110 kilograms of charas was recovered.

3. Record reflects that prosecution in order to prove it's case has examined complainant, namely, SIP Mukhtiar Ali Memon at Ex.4, mashir of recovery PC Ayaz Ali at Ex.5 and I.O of the case SIP Azhar Ali at Ex.6. These witnesses have produced all the necessary documents of prosecution case in their evidence including F.I.R, memo, relevant entries and report of Chemical Analyzer. After closure of prosecution side, statement of the appellant was recorded under Section 342, Cr.P.C, in which he has denied the allegations; however, neither he has examined himself on oath nor has led any evidence in his defence. He, however, has produced a photostat copy of Constitutional Petition No.S-1604/2012, filed by him at Sukkur Bench of this Court against police officials of district Khairpur Mirs. At the conclusion of trial, the appellant has been convicted vide impugned judgment in the terms case as stated above; and being aggrieved by the same, he has preferred this appeal.

4. We have heard learned Counsel for the parties and have perused the material available on record including the case-laws cited at the bar. Learned defence Counsel has mainly argued that the appellant has been falsely implicated in this case; that the evidence adduced by the prosecution is not confidence-inspiring; that there are a number of contradictions and discrepancies in the evidence of the witnesses, which have made the prosecution case entirely doubtful. He has further contended that there are also many contradictions in the evidence regarding the timings at which the formalities were carried out at the spot; that there is delay of four (4) days in sending the alleged Charas to the Chemical Analyzer, which is in violation of the rules of Control of Narcotic Substances (Government Analysts) Rules, 2001, stipulating that the recovered narcotic / sample has to be sent to the office of Chemical Analyzer within 72 hours. He has lastly submitted that in view of such glaring discrepancies, the appeal be allowed and the appellant be acquitted. In support of his contentions, he has relied upon the cases reported as *Hakim Ali v. The State* (2001 Cr.L.J 1865), *Muhammad Saleh alias Dubi Gadehi v. The State* (2015 YLR 2520) and *Shahid Mehmood v. The State* (2016 P.Cr.L.J 1234).

5. On the other hand, learned APG has supported the impugned judgment and contends that there are no material contradictions in the prosecution evidence; that the prosecution witnesses have fully supported each other on all material aspects of the case. According to him, the minor discrepancies pointed out by learned defence Counsel are inconsequential and cannot be considered in a narcotic case, as the offence under Narcotic Law is against the society and Courts are required to have a dynamic approach in such cases.

6. The evidence of prosecution witnesses indicates that the appellant was arrested on 30.12.2012, at 0600 hours by SIP Mukhtiar Ali Memon posted at Police Station Market, Larkana, from the road leading towards Jinnah Bagh, near Little Fox School, Larkana and from him 6.110 kilograms Charas was recovered. Both the complainant and mashir of recovery have supported each other on all salient features of the case. There is no material contradiction in their evidence rendering the prosecution case as doubtful. The discrepancies in the evidence in respect of mentioning of timings of doing different acts in completing the formalities at the spot are minor in nature and cannot be given much importance. The evidence of the witnesses in respect of arrest and recovery of Charas is consistent and confidence-inspiring. In Narcotic cases, the Courts have to have a dynamic approach in

appreciating the evidence. The discrepancies which have no impact on the material aspects of the case have to be ignored.

7. As regards the delay of four days in sending the Charas to the Chemical Analyzer, it is relevant to note that although the relevant rules of Control of Narcotic Substances (Government Analysts) Rules, 2001, prescribe 72 hours for sending the contraband to the Chemical Analyzer after its recovery, but the same requirement is directory and not mandatory in nature. Reliance in this regard can be placed in the case laws reported in 2011 SCMR 624 and 2013 YLR 1683.

8. As to filing of the Constitutional Petition, which the appellant has taken as his defence to show that he has been falsely implicated, we have noted that the said petition was not filed against the complainant or any of the police officers posted in district Larkana to give rise to a presumption that complainant has falsely implicated the appellant in this case. More so, it may be mentioned that now-a-days the drug-barons have become smart and in order to save themselves, they often file petitions or move applications against the police officials in advance before undertaking any nefarious activities, with intention to create defence in the event of their arrest. Be that as it may, as we have discussed above that this is a case in which the appellant was found in possession of huge quantity of narcotics viz. 6 kilograms of Charas, which obviously cannot be foisted upon him, unless it is shown on record that he had some animosity with the police officials acting as complainant and mashir or the said police officials had any motive to falsely implicate him.

9. In view of above discussion, we are of the confirmed view that the judgment of the trial Court does not require interference as far as declaration of the appellant as guilty is concerned. However, at the same time we must mention that the report of Chemical Analyzer, produced at Ex.6/A, shows the net weight of Charas recovered from the appellant as 6 kilograms and as per sentencing policy provided in the case of *Ghulam Murtaza v. The State* (PLD 2009 Lahore 362), the punishment against the recovery of Charas of 6 kilograms is R.I. for 8 years and 6 months and fine of Rs.40,000/- in default of which S.I. for 7 months. We, therefore, tend to modify the sentence awarded by the learned trial Court to the appellant to R.I. for 8 years and 6 months, with fine of Rs.40,000/-, in default whereof S.I. for 7 months more. With this modification in the sentence, the appeal in hand stands dismissed.

JUDGE

JUDGE