

HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.115 of 2020

**Present: Mr. Justice Abdul Maalik Gaddi
Justice Mrs. Rashida Asad**

Appellants : (1) Mansoor @ Mansoori son of Zikriya Khan and
(2) Muhammad Subhan son of Muzammil
Khan
through Mr. Syed Lal Hussain Shah, Advocate.

Respondent : The State through Mr. Abrar Ali Khichi,
Additional Prosecutor General, Sindh.

Date of hearing : 14.5.2020

Date of Judgment : 14.5.2020

J U D G M E N T

Abdul Maalik Gaddi, J.- Through this Criminal Appeal, appellants Mansoor @ Mansoori son of Zikriya Khan and Muhammad Subhan son of Muzammil Khan have called in-question the Judgment dated 29.01.2020 passed by the learned 1st Additional District and Sessions Judge/ Special Judge (CNS), Karachi (Central), in Special Case No.02/2020 (Re. State vs. Mansoor @ Mansoori and another) arising out of crime No.215/2019, registered at PS Paposh Nagar, Karachi, for offence under Section 9(c) of Control of Narcotic Substances Act, 1997, whereby they were convicted and sentenced to suffer R.I. for six years and six months with fine of Rs.30,000/- each or in default thereof, they shall suffer S.I. for six months more. However, the benefit of Section 382-B CrPC was extended to them.

2. Concisely, the facts as portrayed in the FIR are that on 26.11.2019 at about 0530 hours, when complainant ASI Mir Muhammad Jamali was on patrolling duty along with his subordinate staff in the area and during patrolling when they reached near Shoaib Mohammadia School, Block-5/C, Matric Board Office, Karachi, the present appellants were found on motorcycle in suspicious condition, police arrested them and during search 3070 grams chars in a blue color shopper was recovered from appellant No.1 Mansoor @ Mansoori with Rs.2540/-, whereas 3050 grams chars was recovered from appellant No.2 Muhammad Subhan with cash amount of Rs.13200/- with three mobile phones from both the appellants in presence of mashirs namely HC Muhammad Imran and PC Muhammad Kamran. After completing all legal formalities, the appellants and case property were brought at PS where instant FIR was lodged.

3. After conducting usual investigation, challan against appellants was submitted before the competent Court. After compliance of Section 265-C CrPC, formal charge was framed against the appellants, in which they have denied the prosecution allegations and claimed to be tried.

4. The prosecution in order to substantiate the charge against the appellants, examined in all four (04) witnesses, namely (1) Complainant/ ASI Mir Muhammad Jamali, who produced the roznamcha entry under which the police party left police station for patrolling in the area, memo of arrest and recovery of the appellants, FIR and memo of inspection of place of incident at Ex.4/A to 4/E

respectively, (2) HC Muhammad Imran, recovery mashir, (3) SIP Mushtaq Ahmed, who conducted the investigation of the case and also produced certain documents along with CRO record of the appellants as well as chemical report and (4) ASI Ahmed Baloch, Head Moharrer of Malkhana, where the property was kept in safe custody, under entry No.133/2019. These witnesses were cross-examined by the DDPP for the State and then prosecution side was closed.

5. Statement of the appellants under Section 342 CrPC were recorded at Exs.9 and 10 respectively, wherein they denied all the allegations made against them by the prosecution and claimed their innocence. The appellants neither examined themselves on oath in terms of Section 340(2) CrPC, nor examined any witness in their defence.

6. Learned trial Court after hearing the respective parties convicted and sentenced the appellants as stated in the preceding paragraph, hence this appeal.

7. Learned counsel for appellants has vehemently contended that the appellants have been involved in this case malafidely by the police; that impugned judgment passed by the learned trial Court is opposed to the law and facts and is against the principles of natural justice; that the learned trial Court has failed to appreciate the evidence produced by the appellants; that no private/ independent person has been made as mashir of the alleged recovery nor any efforts were taken by the police party in this regard; that appellants were arrested from their houses on 09.11.2019 and 16.11.2019

respectively by the law enforcement agencies and involved them in this case, such applications were sent to concerned quarters, but they paid no heed to it. During the course of arguments, learned counsel for appellants has pointed out various contradictions in between the evidence of the prosecution and was of the view that in the light of such contradictions, no conviction could be safely maintained against the appellants. However, in support of his arguments, he has relied upon the following caselaws:

- (i) Abdul Ghani and others vs. The State (2019 SCMR 608);
- (ii) The State vs. Imam Bakhsh and others (2018 SCMR 2039);
- (iii) Amjad Ali vs. The State (2012 SCMR 577);
- (iv) Muhammad Mansha vs. The State (1995 SCMR 1414); and
- (v) Ali Akber vs. The State (2020 YLR 503).

