

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.258/2019

Rasheed

versus

The State

Appellant by: Qazi Hafeez-ur-Rehman, Advocate.

State by: Dr. Waseem Ahmad Qureshi, Special
Prosecutor, ANF.
Hamza/S.I., ANF.

Date of Hearing: 11.12.2019.

MOHSIN AKHTAR KAYANI, J: The appellant through the captioned criminal appeal has called in question judgment of the learned Judge Special Court (CNS), Islamabad dated 27.06.2019, whereby the appellant has been convicted in case FIR No.68, dated 25.04.2016, under Section 9(C) CNSA, 1997, P.S. ANF-RD, Rawalpindi and sentenced to 12 years and 06 months rigorous imprisonment along with fine of Rs.60,000/-, in default whereof, the appellant has to undergo further 09 months simple imprisonment. However, benefit of Section 382-B Cr.P.C. has been extended to the appellant.

2. Brief facts referred in the instant appeal are that on 25.04.2016, at about 04:30 p.m., Naveed Ahmed Tonio/S.I. of ANF on receiving spy information that one Rasheed (appellant) will be reaching on his motorcycle (RIM-08-5666) to Chungi No.26 with respect to supplying of heavy quantity of narcotics to specific customers at Tarnol Bus Stop reached at the disclosed place along with a raiding party and apprehended the said person. During his personal search, 10 packets of charas wrapped with khaki solution tape and polythene bag were recovered from his shoulder bag, which on weighing found to be 10 kilograms in total having every packet of 1000 grams, from which sample of 10 grams was separated from each packet to be sent to NIH for chemical analysis. Consequently, complaint was sent to police station for registration of case,

whereupon the case FIR No.68/2016 was registered. After completion of investigation, challan was submitted in the Court on 02.06.2016 followed by framing of charge on 10.08.2017, to which the appellant pleaded not guilty and claimed trial. In order to bring home the guilt of appellant, the prosecution had produced five witnesses and one CW, while the learned trial Court pursuant to recording of evidence of prosecution witnesses and court witness, recorded the statement of appellant under Section 342 Cr.P.C., on the basis of which the learned trial Court vide the impugned judgment dated 27.06.2019 has convicted the appellant under Section 9(C) of the CNSA, 1997 and sentenced him to undergo rigorous imprisonment for 12 years and 06 months along with fine of Rs.60,000/-, in default whereof, the appellant to undergo further 09 months simple imprisonment. However, benefit of Section 382-B Cr.P.C. has been extended to the appellant. Hence, the instant criminal appeal.

3. Learned counsel for appellant contended that the prosecution has badly failed to prove the case against the appellant as the recovered substance has been proved to be marijuana, which does not attract Section 2(d)(i) of the CNSA, 1997, but even then the learned trial Court has passed the impugned judgment; that there are glaring contradictions in respect of place of recovery and evidence produced by the prosecution witnesses; that the alleged place of occurrence/recovery is a thickly populated place but even then no public witness has been associated in the recovery proceedings, and as such, the learned trial Court has ignored all these contradictions and flaws in the case and passed the impugned judgment, which is liable to be set-aside and the appellant may be acquitted of the charge.

4. Conversely, learned Special Prosecutor while opposing the instant criminal appeal contended that on the basis of spy information the appellant has been caught red handed while in possession of 10 kilograms charas, which has been proved positive by the NIH; that the prosecution has successfully proved

the case against the appellant as all the witnesses remained consistent in their testimony and the evidence brought by such witnesses has rightly been appreciated by the learned trial Court and convicted the appellant in accordance with law vide the impugned judgment, which is liable to be maintained.

5. Arguments heard, record perused.

6. Perusal of record reveals that the appellant has called in question the judgment dated 27.06.2019, passed by learned Judge Special Court, CNS, Islamabad, whereby he has been convicted and sentenced U/S 9-C, CNSA, 1997 for imprisonment for 12 years and 06 months R.I and fine of Rs.60,000/- and in default of payment of fine to further undergo 09 months S.I in case FIR No.68/2016, dated 25.04.2016, U/S 9-C, CNSA, 1997, Police Station ANF, RD North Rawalpindi registered on the complaint of Naveed Ahmed Tonio, S.I, P.S ANF RD North Rawalpindi/P.W.5 and I.O of this case, who lodged complaint/Exh.P/1-A dated 25.04.2016 with the allegations that on spy information that a person namely Rasheed is transporting heavy quantity of Charas on motorcycle No.RIM-5666-08 Honda CG 125 red colour near Tarnol Railway Bus Stop, Islamabad in order to supply the same to his customer. A raiding party was constituted and deployed at the relevant place secretly when one person came from Peshawar side on motorcycle No.RIM-5666-08 CG 125 with black colour shoulder bag, who was stopped after 10 minutes of monitoring and he was detained in presence of Matti-ur-Rehman ASI and Aamir Nawaz, who disclosed his name Rasheed and he also disclosed that he is in possession of Charas in his shoulder bag. The bag has been opened in his presence, which contained 10 packets wrapped in solution tape and transparent envelope, each contained 1 kg Charas. Sample parcels were taken, the motorcycle was also taken into possession and the complaint was sent to police station for registration of FIR. The complaint was converted into FIR/Exh.P/1-B by Mehboob Shah/H.C, P.S ANF-Dina/P.W.1, whereas the I.O of this case Naveed Ahmed Tonio,

