

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE KHILJI ARIF HUSSAIN

CRIMINAL APPEAL NO. 21-K OF 2016

(On appeal against the judgment dated 10.11.2015
passed by the High Court of Sindh, Karachi in
Criminal Appeal No. 175/2014)

The State/ANF

... Appellant

VERSUS

Muhammad Arshad

... Respondent

For the Appellant: Mr. Habib Ahmed, ASC

For the Respondent: Raja Aftab, ASC
Mr. A.S.K. Ghor, AOR along-with
respondent in person

Date of Hearing: 06.12.2016

JUDGMENT

FAISAL ARAB, J.- Based on a spy information that the respondent would smuggle heroin abroad, the respondent was arrested from Karachi Airport just before taking a flight to Bangkok. He was first taken to nearby Nihal Hospital in Malir for taking X-Ray of his abdomen which disclosed that it contained foreign bodies. He was then brought to Jinnah hospital, Karachi in the custody of ANF police for further examination. It has come on the record that a doctor administered Lactulose syrup and Omerprazole capsule and, thereafter, the respondent excreted 50 capsules, which after chemical examination were found to contain 550 grams of heroin powder. He was tried by Special Court-II, ANF, Karachi, found guilty and sentenced to suffer RI for five years. He was also fined Rs.50,000/- and in case of default in the payment of

fine, he was to undergo imprisonment for a further period of six months.

2. The Respondent challenged his conviction in appeal before the High Court and was acquitted. The main reasons that prevailed with the learned Judges of the High Court were that the Dr. Inam Khan, who appeared as PW-5, did not support the prosecution version; that the respondent did not excrete heroin filled capsules in presence of the doctor; that no doctor of Nihal hospital or paramedic staff, where the respondent was initially taken for X-Ray after his arrest, was examined by the Investigating Officer or produced before the Trial Court. Such omissions led the High Court to believe that no independent, trustworthy or confidence inspiring evidence was brought on record to connect the respondent with the commission of the crime. The High Court's decision of acquittal was then challenged in this Court by the State through a petition for leave to appeal bearing No. 82-K/2015, from which the present appeal has arisen.

3. Learned counsel for the appellant argued that the respondent after his arrest was immediately taken to the nearest hospital for X-Ray which showed foreign bodies in his stomach, whereafter he was taken to Jinnah Hospital for further examination. The Doctor then administered him medicines so that the respondent may pass stool and resultantly he excreted 50 capsules which after chemical examination were found to contain 550 grams of heroin power. Leaned counsel further submitted that Head Constable who appeared as PW-3 and other Constables who were specifically deputed in the ward where the respondent was kept, were present at the time when the respondent excreted the capsules. Dr. Inam Khan who had administered medicine to the respondent was examined as PW-5. He deposed that after examining respondent's X-Ray he advised that the respondent be administered Lactulose syrup and one Omerprazole capsule

and on the next day while he was on duty, the staff of ANF informed him that the respondent has excreted 50 capsules. These very capsules were then sent to Chemical Examiner. The Chemical Examiner Dr. Fazal Elahi was also examined as PW-3. He in his deposition confirmed that 50 capsules weighed 615 grams of which 550 grams were heroin powder. Learned counsel submitted this evidence was sufficient to convict the respondent.

4. Learned counsel for the respondent on the other hand argued that the X-Ray taken in Nihal hospital did not contain the name of the respondent and that it has not come in the evidence as to whether the accused excreted the capsules on the bed or in the toilet and whether the capsules were washed or not and if so as to in whose presence. He also submitted that it has also not come in the evidence that the respondent excreted capsules in the presence of the doctor. He next submitted that no medical officer posted in the department of radiology, who has issued CT scan report, after the excretion of the capsules, was examined.

5. We have examined the evidence that has come on the record. It is an admitted position that the respondent was arrested from the airport. He was then immediately taken to nearby Nihal hospital in Malir where X-Ray of his stomach was taken which depicted foreign bodies. The X-Ray as well as the receipt of the hospital has been produced in evidence. The X-Ray no doubt does not contain the name of the respondent but it contains the receipt number and on the receipt itself the name of the respondent and the very same receipt number that is on the X-Ray is there. After the X-Ray, the respondent was taken to Jinnah hospital. At all times his custody was secured through police personnel. The doctor then administered the requisite medicines so that whatever is in his stomach is flushed out. This entire process, right from the arrest of the respondent and administration of necessary medicine to

facilitate quick excretion, has not been questioned by the defence in the cross-examination of the prosecution witnesses. All that had been said in defence was that X-Ray film does not contain the name of the respondent, that it has not come in the evidence as to whether the accused excreted the capsules on the bed or in the toilet and whether the capsules were washed or not and if so as to who washed the same and that no medical officer posted in the department of radiology, who has issued CT scan report after the excretion of capsules was examined.

6. We have noted that there is no material omission or contradiction in the depositions of the prosecution witnesses. The doctor i.e. PW-5 first administered the requisite medicine and thereafter the respondent excreted capsules under the watch of ANF Staff, who were deputed for such purpose. The excreted capsules were then produced before the doctor. In the presence of deposition of the doctor who after noticing foreign bodies in the X-Ray administered medicine to facilitate excretion as well as the depositions of ANF staff in whose presence respondent excreted capsules, it matters not whether the respondent excreted the capsules on the bed or in the toilet or whether the capsules were washed or not as such details are of no relevance. It has come in the evidence that the recovered capsules after excretion were immediately presented to the concerned doctor and then were sealed and sent to the Chemical Examiner. Upon chemical examination it was confirmed that the capsules contained 550 grams of heroin powder. No contradictions on this material aspect of the case has been extracted from the prosecution witnesses. We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case. Thus, there exists ample evidence on record to find the respondent guilty and the Trial Court rightly convicted him.

7. The above are the reasons of our short order dated 06.12.2016 whereby we allowed this appeal, set aside the impugned judgment of the High Court and restored that of the Trial Court.

JUDGE

JUDGE

JUDGE

Karachi, the
8th of December, 2016
Approved For Reporting
Khurram