

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No.203 of 2019**

*Sabiha Bibi Vs. The State*

Appellant By:	Malik M. Ajmal Khan, Advocate.
State By:	Dr. Waseem Ahmed Qureshi, Special Prosecutor, ANF with Naseer, Sub-Inspector.

Date of Hearing:	04.02.2020.
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**GHULAM AZAM QAMBRANI J.** :- This appeal has been directed against the judgment dated 28.05.2019, passed by learned Special Judge (C.N.S), Islamabad, in case F.I.R No.91 dated 21.06.2016 under Section 9(C) of the Control of Narcotic Substances Act, 1997 (hereinafter be called as C.N.S.A), police station ANF RD, Rawalpindi, whereby appellant (Sabiha Bibi) was convicted of the referred offence and sentenced to simple imprisonment of five years with fine of Rs.10,000/- and in default thereof, appellant was to further suffer for four months S.I, benefit of Section 382-B has also been extended to her.

2. After completion of the investigation, report under Section 173 Cr.P.C, was submitted before the learned Trial Court and the appellant was sent to face the trial. The learned Trial Court after fulfilling codal formalities framed the charge against the appellant to which she pleaded not guilty and claimed trial. On denial of the charge by the appellant, the prosecution was directed by the learned Trial Court to produce evidence.

3. In order to prove the allegations, prosecution examined the following witnesses:-

- i. PW-1, Hassan Feroz/S.I (brought the complaint to police Station.)
- ii. PW-2, Afzal Nawaz/C (taken the samples from Malkhana for depositing NIH).
- iii. PW-3, Arshad Mehmood/H.C (Brought the recovered parcels to Malkhana from the spot).
- iv. PW- 4, Touqeer Shahzad/C (Recovery witness,)
- v. PW- 5, Muhammad Munir Abid/Inspector (Complainant/I.O)

4. On closure of the prosecution evidence, appellant/convict was examined by the learned Trial Court under Section 342 Cr.P.C wherein, she has categorically denied the whole accusation. While recording her statement under Section 340 (2) Cr.P.C, she has stated that on 21.06.2016, it was sehri time, she came at Charasada Motorway Interchange when she was sitting in the public vehicle, a lady was already sitting on the front seat, having a bag in her foot. She had a purse in her hand containing Rs.20,000/-. It has been further stated that before 26-number chungli, the said woman de-boarded from the vehicle and A.N.F officials stopped the vehicle. The lady constable de-boarded her and took her to the police station. The learned Trial Court passed the impugned judgment dated 28.05.2019, hence the instant appeal.

5. The learned counsel for the appellant contended that the prosecution has failed to produce the lady constable as witness against the appellant which casts doubt in the prosecution story; that nothing has been recovered from the possession of appellant; that she has been falsely involved in the matter, therefore, the impugned judgment is liable to be set-aside.

6. On the other hand, learned Special Prosecutor for A.N.F vehemently opposed the appeal and while supporting the impugned

judgment stated that prosecution witnesses have no ill-will or enmity against the appellant; that recovery of contraband has been effected from the conscious possession of the appellant; that samples were separated and sealed at the spot and sent to the laboratory without loss of time; that positive report is available on record followed by protocol which confirms that the material was charas.

7. We have heard learned counsel for the parties and have gone through the available record, which reveals that recovery was effected on 21.06.2016 at about 05:30am, the recovery memos were prepared on the spot, samples were taken for chemical analysis purpose and sent through PW-2 Afzal Nawaz (Constable) to the N.I.H laboratory Islamabad.

8. PW-1 has stated that he was posted as duty officer at Police Station A.N.F Rawalpindi; on 21.06.2016 at about 08:15 am Muhammad Naveed (Constable) brought Murasala/complaint for registration of F.I.R. The contents of the same were incorporated into F.I.R No.91/2016 and he has produced the same as, Exh-PA/1-A.

9. PW-2 Constable Afzal Nawaz has deposed that on 22.06.2016, he was posted at Police Station A.N.F, Rawalpindi. Muhammad Munir Inspector gave an application in Urdu, Docket in English along-with sealed sample and directed to take sample parcels from Moharrir Malkhana for further transmission to N.I.H, Islamabad for chemical analysis. He further deposed that he went to Moharrir Malkhana Arshad Mehmood Head constable who gave application to him and asked for samples parcels. Moharrir malkhana handed over five sealed sample parcels along with the record certificate for transmission to the N.I.H,

Islamabad. During cross examination he stated that during transmission the possession of sample parcels remained intact.

10. PW-3 Arshad Mahmood (Head Constable) is the witness who brought sealed parcels, five samples and the remaining six recovered contraband parcels for keeping the same in safe custody at Malkhana of the Police Station.

11. PW-4 is the witness of recovery memo, who has stated that on 21.06.2016, Muhammad Munir Abid checked the vehicle with the help of lady constable; a lady was sitting on front seat, who disclosed her name as Sabiha Bibi and from whom five packets of charas were recovered. Investigating officer prepared recovery memo which was attested by him along-with Matee Ur Rehman (A.S.I) and Sonia Sanam (Lady Constable).

