

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Cr. Appeal No. D- 46 of 2020

**Present:-**

**Mr. Justice Abdul Maalik Gaddi.**

**Mr. Justice Adnan-ul-Karim Memon**

Date of hearing: 27.08.2020

Date of Judgment: 27.08.2020

Appellant: Aijaz Ali through Mr. Mian Taj Muhammad Keerio, Advocate.

State: Through Ms. Rameshan Oad, Asst. Prosecutor General, Sindh.

**JUDGMENT**

**ABDUL MAALIK GADDI, J-** Through this Criminal Appeal, appellant Aijaz Ali s/o Khan Muhammad Rajpar has called in question the judgment dated 10.08.2020 passed by the learned 2<sup>nd</sup> Additional Sessions Judge / Special Judge (CNS), Hyderabad, in Special Case No.281 of 2018 (Re: The State v. Aijaz Ali) arising out of Crime No.193 of 2018, registered at Police Station Pinyari, Hyderabad, for an offence under Section 9(C) of Control of Narcotic Substances Act, 1997, whereby he was convicted and sentenced to suffer R.I for four (04) years & six (06) months and to pay fine of Rs.20,000/- (Rupees Twenty Thousand), in case of non-payment of fine, he shall suffer S.I for five (05) months more with benefit of Section 382-B Cr.P.C.

**2.** Concisely, the facts as portrayed in the F.I.R are that on 29.11.2018 at 1500 hours, ASI Ali Ahmed Solangi during patrolling arrested the accused near from Liaqat Bridge, Hyderabad in presence of official witnesses and recovered four big pieces of charas lying in black colour shopper weight 1920 grams from his possession. Thereafter such mashirnama of arrest and recovery was prepared after sealing the property by him at the spot and then took the accused and property to PS where he lodged the F.I.R against the accused on behalf of State.

3. The Prosecution in order to substantiate the charge against the appellant, examined the following four (04) witnesses:

**P.W No.1:** Mashir PC Qadir Bux examined at Ex.4, who produced roznamcha entry No.20 at Ex.4/A and mashirnama of arrest and recovery at Ex.4/B.

**P.W No.2** Complainant ASI Ali Ahmed Solangi examined at Ex.5, who produced the roznamcha entry No.25 at Ex.5/A and F.I.R at Ex.5/B.

**P.W No.3** Investigating officer SIP Aftab Ahmed was examined at Ex.6, who produced entry No.151 of Register No.19 at Ex.6/A, letter for permission to SDPO at Ex.6/B, entry No.46 at Ex.6/C, entry No.22 at Ex.6/D, letter to the Chemical Examiner at Ex.6/E and Chemical report at Ex.6/F respectively.

**P.W No.4** PC Mubarak Ali examined at Ex.7.

All the above named witnesses have been cross-examined by learned ADPP for State.

4. Later on, statement of accused was recorded u/s 342 Cr.P.C at Ex.9, in which he denied the prosecution allegation and claimed his innocence. However, he did not examine himself on oath nor give any evidence in his defence.

5. It is pertinent to mention here that appellant was convicted and sentenced by the trial Court vide judgment dated 12.11.2019 and the said judgment was impugned before this Court where from the case was remanded back to the trial Court for recording the statement of the appellant afresh as per the requirement of Section 364 Cr.P.C. It is noted that after remanding back of the case to the trial Court where after recording the fresh statement of the appellant u/s 342 Cr.P.C (available at Ex.14), the appellant was again convicted and sentenced through impugned judgment as stated in the preceding paragraph; hence, this appeal.

6. Learned counsel for the appellant has contended that the appellant has been involved in this case malafedly by the police; that the impugned judgment passed by the learned trial Court is opposed to law and facts and is also against the principles of natural justice; that actually the appellant was arrested from the house of one Saifullah Abro where he was working as cook and thereafter, the alleged charas has been foisted upon the appellant at the instance of said Saifullay Abro as he had developed enmity with the appellant; that no recovery was affected from the possession of appellant and prosecution has miserably failed to establish the guilt of appellant

beyond any reasonable shadow of doubt; that no private / independent person has been made as mashir of the alleged recovery nor any efforts were taken by the police party, as such, false implication of the appellant in this case cannot be ruled out. Lastly he prayed that instant appeal may be allowed and appellant may be acquitted of the charge.

7. Conversely, learned Asst. Prosecutor General appearing on behalf of State has fully supported the impugned judgment by submitting that prosecution has fully established the guilt of appellant beyond any reasonable shadow of doubt. She has further contended that all the prosecution witnesses have fully supported and corroborated the version of each other and there is no contradiction in their version on material particulars of the case hence, the impugned judgment does not call for any interference.

8. We have heard the learned counsel for the parties at a considerable length and have gone through the documents and evidence so brought on record.

