

IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. D-5 of 2019

Present:

Justice Zafar Ahmed Rajput
Justice Shamsuddin Abbasi

Appellants : 1. Daud Khan s/o Abdul Manan Brohi
2. Sher Jan s/o Abdul Salam Brohi, through
Mr. Karim Bukhsh, advocate

Respondent : The State, through
Mr. Ali Anwar Kandhro, Addl. P.G.

Date of Hearing : 03.03.2020
Date of Order : 20.03.2020

JUDGMENT

ZAFAR AHMED RAJPUT-J:- Impugned in this Criminal Jail Appeal is the judgment, dated 19.12.2018, passed in Special Case No.146 of 2017, arising out of Crime No.21/2017, registered under section 9(c) of the Control of Narcotic Substances Act, 1997 ("*Act of 1997*") at P.S Lakhi Ghulam Shah, whereby the learned Sessions Judge Shikarpur/Special Judge Narcotics convicted the appellants for the offence under section 9 (c), Act of 1997 and awarded them sentence to endure life imprisonment and to pay a fine of Rupees One Million each or, in default thereof, to undergo simple imprisonment for six months more. The benefit of Section 382-B, Cr. P.C has, however, been extended to the appellants.

2. Succinctly, the facts of the prosecution case as narrated in FIR are that on 22.03.2017 at 1000 hrs. the appellants were arrested main leading road from Sukkur to Shikarpur, near Wazirabad gate, situated in Deh Lakhi, Taluka Lakhi Ghulam Shah by a police party headed by ASI

Manzoor Hussain of P.S. Lakhi Ghulam Shah in presence of mashirs, namely, PCs. Noor Muhammad Junejo and Mansoor Ali, on being found possessing/transporting 120 kilograms of charas in shape of packets lying in the trunk of Mazda bearing registration No. TKD-243.

3. Having been investigated the case, police sent up the appellants for trial. Formal charge was framed by the trial Court against the appellant as Exh.2, to which he pleaded not guilty and claimed to be tried, vide plea recorded at Exh.3 & 4 . At the trial, prosecution in order to substantiate the charge against the appellants examined three witnesses, namely, PW-1-ASI Manzoor Hussain, the complainant, at Exh.6, PW-2 PC Noor Muhammad, the mashir, at Exh.7 and PW-3 Inspector Syed Hajan Shah, investigating Officer, at Exh. 8. They produced relevant documents in their evidence. The statements of appellants under section 342, Cr. P.C were recorded at Exh.10 and 11, respectively wherein they denied the allegation against them and pleaded innocence by claiming enmity with one Nooruddin Brohi resident of Wazirabad gate over matrimonial affairs. They; however, neither opted for examination on oath under section 340 (2), Cr. P.C. nor even led evidence in their defense. Upon the assessment of the evidence on record, the learned trial Court convicted and sentenced the appellants as mentioned above.

4. Learned counsel for the appellants has contended that the impugned judgment is not sustainable in law being contrary to the facts and law. He has further contended that the trial Court failed to consider defense pleas of appellants. He while referring Rules 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 ("*Rules of 2001*") has further

contended that there is violation of said Rule as the protocols applied in examination of the sample has not been mentioned in the report of the Chemical Examiner hence the same being inconclusive is unreliable and carries no credibility. He has also contended that as per the statement of P.W-2, the charas was wrapped in plastic sheet of white colour, while the substance produced before the Court was wrapped in multi-coloured plastic packets. He has also contended that no evidence is available to consider safe transmission of sample from the place of recovery to police station and from police station to MALKHANA and from MALKHANA to Chemical Examiner, which has rendered the prosecution case against the appellant doubtful entitling him for the benefit hence, the conviction and sentence awarded to appellant are liable to be set aside. Learned counsel in support of his contentions has relied upon the case of *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039) and *Muhammad Boota v. The State and another* (2020 SCMR 196).

5. On the other hand, learned Addl. P.G. has fully supported the impugned judgment by maintaining that no enmity has been alleged by the appellants with police and they failed to produce any evidence in support of alleged enmity with one Nooruddin Brohi. He has further maintained that the prosecution witnesses have given un-contradicted, trustworthy and steadfast account of alleged recovery of huge quantity of contraband article and minor discrepancies in the statements of P.Ws are ignorable to afflux of time. He has also maintained that the report of Chemical Examiner merits consideration as it is within the mandate of Rule 6 and Form-II of the Rules of 2001.



6. We have heard the learned counsel for the appellants as well as learned Addl. P.G for the State and have examined the material available on record with their assistance.

7. It reveals from the evidence of prosecution witnesses that, on 22.03.2017, P.W-1 complainant ASI Manzoor Hussain was on patrolling along with P.W-2 P.C Noor Muhammad (mashir), P.Cs Mansoor Ali, Muhammad Bux and driver P.C Seengar Ali in official vehicle No.4353 under Entry No.05 at 0830 hours (Exh.6-C) in the area. During patrolling he received spy information that one MAZDA vehicle was coming from Quetta carrying charas. They came at Sukkur-Shikarpur road and started checking near Wazirabad gate and at 1000 hrs. they saw a Mazda vehicle bearing registration No.TKD-243, they got it stopped. He in presence of mashirs P.Cs Noor Muhammad and Mansoor Ali made enquiry on that the person driving the vehicle disclosed his name as Daud Khan s/o Abdul Manan by caste Brohi R/o Mashriqi Bypass Quetta while, the cleaner disclosed his name as Sher Khan s/o Abdul Salam by caste Brohi R/o Mian Gandi Quetta. On search of vehicle, they recovered 120 packets of charas from secret cavities, which on weighing came to 120 kilograms. He sealed the packets in three Pachkas (*plastic bags*) in each Pachka 40 packets were sealed. From physical search, he recovered Rs.4500/- from accused Daud Khan from his pocket and a registration book while from accused Sher Khan an amount of Rs.500/= was recovered. He then prepared mashirnama (Exh.6-A) and brought the accused and case property at P.S where he lodged FIR (Exh.6-B) against the accused for the offence under section 9 (c) C.N.S. Act, 1997. Such arrival entry No.10 (Exh.6-C) was also made in *roznamcha* at 1200 noon. to P.W-3 Inspector

