

**Stereo. H C J D A 38.**

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT, LAHORE,**  
**JUDICIAL DEPARTMENT.**

Criminal Appeal No. 1825 of 2010

Razia Sultana

## VERSUS

The State etc.

DATE OF HEARING:	01.04.2014
APPELLANT BY:	Syed Faizan Rasool, Advocate for the appellant.
STATE By:	Mr. Tariq Saleem Sheikh, Special Prosecutor, ANF.

**SYED SHAHBAZ ALI RIZVI**, J. This Criminal Appeal has been preferred by the appellant Razia Sultana, who was tried by the learned Special Court, CNS, Lahore in case FIR No. 14/2006 dated 22.02.2006 registered under sections 9 (c) and 15 of Control of Narcotic Substances Act, 1997, Police Station Anti-Narcotic Force, Lahore with the allegation of recovery of 10 kilogram charas from her person and she also led to the recovery of 26.750 kg charas, 8.200 kg gardacharas and 1.200 kg opium from residential room of her house situated in street No.02, Atta Colony, Octroi Post No.07, Okara city.

2. Formal charge was framed against the accused to which she pleaded not guilty and claimed to be tried. The prosecution produced as many as four witnesses to establish the charge. Ghulam Abbas, SI appeared as PW-1 who had drafted formal FIR (Exh-PA/1) on the basis of complaint (Exh.PA). Rana Muhammad Sarwar ASI/Moharrar appeared as PW-2 and deposed that on 22.2.2006, he received from PW-4 complainant-cum-IO sealed parcels of samples and case property and kept the same in safe custody in malkhana and on 27.02.2006 delivered 43 sealed parcels intact of recovered charas and opium to Imtiaz Hussain C (given up PW) for their deposit in the office of Chemical Examiner, Lahore. Muhammad Arshad-C appeared as PW-3 who is one of the members of the raiding party and marginal witnesses of recovery memos Exh. PB, Exh.PC by which PW 4 secured 10 kg

charas P-1, 34.950 kg charas P-2 and opium 1.200 kg P-3 respectively. The complainant-com-I.O of the case appeared as PW-4 who deposed regarding the mode and manner of recovery of charas from the person of the accused and charas and opium at her instance from her residential room. The S.P concerned tendered in evidence positive reports of chemical examiner Exh.PF and Exh.PG and closed the prosecution case.

3. Thereafter, statement of the accused under section 342 Cr.P.C was recorded, in which she refuted all the allegations leveled against her and professed her innocence. While answering to question (why this case against you and why the PWs deposed against you?), the appellant has replied as under:-

“I had rented out my property consisting of two bed rooms and one drawing room alongwith two attached bath rooms to one M. Akram. The raid was actually designed against Said Muhammad Akram, my tenant, who succeeded to escape during the said raid. I asked the I.O why he forcibly and illegally entered my premises. He being annoyed falsely implicated me in the instant case. As Capt. Umar Altaf and other officials were reluctant to help the I.O. In his illegal design and were supporting my version, hence the I.O willfully did not record their statement”.

4. The accused/appellant did not opt to appear as his own witness under section 340(2) Cr.P.C.

5. Learned counsel for the appellant contends that raid conducted at the house of the appellant is a clear violation of sections 20, 21 and 22 of CNSA, 1997; that no search warrant was obtained by the Investigating Officer under section 20 of CNSA, 1997; that Investigating Officer of this case has not submitted any report to his immediate superior officers; that contraband material allegedly recovered from the boxes available in the house of the appellant was not in the exclusively possession of the appellant as admittedly other family members were residing there and the said boxes were not locked; that the appellant through Exh.D-A has successfully proved that the portion of the house from where the alleged recovery has been made

was already rented out to Malik Muhammad Akram son of Noor Ahmad. Further adds that there are missing some important links in transmission of samples to the office of Chemical Examiner through positive report if any, regarding the contraband material is of no help to the prosecution; that Imtiaz Hussain, Constable who took the sample to the office of Chemical Examiner, has not been produced by the prosecution who was very important witness to prove safe transmission of the samples to the office of Chemical Examiner; that the sentence awarded to the appellant is harsh and it requires reduction and that referring to section 129 (g) of CNSA, 1997 adds that evidence of Imtiaz Hussain, Constable will not be presumed otherwise, he was not supporting the prosecution version.

6. The learned Special Prosecutor for ANF while opposing this appeal has pointed out that Imtiaz Hussain, Constable as per the statement of PW-4, the Investigating Officer of this case, had gone abroad before the commencement of the trial further that he has not been cross-examined by the defence on this particular point; that there is evidence of PW-2 that parcels were sent through Imtiaz Hussain, Constable to the office of Chemical Examiner and report of the Chemical Examiner also reflects that all the parcels were delivered in the said Laboratory by the said Imtiaz Hussain. Further adds that huge quantity of narcotic substance has been recovered from the appellant; that she has been convicted after a regular trial and after considering all pros and cons of the evidence; that at the time of cross examination of PW-4, it has categorically been suggested to him that raid was designed against Muhammad Akram, tenant of the appellant and in this way of the matter, the fact of raid so conducted by the police has stands admitted; that no mala fide is attributable to the appellant in any manner

whatsoever; that the prosecution evidence on all material points is in-line; that no contradictions between the witnesses have been pointed out by the learned defence counsel to shake the prosecution case; that the learned trial Court has already taken a lenient view while awarding the sentence to the appellant and that reports submitted by the Chemical Examiner are positive.