Inspector PA ANF Quetta/P.W.5 has handed over the recovered Charas as well as 10 sample parcels alongwith black colour shoulder bag and motorcycle with other personal belongings of the appellant to Moherer Malkhana Arshad Mehmood/P.W.3, who entered the same in register No.19 and kept the same in safe custody. The samples were deposited in NIH, Islamabad for chemical examination by Muhammad Naveed constable/P.W.2 on 27.04.2016, which was handed over to P.W.2 by Arshad Mehmood/P.W.3.

7. We have not observed any discrepancy and defect in safe custody in transmission of samples to NIH, Islamabad in the testimonies of P.W.2 and P.W.3 and they remained consistent despite cross-examination by the appellant.

8. The prosecution has produced recovery witness of the said Charas, who has witnessed the recovery of Charas in Exh.PC and the said witness Aamir Nawaz, Constable put appearance as P.W.4 and narrated entire storey of the prosecution, in which he stated that at about 4:30 p.m a person having black colour shoulder bag came on motorcycle No.RIM-5666-08 Honda CG 125 from Peshawar side and stopped at Tarnol Bus Stop and waited for someone and on the pointation of informer the said person was identified as Rasheed, who was kept under surveillance for ten minutes, however, no one came before him upon which S.I Naveed Ahmed Tonio alongwith raiding party apprehended him and interrogated him and at about 4:40 p.m, in the presence of witnesses Matti ur Rehman ASI and Aamir Nawaz, Constable he was identified as Rasheed s/o Wahab Gul Afradi and disclosed that a shoulder bag, which he was hanging on his shoulder contained heavy quantity of Charas. The black bag/Exh.P4 was opened, which contained 10 packets of Charas wrapped in white solution tape and transparent envelope weighing 1 kg each. Samples parcels were prepared and the recovered contraband as well as a 10 sample parcels were separately sealed, whereby 10 kg Charas has been recovered as Exh.P1, motorcycle No.RIM-5666-08 CG 125 as Exh.P2 and key of the motorcycle as Exh.P3, which were taken

into possession vide recovery memo Exh.PC. The personal search contains the recovery of motorcycle registration book/Exh.P5, original CNIC of the appellant Exh.P6, Pakistani currency Rs.1500/- Exh.P7/1-15 and different visiting cards Exh.P8/1-3, which were taken into possession vide recovery memo Exh.PD. All these documents have been signed by P.W.4/ Aamir Nawaz, Constable, who has been cross-examined at length but no favourable result could be achieved by the appellant side.

9. The star witness produced by the prosecution is Naveed Ahmed Tonio/P.W.5, who has confirmed registration of complaint Exh.P/1-A, which was converted into FIR Exh.P/1-B and has also witnessed the recovery memo Exh.PC and also prepared the personal search memo Exh.PD, site plan Exh.PE and also submitted the challan before the Court. P.W.5 after receiving the report of Chemical Examiner Exh.PF and PG submitted supplementary challan before the Court.

10. P.W.5 was subjected to lengthy cross-examination but nothing favourable was achieved by the appellant, however, during the course of cross-examination the appellant made request to Trial Court to de-seal parcel Exh.D1 for inspection, which further confirmed that the recovered contraband was Charas.

11. Trial Court also summoned Dr. Shahzad Hussain, Chief Drug Control and Traditional Medicine Division at NIH, Islamabad, who appeared before the Court as C.W.1, who stated that he is government analyst since 11.11.2006 and that he received 10 sealed sample parcels and conducted analysis and observed his all protocols and he prepared report Exh.PF and Exh.PG and he produced original protocol as Exh.PJ. He also stated that all the tests were conducted in his presence under his supervision.

12. During the course of cross-examination, C.W.1 stated that scientific name of Charas is Marijuana, however, he could not tell chemical formula of Charas. He further stated that as per his report the Charas is Marijuana. He also

confirmed that Charas is to be chemically named as Cannbin resin and voluntarily stated that it is also known as Marijuana. C.W.1 further confirmed that he has submitted the report within 15 days in terms of rule 5 of CNS, Rules, 2001.

