

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

*f. n.*  
Crl. Appeal No.D-03 of 2015

**Present :**

**Zafar Ahmed Rajput, J.  
Muhammad Iqbal Kalhoro, J.**

Appellants : Mst. Khalida and Mst. Sughra, through Mr. Rafique Ahmed K. Abro, Advocate.

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

Date of hearing: 08.11.2016.

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

**Muhammad Iqbal Kalhoro, J-** Appellants were arrested on 18.04.2014 at about 0400 hours on spy information from Qureshi Petrol Pump, Jacobabad, while traveling in a Bus bearing Registration No.BSA-755 Quetta, and from each of them ten packets, containing two slabs each, weighing 01 Kilogram Charas each were recovered, in pursuance of which they were arrested and were brought at Police Station, where instant FIR was registered against them. Record also reflects that from each slab of Charas recovered from the appellants, 10 grams of Charas was separated as sample and sealed for sending to Office of Chemical Analyzer for report. The report of which dated 24.04.2014, produced by the complainant at Ex-5, is in positive identifying all the sample (40 in numbers) to be the Charas.

In the trial, prosecution has examined complainant Muhammad Iqbal Arbani at Ex-05 and mashir of the case namely Mir Jeand at Ex-06, who both have supported the prosecution case and have produced all the necessary documents including FIR, Memos etc. At the end of the trial, the appellants were found guilty of the offence and had been convicted vide impugned judgment to suffer life imprisonment for committing the offence under section 9 (c) of Control of Narcotic Substances Act and to pay fine of Rs.100,000/- each and in default of which to suffer six months more S.I.

Counsel for the appellants, Mr. Rafique Ahmed K. Abro, has argued that the appellants are innocent and have been falsely implicated in this case; that there is contradiction in respect of time of incident mentioned in the FIR and in the evidence of the witnesses which has not been explained and that has made the entire prosecution



58  
case doubtful; that from the entire property of 20 Kg, only 400 grams of Charas was sent, therefore, the appellants are liable to be convicted for the same quantity of narcotics and that sentence of life imprisonment in such circumstances needs to be reduced. Apart from above, the learned counsel has also pleaded that since the appellants are above sixty years of age, a lenient view may be taken against them.

On the other hand, learned A.P.G has opposed this appeal and states that the witnesses have supported the entire prosecution case to the hilt and there is no material contradiction rendering the case doubtful. In support of his contentions, he has relied upon the case law reported in 2009 SCMR 819.

We have considered the submissions of the parties and perused the entire material available on record including the case laws cited at the bar. The prosecution has examined complainant and mashir of the case, who both are eyewitnesses, and have fully supported the story on all its material aspects. Their evidence is consistent regarding details about the day of the incident i.e. on 18.04.2014, the time and place of recovery of Charas, arrest of the appellants and the sealing of the recovered property at the spot. The 40 samples of Charas consisting 10 grams each, which were taken from whole lot at the spot, were subsequently sent to Office of Chemical Analyzer within 72 hours in accordance with the relevant rules and in this regard no any illegality or discrepancy has been pointed out by the learned defence counsel. The evidence of the witnesses further shows that the remaining property was duly sealed at the spot and produced in the Court as article 1 & 2 and has been identified to be the same property recovered from the appellants.

As to contention of learned defence counsel that only 400 grams of Charas consisting the samples was sent to Office of Chemical Analyzer, therefore, the appellants are liable for the conviction provided against such quantity, we are afraid to agree with him because in view of the dictum laid down by the Hon'ble Supreme Court in the case of Ameer Zeb v. The State reported in PLD 2012 Supreme Court 380, each appellant is liable for 10 Kg of Charas recovered from her as the prosecution case clearly indicates that from each slab, ten grams as samples were separated and sent to Chemical Analyzer. The statement of the appellants under section 342, Cr.P.C denotes their ages as 50 years which is sufficient to negate the contention of learned defence counsel concerning age of appellants to be more than 60 years. We have



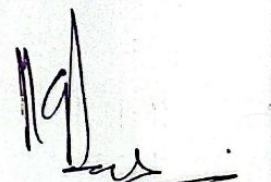
not found any material either to justify taking a lenient view against the appellants. A huge quantity of Charas has been recovered from each of them and there is nothing on record to suggest their false implication on account of any enmity with the police officials.

However, it is obvious that from each appellant 10 Kg of Charas was recovered individually and separately and it is not the case of the prosecution that each appellant apart from possessing 10 Kg of Charas recovered from her own possession was also in conscious possession of 10 Kg recovered from other appellant, therefore, each appellant is liable for only 10 Kg of Charas. Keeping in view this fact, we have taken guidance from the case of Ghulam Murtaza and another v. The State PLD 2009 Lahore 362, where in accordance with the sentencing policy the accused from whose possession 10 Kg of Charas is recovered has to be convicted and sentenced for imprisonment up to R.I for 12 years and six months and fine of Rs.60,000/-. In view whereof while maintaining the conviction of the appellants we modify their sentence and reduce it from imprisonment for life to imprisonment R.I for 12 years and six months and fine of Rs.60,000/-.

The appeal in above terms stands disposed of.



Judge

  
Judge 8-11-2016

M.Y.Panhwar/\*\*