7. Arguments heard. Record perused.

8. Having heard the arguments, advanced by learned counsel for the appellant, learned Special Prosecutor of ANF and gone through the record with their able assistance, we have observed that the prosecution has produced Arshad constable PW.3 and Qadeer Inspector/SHO P.S ANF, Lahore PW.4 to prove the factum of recovery of huge quantity of Charas, Garda Charas and opium weighing 36 Kg. & 150 grams in total from the appellant. Both the witnesses firmly supported the prosecution story and remained unshattered during the cross examination. The defence remained failed to create any doubt, beneficial to it in any manner. Similarly, Rana Muhammad Sarwar ASI appeared as PW.2 who also strengthened the prosecution case by supporting the fact of safe custody of 43 sample parcels in the Malkhana as well as safe transmission of the same to the office of Chemical Examiner, Lahore in an intact condition, which stands further corroborated by the contents of reports of Chemical Examiner Ex.PF and Ex.PG wherein it is clearly mentioned that all the 43 parcels containing samples were received in sealed and intact condition. Ghulam Abbas SI appeared as PW.1 to prove the registration of FIR. From the statements of all the supra witnesses, it is reflected that the defence could not get any benefit,

as they corroborated each other on every material point, connecting the appellant with the commission of offence without any iota of doubt.

9. Now we prefer to advert to the contentions, raised by learned counsel for the appellant, one by one.

Firstly, the stance of the defence regarding the legality and validity of the proceedings of recovery of contraband material, in the light of sections 20, 21 and 22 of Control of Narcotic Substances Act, 1997. Perusal of the prosecution story, narrated in the FIR as well as reiterated by PW.3 and PW.4, transpires that the raiding party apprehended the appellant when she was in the street near her house, holding a black coloured bag, out of which, 10 packets of Charas weighing 10 Kg. were recovered and thereafter when she disclosed about availability of more narcotics inside her house then she herself led to the recovery of 26 Kg. and 750 grams more Charas, 8 Kg. & 200 grams Garda Charas and 1 Kg. & 200 grams of opium from her residential room on her pointation. In these circumstances, when the recovery from the house of the appellant was effected, on her pointation, who herself had led the raiding party there, the contention raised by learned counsel for the appellant becomes inconsequential and irrelevant.

The second averment of learned counsel for the appellant also becomes fruitless because, as above mentioned, the recovery from inside her house was effected on her pointation, which reflects her conscious knowledge about the availability of the narcotic in the iron box lying in residential room. The defence remained silent throughout the trial regarding the habitation of other family members in the same house. Not even a suggestion has been given to the prosecution witnesses in this regard. So how it can be inferred

that the place of recovery was jointly possessed by the appellant. Though, the appellant has taken a plea that she had rented out a portion of her house to one Muhammad Akram and admits that actually the raid was conducted for him and to support this contention, the defence tendered a rent deed Ex.DA executed between the appellant and said Muhammad Akram, but she failed to prove this document by producing any of the marginal witnesses to the same including said Muhammad Akram. There revenue tickets are not even defaced nor the deed Ex.DA is attested one. It seems that the defence half-heartedly attempted to create a counter story, but in our view, it failed. Similarly, the learned counsel for the appellant, focused the argument that Imtiaz Hussain constable who, according to the prosecution case, took 43 sample parcels to the office of Chemical Examiner, after receiving the same from the Moharrar, Malkhana PW.2, has not been produced, which means that a link of the chain of the prosecution case is missing, creating doubt about the veracity of the reports of the Chemical Examiner Ex.PF and Ex.PG. But, even this stand of the defence is not sufficient to create a dent in the prosecution case because of the fact that PW.2 has mentioned in his statement that on 27.6.2006 he handed over the said 43 sample parcels to Imtiaz Hussain constable for onward transmission to the office of Chemical Examiner and when statement of PW.2 is read with the contents of the reports Ex.PF and Ex.PG wherein it is clearly mentioned that 43 different sample parcels were received in a sealed and intact position. So, this averment of the defence also comes to the ground. The origin of the sample narcotics is proved through Ex.PF and Ex.PG, having positive result.

Even otherwise, no plausible reason for planting such a huge quantity of narcotics against the appellant by the complainant has been given by the defence.

For what has been discussed above, we uphold the impugned judgment passed by the learned trial court, resultantly the instant appeal stands dismissed, being devoid of any force.

***(Muhammad Anwaarul Haq)***  
**Judge**

***(Syed Shahbaz Ali Rizvi)***  
**Judge**

***\*  
Rafiqat Ali***