

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. A. 777 of 2019

M. Danish vs. The State

HIGH COURT OF SINDH

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

Mr. Justice Mohammad Karim Khan Agha,
Mr Justice Abdul Moheen Lakhe

Date(s) of Hearing: 31-01-2020

Decide on: 06-02-20

(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.

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Deputy Registrar (Judicial)

IN THE HIGH COURT OF SINDH AT KARACHI

9304

APPEAL No. 777 / 2019

MUHAMMAD DANISH,
S/o Muhammad Yousuf,
Presently confined at Judicial Custody, Central Jail
Karachi **APPELLANT**

V E R S U S

1. **1st Additional Sessions Judge,
/ Model Criminal Trial Court /
Special Court (CNS), Karachi
Central.**
2. **THE STATE.....RESPONDENTS**

FIR No. 39/2019
U/S 6-9(C) CNSA 1997
P.S **PAPOSH NAGAR**

**CRIMINAL APPEAL UNDER
SECTION 410 Cr.P.C. R/W
SECTION 48 OF CNSA 1997**

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Being aggrieved and dis-satisfied with the impugned Judgment dated 25/10/2019, passed by the learned trial Court / respondent No. 1, in Special Case No. 141 of 2019, whereby the learned trial Court has convicted the Appellant to suffer R.I for four years and Six month and to pay fine Rs. 20,000/- or in default thereof, he shall suffer R.I for four months more, as such the appellant prefers instant Appeal inter-alia amongst others, on consideration of the following facts and grounds:-

(Copy of Judgment dated 25/10/2019 is
appended herewith and marked as annexure 'A')

Continued...

IN THE HIGH COURT OF SINDH AT KARACHI

CRIMINAL APPEAL NO.777 OF 2019

Present:

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

Appellant	Muhammad Danish s/o. Muhammad Yousuf through Mr. Azam Memon, Advocate.
Respondent/State:	Through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
Date of hearing:	31.01.2020
Date of announcement:	06.02.2020

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Muhammad Danish s/o. Muhammad Yousuf has preferred this criminal appeal against the impugned judgment dated 25.10.2019 passed by the learned Ist Additional Sessions Judge/Model Criminal Court / Special Courts (CNS) Karachi (Central) in Special Case No.141 of 2019, F.I.R. No.89 of 2019 u/s. 6,9 (c) of CNS Act 1997 registered at P.S. Paposh Nagar, Karachi whereby the appellant has been convicted and sentenced to suffer R.I. for four years and six months and to pay fine of Rs.20,000 (Rupees Twenty Thousand Only) or in default thereof, he shall suffer S.I. for four months more.

2. The brief facts of the case are that the complainant ASI Ghulam Murtaza of PS Paposh Nagar, lodged FIR against accused, wherein he has stated that on 13.4.2019 he was on patrolling duty. When he reached near KMC graveyard of Amjad Sabri, he saw one person in suspicious condition. On inquiry he disclosed his name as Danish @ Dana son of Muhammad Yousuf from whom he recovered one blue color shopper wherein 03 pieces of charas were lying. It became 1050 gram on weighing. He further recovered one TT pistol loaded with 02 rounds in magazine. He sealed the recovered drugs under memo of arrest and recovery separately and lodged such FIR.

3. After registration of the above FIR, investigation was carried out and the Investigation Officer then submitted report under section 173 Cr.P.C. before the concerned court.

4. The charge was framed against the appellant to which he pleaded not guilty and claimed for trial.

5. The prosecution to prove the charge examined 03 PW's who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The statement of accused was recorded under S.342 Cr.PC in which he denied the allegations leveled against him by the prosecution witnesses and claimed false implication by the police. The accused did not examine himself on oath or produce any defence witness in support of his defense.

6. Learned Additional Sessions Judge/Model Criminal Court / Special Courts (CNS) Central Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 25.10.2019, convicted and sentenced the appellant as stated above, hence this appeal against conviction has been filed by the appellant.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant is completely innocent, that he has been falsely implicated in this case by the police, that there was no independent mushir at the time of his arrest, that the IO was below the rank required by the law to carry out the investigation, that based on the weight of the recovered narcotics he had been given a too heavy a sentence contrary to the sentencing guidelines laid down by the superior courts and thus for any of the above reasons he be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on **Ghulam Murtaza V The State** ((PLD 2009 Lah.362) and **Ameer Zeb V The State** (PLD 2012 SC 380)

9. Learned Deputy Prosecutor General for the State has fully supported the impugned judgment and in particular has contended that the appellant was arrested on the spot with the narcotics, that the police were as reliable as any other witness, there was no delay in sending the chemical report to the Chemical Examiner which was found positive and that the appellant had been sentenced correctly in the light of the guidelines for sentencing as laid down in **Ghulam Murtaza's case** (Supra) and **Ameer Zeb's case** (Supra), that under the S.25 CNS Act S.103 Cr.PC requiring Independent witnesses had been ousted, that even if the investigating officer was below the required rank this was an irregularity which was curable and not fatal to the prosecution case and as such the prosecution had proved its case beyond a reasonable doubt and as such the impugned judgment should be upheld and the appeal dismissed. In support of his contentions he has placed reliance on **Muhammad Hanif V The State** (2003 SCMR 1237) and **The State V Abdali Shah** (2009 SCMR 291).

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. 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 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 no enmity has been suggested against any of the police PW's and as such the police had no reasons to falsely implicate the appellant in a false case. Thus we believe the police evidence which is corroborative in all material respects. In this respect reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99).

(b) 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 any PW at the time of giving evidence

(c) 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).

(d) That the recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken for chemical analysis and no suggestion of tampering with the same has even been made. The recovered narcotics were sent for chemical analysis without any delay and such chemical report was positive and complied with all relevant legal requirements.

(e) That although no Independent mashir was associated with the arrest and recovery of the appellant it has come in evidence that no independent mushir was available at the time of the arrest and recovery. 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. In this respect reliance is placed on the case of **Muhammad Hanif** (Supra)

(f) That the IO being below the rank required by the law is not fatal to the prosecution case which is a curable defect. In this respect reliance is placed on **Abdali Shah's case** (Supra).

(g) That the appellant has been correctly sentenced as per sentencing guidelines laid down in the cases of **Ghulam Murtaza** (Supra) and **Ameer Zeb** (Supra)

(h) 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 simply raised the defense that he was

arrested from his house. He did not give evidence on oath so that his contention could be tested through cross examination and he did not call a single DW in support of this contention and thus in the face of the over whelming prosecution evidence against him we disbelieve his defense that he was at his house at the time when the offense was committed and it is a false case against him.

12. 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.

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