

Narcotics Case : Conviction upheld

58

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. A. 170 of 15

Mst. Fausia vs. The State

HIGH COURT OF SINDH

Composition of Bench: S.B./D. B.

Mr. Justice Mohammad Karim Khan Agha,
Mr. Justice Abdul Mobeen Lakh

Date(s) of Hearing: 30-1-20

Decide on: 04-02-2019

(a) Judgment approved for reporting:

Yes



CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

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- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

IN THE HONROABLE HIGH COURT OF SINDH
AT KARACHI

Cr. Appeal No. D- /2015

PRESENTED
 09-07-2015
 D. R. Writ
 3388

Mst. Fauzia D/O Muhammad Shafique
 Muslim, Adult, R/O A-320, Usmania Mohajir Colony,
 & Presently confined at Woman Jail,
 Karachi.....Appellant

VERSUS

The State.....Respondent

F.I.R. NO. 23/2012
 U/S: 6/9-C, CNS Act.
 P.S. A.N.F. CLIFTON

APPEAL UNDER SECTION 48 OF CNSA
R/W SECTION 410 Cr.P.C.

It is respectfully submitted before this Honorable Court on behalf of the Appellant Mst. Fauzia to be pleased to set aside the Judgment and may be pleased to release/acquit her in view of above appeal in the interest of justice on following facts & grounds amongst others to be urged at the time of hearing with permission of this Honorable Court being aggrieved of the Judgment of trial Court dated 10.06.2015 whereby the appellant was convicted under section 265-H (2) in Special Case No. 23/2014.

BRIEF FACTS:-

As per the contents of FIR complainant namely S.I. Muhammad Muzammil Ahmed, posted at P.S. Clifton on 11.12.2012 through higher official and informer was passed information that Narcotics Smuggler Fauzia Bano will come out of her house at Green Town, Shah Faisal Colony, Karachi,

IN THE HIGH COURT OF SINDH AT KARACHI.

Present:-

Mr. Justice Mohammad Karim Khan Agha.
Mr. Justice Abdul Mobeen Lakho.

Cr. Appeal No. D - 170 of 2015.

Appellant	Mst. Fauzia d/o. Muhammad Shafique. through <u>Mr. Anwar A. Shaikh</u> , Advocate.
Respondent	The State. through Mrs. Abida Parveen Channar, Special Prosecutor ANF.
Date of hearing	30.01.2020.
Date of Judgment	04.02.2020.

JUDGMENT

Mohammad Karim Khan Agha, J: Appellant Mst. Fauzia d/o. Muhammad Shafique was booked in Crime No.23 of 2012, in Special Case No.23 of 2014, for an offence punishable under Section 6/9(c) of Control of Narcotic Substances Act, 1997 registered with A.N.F Clifton, Karachi.

2. Feeling aggrieved by the judgment dated 10.06.2015, passed by learned Special Court-I, (Control of Narcotics Substances), Karachi convicting the appellant under Section 9(c) of Control of Narcotic Substances Act, 1997 for imprisonment for life and to pay fine of Rs.300,000/-, in default whereof she was ordered to undergo simple imprisonment for 01 year and six months more by extending the benefit of Section 382-B, Cr.P.C she has moved this appeal against conviction.

3. The facts giving rise to this appeal, briefly stated, are that on 11.12.2012 S.I Muhammad Muzamil of P.S, ANF Clifton, Karachi lodged his report on behalf of the State stating therein that he was present at P.S. ANF Clifton, Karachi, when through his Higher Officer a special informer gave him information that narcotic smuggler Mst. Fozia Bano, will take away huge quantity of heroin from her house situated at Green Town, Shah Faisal Colony No.3, Karachi, for handing over the same to her special agent and if immediate action will be taken then arrest of accused

