

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

**Criminal Appeal No.110 of 2019**

Sadia Bano

*Versus*

The State

Appellant By:	Mr. Qaiser Mehmood Raja, Advocate.
Respondent By:	Mr. Awais Haider Malik, State counsel.
Date of Hearing:	19.11.2020

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**GHULAM AZAM QAMBRANI,J.:-** Through this judgment, we intend to decide Criminal Appeal No.1110/ 2019 filed by the appellant against judgment dated 01.04.2019.

2. The appellant (*Sadia Bano wife of Muhammad Zafran*), was involved in case F.I.R No.490, dated 04.11.2018, offence under Section 9(c) of the Control of Narcotics Substances Act, 1997, registered at Police Station Tarnol, Islamabad, and was tried by the learned Special Judge/CNS, Islamabad (West). The learned trial court seized with the matter in terms of judgment dated 01.04.2019, convicted the appellant under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced her to undergo 08 (eight) years and four months RI with fine of Rs.40,000/- (Fourty thousand) and in case of default in payment thereof, to further undergo simple imprisonment for 06 months. He was also given benefit of Section 382-B, Cr.P.C.

3. The prosecution story as alleged in the F.I.R lodged on the complaint of Muhammad Iqbal SI is that on 04.11.2018, police party headed by Muhammad Iqbal SI alongwith Sobia Naz lady constable, Arif Husssain Head Constable, Naveed Akhtar Head Constable, Ghulam Mustafa Constable, Muhammad Asif Constable and Asim Shah Driver/Constable

were present in the area of Marchan Stop, Fateh Jang road on official vehicle driven by Asim Shah Constable. At about 4.00 p.m, on suspicion they apprehended a lady who disclosed her name as Sadia Bano. She was having a bag and she was searched through lady constable. From search of the bag, three pockets were found. On opening, every packet was containing charas. Two packets were having charas 4 Kilograms each, whereas third packet was of 2500 grams of charas (Total weighing 10.5 Kilograms), 10 grams each was separated from each parcel for chemical analysis. All recovered charas was made into one sealed parcel, whereas three parcels of samples were prepared. Recovered charas and samples alongwith bag were taken into possession vide memo Ex.PA signed by Sobia Naz lady constable and Ghulam Mustafa Constable. Appellant was arrested. On personal search of appellant Rs. 3000/-, a gold chain, wrist watch, colored copy of CNIC, 12 steal bangles, mobile phone and two ear rings were also taken into possession through recovery memo Ex.PB and the said articles were produced before the Court as articles P6 to P9. The complainant Muhammad Iqbal drafted the complaint Ex.PC and sent the same through Yar Muhammad Constable PW.5 to the police Station on the basis whereof F.I.R Ex.PC/1 was registered. The PW.2 being the Investigating Officer prepared site map at the spot and recorded the statements of witnesses under Section 161 Cr.P.C. On completion of investigation, challan under Section 173 Cr.P.C was submitted before the learned Trial Court.

4. After taking cognizance by the learned trial Court and fulfilling the codal formalities, charge was framed against the appellant, to which she pleaded not guilty and claimed trial.

5. In order to prove its case against the appellant, the prosecution produced five witnesses, PW-1, Mubarak Ali, PW-2 Muhammad Iqbal Sub-Inspector, PW-3 Sobia Naz Constable, PW-4 Muhammad Umar Constable and PW-5 Yar Muhammad

SI. Apart from the above oral evidence, the prosecution also produced documentary evidence laboratory reports as Ex.PE, Ex.PF and Ex.PG.

6. On closure of the prosecution evidence, statement of appellant was recorded by the learned trial Court under Section 342 Cr.P.C, wherein, she has categorically denied the allegations and pleaded innocence. The appellant neither opted to appear as her own witness in terms of Section 340 (2) Cr.P.C nor produced any evidence in defence.

7. After hearing the arguments of learned counsel for the parties, the learned trial Court, on assessment of the evidence passed the impugned judgment dated 01.04.2019, whereby convicted and sentenced the appellant, which she has impugned before this Court, by filing of instant Criminal Appeal.

8. Learned counsel for the appellant has argued that the impugned judgment is contrary to the facts, evidence and law; that the appellant is innocent; that in fact the charas was recovered from a Suzuki Pick-up and the person driving it made his escape good and she has been falsely involved in the case; that the alleged recovered contraband has been foisted upon her; that there are material contradictions in the statements of the prosecution witnesses, which have not been considered by the learned Trial Court; that no private person from public was associated during recovery proceedings, which is clear violation of Section 103 Cr.P.C; that prosecution has failed to establish its case against the appellant beyond any reasonable shadow of doubt. Further contended that the laboratory reports Ex.PE to Ex.PG are not followed by necessary protocols; that there is no evidence that the sample parcels remained in safe custody with the police; that the story of prosecution is doubtful, but the benefit of the same was not extended to the appellant. Lastly prayed for acceptance of the appeal.