9. From perusal of record it appears that complainant ASI Ali Ahmed Solangi has deposed that on 29.11.2018, he along with his sub-ordinate staff left police station Pinyari for patrolling and during patrolling when they reached Mustafa Park, they received spy information that one person was standing outside Liaquat Bridge and was selling charas. On receiving such information, they reached at the pointed place and apprehended the accused / appellant and on enquiry he disclosed his name as Aijaz Ali s/o Khan Muhammad r/o Village Chhachhi, Taluka Chhachhro, District Mithi. Due to non-availability of private person, police party took personal search of the appellant in presence of PC Qadir Bux and PC Khan Muhammad and recovered 1920 grams charas which was lying in black colour shopper in four pieces. The said charas was weighed on electronic scale at spot. Thereafter, mashirnama of arrest and recovery was prepared and case was challaned under the aforementioned crime. The statement of PWs was recorded u/s 161 Cr.P.C and sample of the allegedly recovered charas was sent to Chemical Examiner for its analysis through PC Mubarak Ali on 30.11.2018 and such positive report was received. The Complainant ASI Ali Ahmed Solangi was cross examined by the counsel for appellant and in his evidence he denied the suggestion of having foisted the charas upon the appellant. He also denied the suggestion of having registered a false case against the appellant.

**10.** We have also examined the evidence of mashir PC Qadir Bux (available at Ex.4), who produced mashirnama of arrest and recovery and also perused the evidence of I.O SIP Aftab Ahmed (available at Ex.6) and so also the evidence of mashir PC Mubarak Ali (available at Ex.7), through whom the case property was sent to chemical examiner. These witnesses though cross examined by the counsel for appellant but they remained unshaken.

**11.** We have carefully perused the evidence of prosecution witnesses and have found that they have constituted an uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison and all the salient features regarding interception of the huge quantity of charas as well as steps taken subsequently. The chemical report is positive one and containing all the information with regard to receiving sample parcels of charas and is found by us as exercise sufficient to constitute forensic proof. We have also examined the report of chemical examiner available on the record at Ex.6-F, and have also found that it corroborates the evidence of all the police officials, who have stand juxtaposition with the chemical report. It is a matter of record that charas was recovered from the exclusive possession of the appellant on 29.11.2018 while the same was received by chemical examiner on 30.11.2018 for its analysis and did not find any tempering with the sealed parcel of the samples of the contraband so recovered from the appellant. Apparently there is no delay in sending the property for chemical analysis. Learned counsel for the appellant has also failed to point out any piece of evidence showing that the property was tempered during the period of receiving and sending it to Chemical analysis.

**12.** The contention of the learned counsel for the appellant that the evidence of the PWs is not reliable as the same suffers from the material contradictions and inconsistencies has no force until and unless some cogent and reliable evidence is brought on record, which may suggest that the appellant is innocent or his act is beyond any doubt. The contradiction in the testimony of PWs being urged by learned counsel for the appellant appear to be minor in nature and those seem to be not fatal to the case of prosecution. It is well-settled principle of law that minor discrepancies in the evidence of raiding party do not shake their trustworthiness as observed by the Honourable Apex Court in the case of **“The STATE / ANF v. MUHAMMAD ARSHAD** (2017 SCMR 283). So far as the defence plea raised by the appellant that charas has been foisted upon him at the

behest of one Saifullah Abro where the appellant was working as cook but in this connection no documentary evidence is brought on record to prove this fact.

**13.** So far as another defence plea raised by learned counsel for the appellant that brother of the appellant has filed an application u/s 491 Cr.P.C against police officials for illegal detention of the appellant but in this regard no concrete evidence has been produced by the appellant during trial.

**14.** Admittedly, the appellant was arrested by the police and from his possession a huge quantity of charas was recovered and it would be enough for a person of prudent mind that how such a huge quantity of contraband, the cost whereof would be in thousands of rupees, can be foisted upon accused. At this juncture, we are fortified by the dictum laid down in the judgment dated 08.01.2020 passed by the Honourable Supreme Court in the case of **SHAZIA BIBI v. THE STATE** (Jail Petition No.847 of 2018).

**15.** The next argument of learned counsel for the appellant is that he has questioned upon the veracity of the police witnesses that their evidence is not trustworthy and that no independent or private person has been cited as witness; therefore, as per him the case of the prosecution is doubtful. This argument of the learned counsel also has no force; such argument could have been considered when the evidence of police officials is based upon untruthfulness casting uncertainty, enmity and ambiguity. The police officials are good witnesses as any other private witness and their evidence is subject to same standard of proof and the principles of the scrutiny as applicable to any other category of witnesses; in absence of any animus, infirmity or flaw in their evidence, their testimony can be relied without demur. Reference in this regard may be made from the case of **IZAT ULLAH and another v. THE STATE** (supra), wherein the Honourable Apex Court has observed as under:-

*“3.....Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in comfortable unison: being functionaries of the republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trustworthy, as in the case in hand. Both the courts below have undertaken an exhausting analysis of the prosecution case and concurred in their conclusions regarding petitioners’ guilt and we have not been able to take a different view then concurrently taken by them. Petitioners fail. Dismissed.”*

**16.** Same view has also been taken in the case of **HUSSAIN SHAH and others v. THE STATE** (PLD 2020 Supreme Court 132), wherein the Honourable Supreme Court of Pakistan has held as under:-

*“3. Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical examiner had declared that the recovered substance was Charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witnesses had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which could possibly be used to doubt the veracity of the said witnesses.*

**17.** For the forgoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellant; therefore, the impugned judgment dated 10.08.2020, having been rightly passed, requires no interference by this Court; hence, is maintained and the appeal in hand being meritless is dismissed along with pending application[s].

**18.** Above are the reasons of our short order dated 27.08.2020 whereby the instant appeal was dismissed.

**JUDGE**

**JUDGE**

**Hafiz Fahad**