8. Learned Additional Prosecutor General Sindh appearing for the State has fully supported the impugned judgment by submitting that the huge quantity of chars i.e. three kilograms from each appellant was recovered from their possession along with looted mobile phones in presence of mashirs, who have no inimical terms with them. The offence as alleged against the appellants is an offence against the society and such huge quantity of contraband could not easily be foisted upon them; that all the witnesses have supported the prosecution case; hence the impugned judgment does not call for any interference.

9. We have given due consideration to the submissions made by learned counsel for appellants as well as learned Additional Prosecutor General for the State and have perused the record.

10. It is noted that on 26.11.2019, when complainant along with his subordinate staff was on patrolling duty and during patrolling, when they reached at Shoaib Mohammadia School, Block-5/C, near Matric Board Office, Karachi, the present appellants were arrested and during their personal search, 3070 and 3050 grams chars and Rs.2540/- and Rs.13200/- with three looted mobiles phones were recovered from them respectively in presence of mashirs namely HC Muhammad Imran and PC Muhammad Kamran, who have no inimical terms with appellants nor any admitted enmity has been alleged against them.

11. We have also examined the evidence of PW HC Muhammad Imran, who has acted as mashir in the case. He has narrated the entire facts by stating that the appellants were arrested from Shoaib Mohammadia School, Block-5/C, near Matric Board Office, Karachi and the recovery was made from them in his presence. He has also affirmed that memo of arrest and recovery was prepared at the spot and after completing all formalities, the accused and case property were brought at PS. This witness though cross-examined by the appellants' counsel at-length, but he remained unshaken on material particulars of the case. We have also carefully perused the evidence of other witnesses and have found that they have constituted and uninterrupted chain of facts ranging from seizure and forensic analysis of the contraband. They are in comfortable unison and all the silent features regarding interception of the huge quantity of chars along with mobile phones as well as steps taken subsequently. The whole property was sent to chemical analysis is found by us as exercised sufficient to constitute forensic proof.

12. We have also examined the report of chemical examiner available on record at Ex.6/J and have also found that it corroborates the evidence of all the police officials, who have stand in juxtaposition with the chemical report. It is argued by learned counsel for appellants that no independent person has been sighted in the recovery proceedings, therefore, false implication of the appellants in this case could not be ruled out. Reverting to this contention, it is suffice to say that the alleged incident took place in the pitch dark night and no evidence on record that private witnesses were available at that time. It is also argued that present appellants were apprehended by law enforcement agencies much prior to present incident and involved them in this case, although the appellants filed/moved the application to the higher authorities in this regard, but they paid no heed to it, therefore, their involvement in this case is false. We have, however, not felt persuaded to agree with the learned counsel for appellants in this regard, as the appellants neither have taken this plea in their statements recorded under Section 342 CrPC nor any documentary evidence has been produced.

13. It is noted that quantity recovered, rather substantial in volume/ weight, cannot be possibly foisted upon appellants to victimize them. As observed above, all the prosecution witnesses including those of recovery have been found by us well within tune with one another, soon after their arrest, remands were obtained by the police from concerned Judicial Magistrate, who remanded them into judicial custody, a most opportune occasion to raise protest;

their silence goes a long way to rebut the belatedly related story that otherwise may not find a buyer.

14. As observed above, the appellants were arrested on 26.11.2019 along with recovered chars and the same was sent to chemical examiner without any inordinate delay and the chemical report on record as Ex.6/J, which is positive. Perusal of contents of chemical report shows that while preparing the same, all requirements of law/ protocol were also observed and the report also found that it corroborates the evidence of all the prosecution witnesses.

15. The contention of learned counsel for appellants that evidence of PWs is not reliable, as the same suffers from material contradictions and inconsistencies has no force until and unless some cogent and reliable evidence is brought on record which may suggest that the appellants are innocent or their act was beyond any doubt. The contradiction, if any, in the statement of PWs being urged by the appellants appears to be minor in nature and those seem to be not fatal to the case of the 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 Hon'ble Apex Court in the case of the State/ ANF vs. Muhammad Arshad (2017 SCMR 283).

16. Caselaws cited by the learned counsel for appellants have been perused and considered by us but did not find applicable to the facts of the present case. Even otherwise, in criminal administration of justice, each case has to be decided on its own facts and circumstances.

17. For the foregoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellants; therefore, the impugned judgment dated 29.01.2020 having been rightly passed, requires no interference by this Court; hence, is maintained and appeal in hand being meritless was **dismissed** by short order dated 14.5.2020 and these are the detailed reasons thereof.

JUDGE

JUDGE

asim/pa