Hajan Shah during investigation left police station along with staff under *roznamcha* entry No. 12 at 1245 hrs (Exh.8-A). and visited the place of incident pointed out by the PW-1, he prepared memo of incident (Exh.7-A produced by P.W-1 Mashir Noor Muhammad) in presence of said mashirs. He recorded the statements of P.Ws and sent the case property for chemical examination under a road certificate (Exh.8-B). He obtained the Chemical Examiner's report (Exh.8-C). Case property viz. charas was produced before the trial Court and Mazda vehicle was parked outside the Court room at the time of recording evidence of P.Ws.

8. All the three P.Ws have implicated the appellants to have been apprehended on/at aforementioned day, time and place on being in possession of 120 kilograms of charas. The evidence of PWs in respect of arrest 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. Admittedly none of the prosecution witnesses had any enmity with the appellant nor was it suggested. The appellants however, suggested their enmity with one Nooruddin Brohi on matrimonial disputes but they failed to bring on record any evidence in support of their defense plea. The discrepancy in the statement of P.W-2, as pointed out by the learned counsel for the appellants is minor in nature. It goes without saying that in narcotic cases the Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in the statements of prosecution witnesses due to lapse of time or those having no impact on the material aspects of the case, have to be ignored.



9. In order to appreciate the arguments of learned counsel for the appellant, we deem it appropriate to reproduce here Rule 6 of the Rules of 2001, as under:

6. Report of result of test or analysis--After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II.

FORM II

CERTIFICATIONS OF TEST OR ANALYSIS BY FEDERAL NARCOTIC TESTING LABORATORY GOVERNMENT ANALYST

1. Certified that the sample bearing on-----purporting to be sample of-----received on-----with memorandum No.-----dated-----from-----has been test/analyzed and the result of each test/analysis is stated below :
2. The condition of the seal on the packet on receipt was as follows; Satisfactory/Unsatisfactory/None.
3. In the opinion of the undersigned the sample is----- as defined in the Section 2 of the CNS Act, 1997.
4. **DETAILS OF THE RESULTS OF TESTS/ANALYSIS :**
 Sample No.-----
 Gross Wt.:-----Net Wt.:-----
 F.I.R No.-----Dated-----
 Accused-----

 Physical Examination-----
 Conclusion

NOTE: In case of mixture the %age of each Alkaloids, Opium derivatives, Opiates, Cannabis, Drugs of abuse and the synthetic compounds are as follows:

The sample identified as-----and contains %

Signature of Government Analyst
Federal Narcotics Testing Laboratory

Signature of any other authorized
Officer of Laboratory

10. The Chemical Examiner's report (Exh.8/C) in the instant case is marked with as under:

REPORT ON Three sealed white cloth parcels
LETTER No. R C 30, Dated 24.03.2017
RECEIVED ON 24.03.2017
BY THE HANDS OF PC Muhammad Hashim

**MODE IN WHICH THE PARCEL WAS/WERE
FOUND TO BE PACKED OF RECEIPT**

Three sealed white cloth parcels each bearing 03 seals
Seals perfect and as per copy sent

LABELLED IN SINDHI AS/

1. Crime No: 21/2017 U/S 9/C CNS
2. Accused: Daud Khan and Sher Jan Brohi
3. 40 Kilo Grams of Charas in each parcel No: 1 to 3
4. Signature of Two Mashirs on each katta.

TESTS PERFORMED

1. Total weight of the above each parcel No: 1 to 3 along with contents: 40 Kilo & 606 Grams.

Net weight of slabs of each parcel No: 1 to 3, 40 Kilo Grams.

2. Physical examination: smell like that of Charas
3. Resin test..... Positive
4. Microscopic Exam: Horn type spines visible.

RESULT OF EXAMINATION

The above each plastic katta No. 1 to 3 contains Charas.

11. Rule 6 of the Rules of 2001 requires reference to the protocols applied for the test or analysis as per Form-II. We have scanned the Chemical Examiner's report (Exh.8/C) and of the opinion that the same is substantially and significantly meets the rudiments of Rule 6 and Form-II. It reflects from perusal of the (Exh.8/C) that it bears reference of letter through which sample was deposited, date of receiving sample, name of official who deposited the sample, the condition of the seals on the parcels, description of article in the parcels, total weight of each parcel, net weight of slab of each parcel, physical examination, resin test, microscopic examination and the result of the examination. We are therefore of the

view that the Chemical Examiner's report qualifies to meet the required standards and it is in consonance with Form-II referred to in Rule 6 (ibid).

12. So far arguments of the learned counsel for the appellant regarding safe custody in MALKHANA is concerned. It is pertinent to note that the alleged charas was recovered on 22.03.2017 and the same was sent to Chemical Examiner promptly on the 24.03.2017 and it was not the case of the appellants before the trial Court that the case property was tampered with while lying in the MALKHANA. Once the prosecution *prima facie* establishes its case, then under Section 29 of the Act of 1997 burden shifts upon the accused to prove contrary to the case of the prosecution, and in the instant case, the appellants have failed to do so.

13. 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 sentence and conviction to appellants by the trial Court. Hence, instant criminal appeal is dismissed.

Mr. Sharma
S.P.