13. The appellant got recorded his statement U/S 342, Cr.P.C, whereby he has denied the entire incident.

14. The above referred detailed evidence has been considered with able assistance of learned counsel for the appellant but no legal defect has been highlighted by the appellant in this case as the case property i.e. motorcycle No.RIM-5666-08 CG 125/Exh.P2 was produced in the Court including the shoulder bag/Exh.P4, which contained 10 kg Charas/Exh.P1 on the day of recovery i.e. 25.04.2016 from the appellant. The appellant was also found in possession of key, registration book alongwith original CNIC, which further confirms that the appellant was on the motorcycle while in possession of 10 kg Charas through bag/Exh.P4 and the samples were taken at the time of recovery of Charas on 25.04.2016 and the said 10 samples were received by NIH, Islamabad on 27.04.2016, which has been confirmed through Exh.PF and Exh.PG dated 23.05.2016 and identified as Charas. The said reports have been appreciated by evidence of C.W.1, who has brought the evidence on record and confirmed the protocols and gave details of chemical name of Charas as Marijuana and explained the details of Marijuana, which has been discussed by the appellant at length. Marijuana is plant material derived from Cannabis plant as defined in Physiology and Pharmacology for Addiction Professionals. Similarly, it has also been defined dry, shredded green and brown mix of flowers, stems, seeds, and leaves. This has also been confirmed from the drug facts referred in www.drugabuse.gov/drugpages.

15. The above referred details if seen in juxtaposition with testimony of C.W.1, who categorically stated that *“scientific name of Charas is Marijuana. I*

cannot tell chemical formula of Charas. Voluntarily stated that there is no need to mention the chemical formula. As per my report the Charas is Marijuana".

This stance leaves nothing in favour of the appellant as Charas and Marijuana is same thing. Even otherwise, as per definitions provided in section 2 of CNSA, 1997 Marijuana, Cannabis and Charas have common chemical names with common international non-proprietary names and the relevant term has been defined in section 2(d)(i), which is reproduced as under:-

"2(d)(i) cannabis resin (charas) that is, the separated resin, whether crude or purified obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish."

16. The above referred definition provided in CNSA, 1997 explains the origin of Charas i.e. Cannabis resin and as per International Journals and Research cannabis is also known as marijuana among other names is a psychoactive drug from the cannabis plant used for medical or recreational purposes. The main psychoactive part of cannabis is tetrahydrocannabinol (THC), one of the 483 known compounds in the plant, including at least 65 other cannabinoids. Cannabis can be used by smoking, vaporizing, within food, or as an extract. Cannabis has mental and physical effects, such as creating a "high" or "stoned" feeling, a general change in perception, heightened mood, and an increase in appetite. Onset of effects is felt within minutes when smoked, and about 30 to 60 minutes when cooked and eaten.

17. The effects last for two to six hours. Short-term side effects may include a decrease in short-term memory, dry mouth, impaired motor skills, red eyes, and feelings of paranoia or anxiety. Reference has been drawn from (i) Vij (2012) *Textbook Of Forensic Medicine And Toxicology: Principles And Practice*. Elsevier India (ii) *Shorter Oxford English Dictionary* (6th ed.) (iii) *Editors of the American Heritage Dictionaries* (2007). *Spanish Word Histories and Mysteries: English Words That Come From Spanish*. Houghton Mifflin Harcourt (iv) Russo EB (2013). *Cannabis and*

Cannabinoids: Pharmacology, Toxicology and Therapeutic Potential (v) Newton DE (2013). *Marijuana: a reference handbook*. Santa Barbara, Calif (vi) *Drugs Facts: Marijuana*. Therefore, there is no difference in cannabis, resin, Charas and marijuana and they are same things having different effect due to preparation and the process, hence, the arguments advanced by the appellant side regarding difference in Charas and Marijuana has no legal significance as both of them have same active ingredient Tetrahydrocannabinol (THC) and their names are different in different region of world.

18. The prosecution has successfully proved the safe transmission of samples of recovered contraband, witnesses of the recovery remained consistent, no illegality has been observed during the entire process. We have gone through the impugned judgment in detail, whereby the sentence has been awarded to the appellant in the light of judgment reported as PLD 2009 [Lahore] 362 (Ghulam Murtaza and another vs. The State), wherein the maximum sentence provided for 10 kg Charas is 12 years and 6 months with Rs.60,000/- and as such the principles laid down in PLD 2012 SC 380 (Ameer Zeb vs. The State) have rightly been applied and no illegality has been committed by learned Trial Court.

19. In view of the above discussion, the instant appeal bears no merits, therefore, the same stands dismissed.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 13-1-2020.

JUDGE

JUDGE

R. Anjam