9. Conversely, learned State counsel submitted that the appellant was arrested red handed at the spot, that the contraband were taken into possession samples were drawn and sealed at the spot; that no malafide on the part of prosecution witnesses was alleged by the appellant during the course of trial to falsely involve her in the commission of the offence or to foist the contraband; that sufficient incriminating evidence is available on record connecting the appellant with the commission of crime and conviction awarded to her by the learned trial Court is based upon proper appraisal of evidence; that the appellant has failed to establish her false implication in the instant case; that the impugned judgment dated 01.04.2019 does not suffer from any illegality or irregularity; that the chemical examiner's report as to the narcotics substance, recovered from the appellant, was in positive; that the appellant had been rightly convicted by the learned trial Court. Learned State counsel urged for dismissal of the instant appeal.

10. We have heard learned counsel for the appellant and learned State counsel and perused the record with their able assistance.

11. Perusal of the record reveals that on 04.11.2018, at about 04:00 p.m., the prosecution witnesses were on routine area patrolling at Marchan Stop, Fateh Jang. The appellant was apprehended having a bag in her hand. On search of the bag, three packets of charas were recovered. Two packets were having Charas 4 Kilograms each, whereas third packet was of 2500 grams of charas. 10/10 grams was separated from each recovered contraband for chemical analysis purpose as representative sample and were sealed into separate parcels, while the remaining was also sealed into another parcel through recovery memo Ex.PA. All the prosecution witnesses remained consistent on all material aspects although they were subjected to lengthy cross-examination by the defence, but their testimonies were not shattered. From the statements of prosecution

witnesses, the mode and manner of arrest of the appellant, recovery of narcotic from the physical and conscious possession of appellant, has been proved, whereas the appellant has failed to establish malafide or enmity with any of the prosecution witnesses.

12. From the statements of prosecution witnesses it has been established that 10.5 Kilograms charas was effected from the conscious and exclusive possession of the appellant. It is also proved from the statements of the prosecution witnesses that the sample parcels remained intact at the Malkhana and without any delay, the same have been transmitted to the laboratory on 06.11.2018, which fact proves that no tampering has been made with the sample parcels and the same were transmitted safely to the N.I.H Laboratory, Islamabad. So far as the contention of the learned counsel for the appellant that no private person was associated in recovery proceedings, which is in violation of Section 103 Cr.PC is concerned, there is no force in the contention of learned counsel for the appellant, as the application of Section 103 Cr.P.C has been excluded by Section 25 of the Act, in narcotics cases. The august Supreme Court of Pakistan in the case of "Zafar VsThe State" (2008 SCMR 1254) has held as under:-

*"Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are the police employees."*

The prosecution witnesses have rightly been believed by the learned Trial Court. The PWs were not at all questioned about any previous ill-will with the appellant, whereby she could have been falsely involved huge quantity of charas foisted upon her.

13. Reappraisal of statements of the prosecution witnesses reveals that they remained consistent in their respective depositions despite being subjected to lengthy cross examination. Their testimonies are consistent regarding the time, date, place

and mode of recovery of narcotics substance. There is no delay in sending the samples to the laboratory, which were sent and received on 06.11.2018 in the office of the laboratory. The laboratory report i.e. Ex.PE to Ex.PG, which is in accordance with standard protocols, has confirmed the samples to contain narcotic drugs/chars. The chemical report Ex.PE to Ex.PG shows that the seals of the parcels were intact and satisfactory. Learned counsel for the appellant has failed to bring on record any motive on the part of prosecution for false implication of the appellant in the instant case.

14. In view of what has been discussed hereinabove, it is concluded that the prosecution has proved the charge against the appellant beyond any shadow of doubt. The learned trial Court after proper appraisal of evidence has rightly convicted and sentenced the appellant. We found no illegality or any material irregularity in the impugned judgment, warranting interference by this Court, therefore, this appeal, being devoid of merits, is hereby **dismissed**.

(AAMER FAROOQ)  
JUDGE

(GHULAM AZAM QAMBRANI)  
JUDGE

Announced in open court, on 18<sup>th</sup> day of December 2020.

JUDGE

~~JUDGE~~  
JUDGE

S.Akhtar