and recovery of the heroin will be made. He on receipt of said information and direction of his Higher Officer prepared a raiding party consisting of ASI-Muhammad Ali Khokhar, ASI Javeed, P.C-Majid Baloch, P.S-Rizwan, P.C-Mazharuddin, P.C-Zafar Iqbal, P.C-Manzoor, L.P.C-Samina Naz and Driver Ghullam Rasool, duly armed with official weapons on government vehicle vide roznamcha entry No.8, at about 1200 hours, alongwith special informer, left their P.S, and on the pointation of the special informer they reached at Shah Faisal Colony No.3, Green Town, near Quba Masjid, at about 1245 hours, and started secret surveillance. Meanwhile at about 1300 hours, on the pointation of special informer they saw one woman who was having black colour hand bag in her right hand coming towards the main road. They encircled the said woman and asked the people available on the spot to act as mashir, but they refused. Hence he cited ASI-Muhammad Ali, PC-Majid Baloch and L.P.C-Samina Naz as mashirs, and inquired name from the women which she disclosed as Fozia Bano w/o. Shuhabuddin, d/o. Muhammad Shafiq, presently r/o. House No.MC-987, Green Town, Shah Faisal Colony No.3, Karachi, and permanent address House No.A-320, Muhallah Usmanabad, Muhajir Colony, Jail road, Karachi. In presence of mashirs he secured black colour hand bag on which word "FITGERALDS" was written from right hand of accused. He opened said bag in order to check the same and recovered 13 packets wrapped with yellow solution tape lying in the bag. He chopped each packet and found that in 12 packets heroin powder was lying, and in one packet psychotropic chemical ICE. He weighed each packet of heroin powder which weighed one Kilogram for each packet with total weight of twelve packets being twelve kilograms heroin. He weighed psychotropic chemical ICE packet which weighed one Kilogram. He kept said 12 packets of Heroin powder in same hand bag of accused and sealed the same for the purpose of chemical examination. He kept one packet of psychotropic chemical ICE in white colour cloth bag and sealed the same for chemical examination. He got conducted personal search of accused through L.P.C-Samina Naz, and she recovered hand purse, one Mobile Phone Nokia model 101 along with two Sim cards (Zong & Warrid), original CNIC of accused bearing No. 42201-1898237-8, and cash Rs.500/- viz; currency notes of Rs.100/=. The accused on spot inquiry disclosed that the supplier of secured Narcotics was Muhammad Shahid s/o. Rahim Mian, r/o. Pak Colony, Karachi. He then arrested the accused and

prepared such mashirnama of arrest and recovery on the spot, read over its contents to mashirs, who after hearing the contents accepted the same as true and correct and put their signatures on it. He along with mashirs also put their signatures on sealed bag containing heroin powder and sealed parcel containing psychotropic chemical ICE on the spot. They then brought the accused and secured property at P.S, where he lodged his report against accused for the commission offence u/s 6/9 (c) Control of Narcotics Substances Act, on behalf of the State under above referred Section.

4. Pursuant to the registration of FIR, the usual investigation was carried out and challan was submitted before the Court of competent jurisdiction.

5. Trial Court framed charge against the appellant who pleaded not guilty and claimed trial.

6. At the trial, the prosecution has examined PW-1/SIP Inspector Muhammad Muzamil, complainant and PW-2/ L.P.C Samina Naz mashir and also exhibited numerous documents in support of its case. The Statement of the appellant was recorded under Section 342, Cr.P.C. wherein she denied the prosecution case and pleaded her innocence and claimed false implication by her ex husband and the police. She did not give evidence under oath but called 2 DW's in support of her defense case.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 10-06-2015 (the impugned judgment) passed by the concerned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant was innocent of any wrong doing; that she had been falsely implicated in this case by the police at the behest of her ex husband, that the narcotics had been foisted on her by the police, that there were major contradictions in the evidence of the PW's, that the PW's had improved their evidence from their S.161 statements, that S.103 Cr.PC had been violated and that for any of the above reasons the appellant was entitled to be acquitted

based on the benefit of the doubt. In support of his contentions he has placed reliance on **Syed Azizullah Rafahi alias Waseem Ahmed v. Special Judge (Offences in Banks) Karachi and another** (SBLR 2019 Sindh 1250), **ABDUL Ghani and others v. The State and others** (2019 SCMR 608), **Munir Hussain alias Munawar alias Muno v. The State** (2019 YLR 51), **Abdul Sattar v. The State** (SBLR 2019 Sindh 586), **Nasir Rajpoot v. The state** (2019 MLD 1021), **Suleman Khan v. The State** (2019 MLD 393), **Suhail alias Shoaib Shar v. The State** (YLR Note 30), **Minhaj Khan v. The State** (2019 SCMR 326), **Taimoor Khan and another v. The State and another** (2016 SCMR 621), **Gul Noor Ali v. The State** (2015 SCMR 279), **Muhammad Aslam v. The State** (2011 SCMR 820), **Zareef Khan v. The State** (2005 AC 841) and **Karim and another v. The State** (2004 P. Cr.LJ 37).