12. PW-5 Muhammad Munir Abid, Inspector has deposed that on 21.06.2016, he was posted as inspector/S.H.O at Police Station A.N.F North Rawalpindi, when at about 05:00 am, he along with Matee Ur Rehman and Toqueer Shahzad, Muhammad Naveed constable and lady constable Sonia Sanam on official vehicle number RIG-1115 alongwith driver Asif Iqbal were present at 26-Number Chungi, Bus Stop, Motorway Chowk Islamabad, for the purpose of narcotic surveillance. The spy informer came to him and furnished information that a lady namely Sabiha Bibi will smuggle a huge quantity of charas to Rawalpindi through public transport. Upon such information, he alongwith A.N.F staff started checking of vehicles coming from Motorway side and at about 05:30 am a vehicle bearing number RIS-1266 coming from Motorway side, was signaled to stop by the A.N.F personnel. On the

pointation of informer a lady was sitting on the front seat of vehicle and a lady bag, maroon color was lying in her lap. She was alighted with the help of lady constable Sonia Sanam and overpowered. On query, she disclosed her name Sabiha Bibi w/o Muhammad Din. On checking of the bag, it resulted into recovery of five packets of charas, wrapped in khaki envelop and solution tape and white polythene bag. All the recovered packets of charas were weighed at the spot and became 1/1 kilogram each, total 5-KG. From each recovered packet, 10 grams each substance was separated for chemical analysis purpose and five sealed sample parcels were prepared. The remaining bulk charas was also sealed in another parcels. Total six parcels were made and sealed with the seal MA. All the articles P/1, the lady bag P/2, recovery of Rs.1000/- P/3, and a lady purse P/4, were taken into possession through recovery memo Exh-PC. He drafted complaint Exh-P/1-B and sent to the police station A.N.F through Constable Muhammad Naveed for registration of F.I.R. He recorded the statements of PWs under Section 161 Cr.P.C, prepared site plan Exh-PD, on receipt of copy of F.I.R Exh-P/1-A and original complaint Exh-P/1-B and handed over the case property alongwith other articles as per recovery memo transmitted to Malkhana through Arshad Mehmood, Head Constable. On 22.06.2016, five samples parcels were sent to N.I.H laboratory for chemical analysis purpose Islamabad, through Constable Afzal Nawaz. He also recorded statement of Moharrir Malkhana and Afzal Nawaz.

13. Dr. Shahzad Hussain CW-1 has stated that he is performing duties as Chief Drug Control and Traditional Medicine Division in N.I.H, Islamabad. He is notified as Federal Government Analyst since

11.11.2006, he conducted analysis of five sealed samples parcels and observed all protocol i.e. received parcels in sealed condition, took care while opening; analyzed the same and maintained separate register. He prepared a report which is Exh-PG, Exh-PH, Exh-PI and Exh-PJ to Exh-PK. He produced protocol form in original as Exh-PM. All the tests were conducted in his presence under his supervision.

14. Perusal of the depositions of the witnesses shows that they arrested the appellant convict and recovered five kilograms charas from her conscious possession. The statements of the witnesses are in line with each other. The witnesses were subjected to lengthy cross examination but their testimonies could not be shaken to the extent of apprehending the appellant, recovery of five packets charas each weighing 1000gram, total 05 kilogram, 10 grams samples were separated from each packet for chemical analysis purpose and sealed five parcels were made at the spot thereafter on the very next day the sample parcels were delivered to N.I.H laboratory Islamabad, without any loss of time in accordance with the Rule 4(2) of the Control of Narcotic Substances (Government Analysis) Rules, 2001. Five separate samples were obtained at the spot from each packet and the chemical analysis report received from N.I.H is on the record in positive. The prosecution has successfully established the recovery of five kilogram charas from the appellant namely Sabiha Bibi beyond reasonable doubt by producing six prosecution witnesses in addition to Dr. Shahzad Hussain, CW-1, under Section 29 C.N.S.A 1997. The prosecution has proved the case against the appellant. So far as, the contention of learned counsel for appellant that the lady constable namely Sonia

Sanam was not produced as PW is concerned, in this regard, it is stated that PW- 4 & 5 have been produced for the proof of recovery of the narcotic, therefore, the production of lady constable was not necessary. As far as, the recovery of five kilograms charas from the possession of the convict is concerned, in this regard the quantum of sentence has to be seen in the light of the judgment titled Ghulam Murtaza and another Vs. The State (PLD 2009 Lahore 362) and approved by Hon'ble Supreme Court of Pakistan in judgment titled "Ameer Zeb Versus The State" (PLD 2012 Supreme Court 380) wherein, for the recovery of charas up to five kilograms, the sentence is advised as rigorous imprisonment for seven years and six months with fine of Rs.35000/-, in default S.I. for six months and fifteen days.

15. The learned Trial Court has already taken lenient view keeping in view that the appellant is a lady and previous non-convict. The appellant failed to point out any misreading or non-reading of evidence in the impugned judgment

16. We have found no irregularity or illegality in the judgment impugned dated 28.05.2019, warranting interference by this Court, therefore, the instant appeal having no force is **dismissed**.

**(AAMER FAROOQ)**  
**JUDGE**

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

Announced in open court, on 19<sup>th</sup> day of March, 2020.

**JUDGE**

**JUDGE**