

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Crl. Jail Appeal No.D-15 of 2019.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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1. For hearing of M.A. No.5194/2019[426 (1-A)  
(c) Cr.P.C.]
2. For hearing of main case.


25.02.2020

Messrs Muhammad Shabbir Rajpur & Abdul Waheed  
Khushk, advocates for the appellant.

Mr. Ali Anwar Kandhro, Addl. P. G.

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Heard the learned counsel for the appellant and learned  
Additional Prosecutor General. Judgment is reserved.

  
Judge

  
Judge

IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA  
Criminal Jail Appeal No. D-15 of 2019

Present:

Justice Zafar Ahmed Rajput  
Justice Shamsuddin Abbasi

**Appellant** : Abdul Jabbar s/o Abdul Rehman Kakar  
Pathan, through M/s. Muhammad Shabbir  
Rajput & Abdul Waheed Khushk, advocate

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

**Date of Hearing** : 25.02.2020  
**Date of Order** : 20.03.2020

J U D G M E N T

ZAFAR AHMED RAJPUT-J:- Impugned in this Criminal Jail Appeal is the judgment, dated 06.04.2019, passed in Special Case No.02 of 2019, arising out of Crime No.03/2018, registered under section 6, 8, 9(c) of the Control of Narcotic Substances Act, 1997 ("Act of 1997") at P.S Excise Circle, Shahdadkot, whereby the learned First Addl. Sessions Judge/Model Criminal Trial Court Kambar-Shahdadkot at Kambar convicted the appellant for the offence under section 9 (c), Act of 1997 and awarded him sentence to endure life imprisonment and to pay a fine of Rs. 5,00,000/- or, in default thereof, to undergo simple imprisonment for five years more. The benefit of Section 382-B, Cr. P.C has, however, been extended to the appellant.

2. Succinctly, the facts of the prosecution case as narrated in FIR are that on 23.12.2018 at 03:00 a.m. the appellant was arrested at Excise Check Post Nasirabad at Waggan, Taluka Warah by Excise Inspector Asif Ali

M. J. of P.S. Excise Circle, Shahdadkot on being found in possession of



216 kilograms of charas during search of secret cavity of roller loaded/ lying over truck bearing registration No. TKH-018 Quetta, being driven by him in presence of mashirs E.C. Mashooque Ali and E.C Ghulam Kambar.

3. Having been investigated the case, police sent up the appellant for trial. Formal charge was framed by the trial Court against the appellant as Exh.4, to which he pleaded not guilty and claimed to be tried, vide plea recorded at Exh.4-A. At the trial, prosecution in order to substantiate the charge examined two witnesses, namely, PW-1- Inspector Ghulam Mustafa of Excise Police, the complainant/I.O, at Exh.5 and PW-2 E.C. Mashooque Ali, the mashir, at Exh.6. They produced relevant documents in their evidence. The statement of appellant under section 342, Cr. P.C was recorded at Exh.8 wherein he denied the allegation against him and pleaded innocence. He; however, neither opted for examination on oath under section 340 (2), Cr. P.C. nor even led evidence in his defense. Upon the assessment of the evidence on record, the learned trial Court convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant has contended that the impugned judgment is not sustainable in law being contrary to the facts and law. He while referring Rules 5 & 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 ("*Rules of 2001*") has further contended that Rule 5 is directory while Rule 6 is mandatory to the extent that the full protocols ought to be mentioned in the report of the Government Analysts and non-compliance thereof in such context renders the report of the Government Analysts inconclusive and unreliable and since in the instant case full protocols applied by the Chemical Examiner has not been



mentioned in his report, no credibility can be attached to it; hence, maintaining conviction of the appellant would not be safe. He has also contended that no evidence has been brought on record to prove that the case property before sending for chemical analysis remained in *MALKHANA* in safe custody and even the relevant entry regarding keeping the case property in *MALKHANA* in safe custody has not been produced by the prosecution witnesses, 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 has relied upon the case of *The State through Regional Director ANF v. Imam Baklish 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. He has maintained that no enmity has been alleged by the appellant with Excise Police to implicate him in the case falsely. He has further maintained that both the prosecution witnesses have given uncontradicted, trustworthy and steadfast account of alleged recovery of huge quantity of contraband article. He has also maintained that the report of Chemical Examiner merits consideration as it is within the mandate of Rule 6 of the Rules of 2001.

