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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

**Crl. Appeal No.D-21 of 2013**

**Present**

**Mr. Justice Zafar Ahmed Rajput &  
Mr. Justice Muhammad Saleem Jessar**

Appellant : Zarmad Khan Pathan  
through Mr. Safdar Ali Ghouri, advocate

Respondent : The State  
Through Mr. Khadim Hussain  
Khoharo, Additional P.G

Date of hearing : 23.11.2017

Date of judgment : 23.11.2017.

**J U D G M E N T**

**MUHAMMAD SALEEM JESSAR.J-** By this judgment, we intend to dispose of above Criminal Appeal, whereby Appellant/ Convict Zarmad Khan has challenged his conviction recorded by the learned Sessions Judge/Special Judge for CNS, Kashmore at Kandhkot vide judgment dated 21.02.2013, in Case No.01 of 2011 (The State Vs. Zarmad Khan Pathan) arising out of FIR No.02/2010, U/S 6, 8, 9(C) CNS Act, 1997 registered at P.S Circle Kashmore awarding sentence to suffer R.I for life under Section 9(C) CNS Act, 1997, and to pay fine of Rs.300,000/- (Rupees three Lac) or in default thereof to undergo further imprisonment for One Year and Six Months. The appellant was, however, extended the benefit admissible under Section 382-B Cr.P.C.

2. The crux of prosecution case is that, on 23.12.2010 Excise Inspector Jan Muhammad Junejo lodged F.I.R on behalf of the State, to the effect that on fateful day he alongwith other Excise officials left vide entry No.01 and

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reached at Excise Check-Post near Wardak Petrol Pump, where they received information through spy about coming of a Truck from Dera More bearing huge quantity of narcotic substances and within short while they noticed that a truck was coming with registration No. E- 4535 D.I. Khan; they got stopped said truck; two persons were sitting in the truck and on enquiry the person who was driving the truck disclosed his name to be Zarmad Khan, while another disclosed himself to be cleaner of the truck and disclosed his name as Shamal Khan. The complainant recovered cash or Rs.25000/- during personal search of Zarmad Khan and Rs.1200/- from Shamal Khan. The complainant recovered registration book of the truck, which was in the name of one Rashid Khan. The truck was found loaded with orange boxes and on enquiry the driver disclosed that it was loaded from Awan Goods Transport Company, G.T Road, Kasowal, District Sahiwal; he produced such built receipt. The police found secret boxed affixed in base of the truck, which were opened, wherein plastic bags of white and yellow color were lying; out of them 134 bags were containing heroin powder, while 20 bags were containing opium. The heroin power on weighing became 150-kilograms while opium became 20 kilograms. Five plastic bags of white color and 17 plastic bags of off-white color containing heroin power and 5 plastic bags containing opium were separated for as sample while rest of contraband was sealed separately and ultimately the accused with case property were brought at police station, where complainant lodged report.

3. After usual investigation, challan was submitted by the Excise Officer before the trial Court on 08.01.2011.

4. During pendency, co-accused Shamal Khan being of tender age was declared as Juvenile Offender, thus trial of Juvenile Offender Shamal Khan was separated from present appellant Zarmad Khan.

5. After taking cognizance and completion of codal formalities learned trial court framed formal charge at Ex.05 against the appellant/accused to which he pleaded not guilty and claimed to be tried vide his plea at Ex.5-A.

6. To prove its case, the prosecution examined in all two witnesses. Complainant/I.O Jan Muhammad Junejo, Excise Inspector examined as PW-01 at Ex.06, EC Ali Gohar examined as P.W-2 at Ex.07.

7. Statement of Appellant/accused was recorded under Section 342 Cr.P.C at Ex.11, wherein he pleaded his innocence and stated that PWs are interested and the alleged heroin powder and opium have been foisted upon him; that on the fateful day he was going from Peshawar to Karachi on a coach, which was got stopped by Excise Officials at Wardak Petrol Pump and he was offloaded from the coach, thereafter, he was taken to Excise Police Station where on same night excise officials also brought a truck loaded with orange and on following morning he was booked in this false case. He further submitted that neither he was driver of the truck nor anything was recovered from his possession.

8. The learned trial court after hearing learned counsel for the parties, convicted and sentenced the appellant as stated above.

9. We have heard Mr. Safdar Ali Ghouri, learned counsel for the appellant, Mr. Khadim Hussain Koharo, Additional Prosecutor General, Sindh for the State and have scanned the record carefully and anxiously.