9. On the other hand learned Special Prosecutor ANF has fully supported the impugned judgment. She contended that the police PW's were reliable witnesses which fully corroborated the prosecution case, that the narcotics had been recovered on the spot, that there was no delay in sending the narcotics for chemical analysis and the chemical report which had complied with all the relevant protocols proved positive and fully supported the prosecution case and as such the prosecution has proved its case against the appellant beyond a reasonable doubt and that the appeal should be dismissed. In support of her contentions she placed reliance on **State through Regional Director ANF Peshawar v. Sohail Khan** (2019 SCMR 1288), **Zafar v. The State** (2008 SCMR 1254), **Riaz Ahmed alias Raju v. The State** (2004 SCMR 988) and **Begum Nusrat Ali Gonda v. Federation of Pakistan and others** (PLD 2013 Supreme Court 829).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellant, the impugned judgment with their able assistance and have considered the relevant law.

11. In our view after our reassessment of the evidence we are of the view that the prosecution has proved its case beyond a reasonable doubt against the appellant for the following reasons:-

⚡

(a) That the arrest and recovery was made on the spot in day light hours on the pointation of a spy informer and the appellant was caught red handed with the narcotics by the police whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case the police PW's have no enmity with the appellant. In this respect reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99).

(b) The fact that a lady was part of the police raiding party being PW 2 Samina Naz also corroborates the spy informer's information that the person carrying the narcotics would be a lady with the same name as the appellant. If that had not been the case then the police would not have included a women in their raiding party for the purpose of searching the appellant.

(c) The FIR was also registered with promptitude giving no time for concoction and the S.161 statements were recorded promptly which were not significantly improved upon by either PW at the time of giving evidence

(d) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).

(e) That the recovered narcotics were kept in safe custody at the Malkana and were sent for chemical analysis without any delay and such chemical report was positive and complied with all relevant legal requirements.

(f) That is extremely difficult for such a large amount of heroin and Ice to be foisted on the appellant during day light hours which is usually not readily available with the police.

(g) That although no Independent mashir was associated with the arrest and recovery of the appellant it has come in evidence that the PW's asked independent persons to become mashers but they refused. Even otherwise S.103 Cr.PC is excluded for offenses falling under the Control of Narcotic Substances Act 1997 by virtue of S.25 of that Act.

(h) There is no legal bar for the complainant also being the IO of the case as in this case.

(i) That the appellant has a past history of drug smuggling and being a drug courier. As per Judgment dated 27.05.210 (which was exhibited at trial) passed by Judge Special Court -I (CNS) Karachi the appellant pled guilty to a charge u/s 6/9 B CNS Act 1997 for attempting to smuggle 52 capsules of heroin out of Pakistan at the Jinnah International Airport. It is significant that in that case the judge took a lenient view in sentencing since the appellant had shown remorse and was a first time offender. In our view it is unlikely that the appellant was a first time offender but rather that was the first time in which she was caught. In that case she had no option but to pled guilty as the heroin was detected in her stomach at the airport by airport scanners and as such she had no defense available to her such as foisting. The appellant is therefore a habitual offender and not an innocent.

(j) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which we disbelieve. This is because the appellant initially blamed her ex husband who wanted to fix her so that he could obtain custody of her children and then she claimed that the police had fixed her in this case as she refused to pay a bribe. According to her the police had illegally detained her and her two DW's and had demanded RS 100,000 as a bribe for the release of the two DW's and the police had settled on a bribe of RS 20,000 for the release of both of them however in her case the police refused to lower the bribe to less than RS 500,000 which does not appeal to reason, logic or

common sense as if the police had accepted RS 20,000 for the two other detainees who they originally wanted RS 100,000 from then surely they would have reduced her bribe amount to say RS30,000 rather than keep it at such a high amount whereby they gained nothing.

12. The peddling of narcotics is a cancer which needs to be dealt with severely if proven beyond a reasonable doubt, as in this case, and the court cannot take a lenient view in such offenses especially when the amounts are so large as in this case and concern hard drugs like heroin, as in this case. The large amount of heroin and Ice which was recovered clearly shows that it was for supply and not for personal use. In particular at this point in time the drug Ice is a plague on our society as it is low cost, readily available and very addictive and the drug peddlers tend to prey on school children with respect to this drug which must be stamped out at all costs as it is the school children who are the future of our country. Furthermore, having one's child reduced to being a drug addict must be one of the greatest fears and night mares of any parent and as such the courts are under an obligation to rid the plague of narcotics from society and show no mercy when it comes to sentencing for those who choose to peddle drugs or be a part of such peddling which very often is a part of organized crime.

13. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellant and the impugned judgment is upheld and the appeal is dismissed.

14. The appeal is disposed on in the above terms.