6. We have heard the learned counsel for the appellant 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 23.12.2018, P.W-1 Asif Ali Magsi, Inspector Excise Circle, Shahdadt



complainant/I.O, received spy information in his office on mobile phone that huge quantity of charas was being transported in a truck bearing registration No. TKH-018. He then along with his subordinate staff left P.S., vide Daily Diary Entry No.01 at 01.00 p.m. (Exh.5/b) in Government vehicle and reached the pointed place viz. Excise Police Post Nasirabad at Waggan, Taluka Warah where after some moments, they saw the said truck coming; they got it stopped, a roller was loaded on it. On inquiry, the driver/accused disclosed his name as Abdul Jabbar. P.W-1 Inspector Asif Ali Magsi in presence of EC Mashooque Ali (P.W-2) and EC Ghulam (mashirs) Kamber took personal search of the accused and recovered 12 currency notes of Rs.500/- (total amount of Rs.6000/-) and a mobile phone from left side pocket of his shirt while, original registration book of the truck was secured from the dashboard, which was in the name of one Taza Gul s/o Sobdar Takhtani r/o Bypass Muslim Itehad Colony, Quetta. Excise Police found a secret cavity in the roller which was locked. Since the accused refused to give its key, they broke the cavity and found 216 bundles of plastic packets containing charas. On weighing, each bundle came to one kilogram and total weight of all bundles 216 kilograms. Bundles were marked as serial numbers 01 to 216. Excise Police sealed charas in five plastic bags, each weighing 40 kilograms and 16 kilograms in another bag with the signatures of the complainant and mashirs on each bag and also affixed three seals on each sealed plastic bag. P.W-1 Inspector Asif Ali Magsi arrested the accused under a mashirnama (Exh. 5/a) prepared in presence of said mashirs and brought him with case property at P.S., vide entry No.2. (Exh.5/b), where he lodged the FIR (Exh. 5/c).



Police to the roller/truck and took out a sale agreement of roller, which was in the name of one Abdul Hakeem Achikzai. P.W-1 Inspector Asif Ali Magsi prepared such mashirnama (Exh.5/d) in presence of Baggan Ali and Muhammad Ameen. He, on 26.12.2018, handed over the recovered charas to P.W-2 mashir Mashooque Ali to deposit the same with Chemical Examiner Rohri, through a letter (Exh.6/B) and also issued a letter on 01.01.2019 to Chemical Examiner (Exh.6/A) requesting him to give chemical report and case property to said P.W-2 to produce challan before the Court. The report of Chemical Examiner (Exh.5/e) was received in positive. Case property viz. charas was produced before the trial Court during evidence of both the P.Ws, while the truck with loader was parked outside the Court room at the time of recording evidence of P.W-1.

8. Both the P.Ws have implicated the appellant to have been apprehended on/at aforementioned day, time and place on being in possession of 216 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.

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.5/e) in the instant case is  
marked with as under:

REPORT ON.....Six seal plastic katta

LETTER No. .... Ex:- 36 dated 24.12.2018

RECEIVED ON.....26.12.2018

BY THE HANDS OF ..... PC Mashooque Ali B. No. 56

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

Six sealed plastic katta each bearing 03 seals  
Seals perfect and as per copy sent



LABELLED IN SINDHI AS/

1. Crime No: 03/2018 U/S 6, 8, 9/C CNSA 1997
2. Accused: Abdul Jabbar S/O Abdul Rahim Pathan
3. 40 Kilo Grams of Charas in each plastic katta No: 1 to 5 and 16 Kilo Grams of Charas in plastic katta No: 6 weight above.
4. Signature of Two Mashirs on each katta.
5. Signature of Inspector on each katta.

TESTS PERFORMED

1. Total weight of the above each plastic katta No: 1 to 5 along with contents: 40 Kilo & 510 Grams.

Net weight of slabs of each plastic katta No: 1 to 5, 40 Kilo Grams.

Total weight of the above plastic katta No: 6 along with contents: 16 Kilo & 260 Grams.

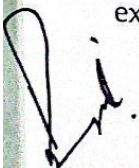
Net weight of slabs of each plastic katta No: 6: 16 Kilo Grams.

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 6 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.5/e) 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.5/e 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 packet, description of article in the parcel, total weight of each katta, net weight of slab of each katta, 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 23.12.2018 and the same was sent to Chemical Examiner promptly on the 26.12.2018 and it was not the case of the appellant 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 appellant has 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 appellant by the trial Court. Hence, instant criminal appeal is dismissed.



JUDGE

  
JUDGE