10. Learned counsel for the appellant has argued that there are major contradictions in evidence of complainant Jan Mohammad Junejo and EJ Ali Gohar and these contradictions cut the root of the prosecution case. He argued that there is violation of Section 103 Cr.P.C besides complainant himself has conducted investigation of instant case. He added that the

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impugned judgment does not inspire confidence and the trial court has not appreciated the evidence brought by the defence on record thereby it has caused miscarriage of justice. He prayed that entire episode of prosecution case is based upon the spy information through AETO Qurban Ali Shaikh but none examination of Qurban Ali Shaikh has created lot of doubts upon the veracity of prosecution evidence which has made the case of prosecution highly doubtful and entitles the appellant with acquittal. He next argued that alleged Narcotics Substance was recovered from secret cavities of the vehicle and prosecution has failed to establish that the appellant was having such knowledge. He further argued that as per prosecution case, AETO Qurban Ali Shaikh had received spy information regarding transportation of contraband, but prosecution has not examined AETO Qurban Ali Shaikh. He contended that FIR has been registered with delay of 13 hours, therefore, there is every possibility of false implication of appellant after due consultation. He has emphasized that in view of major contradictions, deposition of P.Ws and discrepancies in investigation, the prosecution case has become doubtful, therefore, appellant may be acquitted by extending benefit of doubt to him. In support of his contentions he relied upon the cases of *Khan Mohammad Vs the State*, reported in *PLD 2004 Karachi 681*, *Mst. Jameela and another Vs the State* reported in *PLD 2012 SC 369*, *Zahoor Ahmed Awan and another VS the State* reported in *1997 SCMR 543*, *Munwar Ali Jatoi Vs the State* reported as *2012 MLD 1763*, *Shahbaz Ahmed Vs the State* reported in *1994 P.Cr.L.J 938*, *Haji Inayat and another Vs the State* reported in *2010 P.Cr.L.J 825* and *Bakhti Jan Vs the State* reported as *2011 YLR 134*.

11. On the other hand, Mr. Khadim Hussain Khoharo, Additional Prosecutor General appearing on behalf of the State has vehemently opposed the appeal and supported the impugned judgment by arguing that

huge quantity of heroin powder and opium has been recovered from the possession of appellant which he, alongwith juvenile co-accused Shamal Khan, was transporting in the truck being driven by him. He further argued that Excise Police have no enmity with the appellant nor such evidence has been brought on record by the defence to implicate the appellant falsely. He has maintained that it was not easy for excise police to manage such huge quantity of heroin powder and opium against the appellant. He has further argued that complainant Jan Mohammad and PW EJ Ali Gohar have fully supported the prosecution case. He added that the prosecution evidence is confidence inspiring, natural and has not been shaken in cross examination, which has been fully corroborated by positive chemical examination report, as such, the appellant has been rightly convicted and sentenced. The learned Addl. PG further contended that the trial court has taken lenient view by awarding punishment in terms of the sentencing policy enumerated in the case of *Ghulam Murtaza Vs the State vide PLD 2009 Lahore 362*. He has also placed reliance upon the cases of *Surhiya Bibi Vs. the State reported in 2009 P.Cr.L.J 46*, *Khair Mohammad Vs The State reported in 2006 SCMR 299* and *Aziz Rehman Vs the State 2006 SCMR 1826*.

12. We have considered the arguments advanced by the learned counsel for respective parties and have gone through the evidence and other material available on record.

13. The perusal of evidence would itself show that evidence of both the witnesses is trustworthy and confidence inspiring, without any material contradiction, going through the roots of recovery of contraband material from the secret cavities. Both the witnesses were cross examined at length but nothing favourable to the appellant has come on record neither any inherent defect in the evidence of both the witnesses has been pointed out except some minor contradictions. The contentions of learned counsel for

the appellant that private persons were not associated as mashirs is without substance. Under the law Excise Officials are as good witnesses as private witnesses, unless malafide is brought on record against them. In this case nothing is brought on record against them, except the word of appellant that actual culprits are released by Excise Officials, such plea in absence of tangible evidence is hanging in the air.

14. It has been vehemently contended by the learned counsel for the appellant that Excise Inspector Jan Muhammad Junejo, who is the complainant of the present case, could not act as Investigating Officer at the same time as no one could be judge of his own case. The contention is without legal force for the reasons that there is no law by which any restriction has been imposed on the police officer, not to act as complainant and Investigating Officer at the same time. In fact there is no embargo on any Police Officer in whose presence an offence has been committed to act as Investigating Officer. Reliance in this regard can be made on the case reported in *PLD 1997 Supreme Court 408 (The State Vs. Bashir)*, wherein the Hon'ble Supreme Court was pleased to observe that no legal prohibition for a police officer to be a complainant if he is a witness to the commission of an offence and also to be an Investigating Officer so long as it does not in any case, prejudice the accused person. The dictum laid down by the Hon'ble Supreme Court in the case of *The State vs. Bashir, (supra)*, is usefully quoted herein below for the sake of convenience:

*"I agree with Ajmal Mian, J, that we are unable to subscribe the said broad legal proposition and that there is no legal prohibition for a police officer to be a complainant if he is a witness to the commission of an offence and also be an Investigating officer so long as it does not, in any way, prejudice the accused person."*

15. It appears that I/O Jan Muhammad Junejo, Excise Inspector and EC Ali Gohar, mashir of recovery have clearly deposed that 150 Kilo grams heroin powder and 20 Kilo grams opium was recovered from the vehicle of the appellant on 23.12.2010. Excise officials have also produced arrival and departure roznamcha entries for the satisfaction of the court, we, therefore hold that appellant was on driving seat of vehicle, he was responsible for transportation of narcotics, having knowledge of same. It was in his exclusive possession and control. In the case of *Mehrab Khan and 4 others Vs. The State, reported in PLD 2002 (Quetta) 58*, it is laid down that word "possession" has been used in the wider sense so that include transport, dispatch and delivery, transportation within the country is also prohibited and finding relating to ownership is not required and accused person has failed to disprove the factum of possession of contraband articles under section 29 of CNS Act 1997, as he has taken zigzag defence plea. In the cross examination of Jan Muhammad at Ex:6, the appellant has taken plea that he took lift from driver Juma Gul from Dera Morr (A bus stop) and his driving license is managed by Excise officials, after releasing actual culprits. During the cross examination of EJ Ali Gohar PW-2 at Ex:7, the appellant has taken another plea that he was offloaded from the coach in which he was travelling for Karachi, and after exchange of hot words he was implicated in this case while in his statement under Section 342 Cr.P.C he has taken yet another plea that his driving license was snatched while he was travelling in coach by Excise Officials. In these circumstances, there can be no two opinions but all defence plea of appellant/convict Zarmad Khan is found afterthought and when his plea is put to juxtaposition with the prosecution case, the prosecution case is more firm, confidence inspiring and truthful, as driving license recovered from the appellant/convict clearly shows that he was driving the vehicle in question.

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16. It is matter of record that appellant Zarmad Khan was driving the truck in question from which huge quantity of contraband material is recovered. Hon'ble Apex court with consistency has laid down the law in respect of responsibility of drivers of vehicles from which contraband articles are recovered. In the cases of *Muhammad Shah Vs. the State*, reported in PLD 1984 SC 278, *Said Shah and 2 others Versus the State*, reported in PLD 1987 SC 288, *Shaehrzada Versus The State*, reported in 1993 SCMR 149, *Shah Wali and another Versus the State*, reported in PLD 1993 SC 32, *Rab Nawaz and others Vs The State*, reported in PLD 1994 SC 858, *Ikram Hussain Versus the State*, reported in 2005 SCMR 1487 *Muhammad Noor and others Versus The State*, reported in 2010 SCMR 927, *Kashif Amir Versus The State* reported in PLD 2010 SC 1052, it has been laid down that .it is well settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics, having knowledge of the same as no condition or qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is Incharge of the same and it would be under his control and possession, hence whatever articles lying in it would be under his control and possession." Likewise, in the case of (*Lal Badshah Vs. The State*, reported in 2011 SCMR 984), Hon'ble Apex Court has maintained the conviction of driver of vehicle from whom contraband articles were recovered. In the presence of all these pronouncements of Hon'ble apex Court, We are afraid, cases relied upon by the learned counsel for appellant are on distinguishable facts and circumstances and not applicable to the present case.

17. In these circumstances, we are of the considered opinion that prosecution has with confidence inspiring evidence has proved that appellant/convict Zarmad Khan was in possession of contraband heroin powder and opium for trafficking in contravention of Section 6 and 8 of CNS

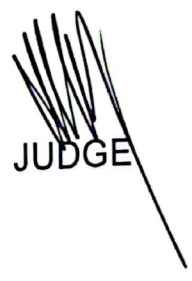
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Act 1997. We are, therefore, of the view that the prosecution has proved its case beyond shadow of doubt by adducing inspiring confidence evidence. The impugned judgment is speaking one and the learned trial court has rightly appreciated the evidence brought by prosecution and has rightly convicted and sentenced the appellant/convict for the charge he stand charge sheeted. Accordingly, we, by maintaining the impugned judgment, dated 21.02.2013 dismissed instant appeal being devoid of its merit.

  
JUDGE

  
JUDGE

Dated: 23.11.2017