



JUDGMENT:

ABDUL WAHEED SIDDIQUI, J:- Appellant has assailed a judgment delivered by the court of Judicial Magistrate Section 30, Muzaffargarh on 14-11-1998 whereby he has been sentenced to R.I for 7 years with a fine of Rs.30,000/-. In default to payment of fine, he has to further to undergo R.I for one year. Benefit of section 382-B Cr.P.C has been extended to him.

2. One Riaz Hussain (PW-2), the complainant, was on patrol duty accompanied by other personnel of police on 19.4.1994 at about 8 P.M at Chawk Godar that a spy information was received that the appellant was present in a graveyard near Pir Bukhari and was selling heroin. Consequently a raid was arranged, appellant tried to escape but he was caught hold. On personal search, from secret shalwar a bag of plastic was tied with azarband which contained 250 grams of heroin. Ten grams were separated and sealed as a sample for the report of Chemical Examiner before witnesses. The remaining heroin was also sealed in a separate parcel. A complaint Ex.P.C was sent to P.S Qureshi Distt. Muzaffargarh where an FIR Ex.PC/1 was lodged on the same date at 830 P.M. Appellant was challaned and charged under articles 3/4 of the Prohibition (Enforcement of Had) Order, 1979 to which he did not plead guilty.

3. To prove its case prosecution examined 4 witnesses. Muhammad Ismail (PW-1) P.C, has proved that on 23.4.1994 Moharrir Shimla Shah

handed over to him a sealed parcel containing sample of heroin for handing over to the Chemical Examiner Multan. The parcel was returned to him with an objection that it contained 10 grams whereas for analysis only one gram was needed. Later on he brought the said parcel on 24.4.1994, 28.4.1994, 3.5.1994 and 5.5.1995 but every time it was returned with some objection. Finally he was successful in handing it over in the office of Chemical Examiner on 9.5.1994. All this time the parcel remained with him and no tampering was laid. He received a report of Chemical Examiner Ex.PA on 9.5.1994 which was brought on the record. Riaz Hussain P.W.2, S.I complainant has proved the contents of complaint Ex.PC. He has proved memo of recovery Ex.PB Ghulam Shabbir, P.W.3 A.S.I. has proved being a member of the Police party on Petrol on the day of occurrence. He has corroborated complainant P.W.2 and has also proved his signature on the memo of recovery Ex.PB Muhammad Iqbal P.W.4, H.C. has proved receipt of two sealed parcels containing heroin from S.I. Riaz P.W.2 on the day of occurrence. The parcel containing sample was handed over by him on 23.4.1994 to Police Constable Ismail P.W.1 for onward transmission to the Office of Chemical Examiner Multan. It was returned back with objections. After removing objections the same were sent on 27.4.1994, 28.4.1994, 3.5.1994 and 5.5.1994 but were returned with objection. Finally it was sent on 9.5.1994 and was accepted. On the same date, the report was handed to over Ismail (P.W.1) who brought the same to Police Station and is Ex.PA.

*Ahmed*

In his statement under section 342 Cr.P.C, appellant has denied all the specific questions. He has examined one Allah Wasaya in defence as D.W-1. Allah Wasaya has deposed as under:-

"یہ میرا ہمسائیہ ہے اور میرے موضع کا رہائشی ہے۔ ملزم"

ایک شریف شہری ہے اور منشیات وغیرہ کا کوئی کاروبار

نہ کرتا ہے۔ ملزم مال مویشی کا کاروبار کرتا ہے۔ پولیس

جس رات ملزم حاضر عدالت کو اسکے گھر سے گرفتار کر کے لیے گئی

تھی، اس سے اگلے دن میں اس کی گرفتاری کا پتہ چلا تھا۔ ہم

تھانہ پر ملزم کی صفائی کے لئے گئے تھے مگر پولیس نے ہماری

صفائی قبول نہ کی۔ تھانہ پر میرے ہمراہ حافظ احمد بخش پتافی وکیل

اور اقبال پتافی، کوڑا خان اور دیگر ۲۵/۲۰ افراد ملزم کی صفائی

کے لئے گئے تھے مگر انہوں نے کسی کی صفائی قبول نہ کی۔ دربار والے

بجائے اس کے پاس مسجد کا جہاں باقاعدہ پنچگانہ جماعت نماز ادا کی جاتی

ہے پولیس کی ممکن ہے ملزم کے ساتھ دشمنی ہو۔ اس لئے اس کے خلاف

مقدمہ جھوٹا مقدمہ قائم کر دیا تھا۔ ملزم نے ہمیں بتایا تھا کہ پولیس

والوں نے اس سے کچھ رقم کا مطالبہ کیا تھا جس سے انکار پر اسے

مقدمہ ہذا میں ناحق ملوث کر دینا گیا تھا۔"

4. I have heard the learned counsel for the appellant and State. At the outset the counsel for the appellant has contended that the order sheet of the trial Court dated 5.11.1997 reads as under:

ملزم برضمانت حاضر۔ گواہان حاضر نہ ہیں، گواہان نمبر ۲۰۱

اور ۲ کو برائے وارنٹ گرفتاری ضمانتی ۵/۵ ہزار بتقرر

۹۷-۱۲-۳ طلب کیا جاوے۔ گواہ شملہ گھر کے پتہ سے

طلب ہو"

But Ghulam Shabbir is appearing as PW-3 on the same date and has been examined accordingly. Hence the evidence of this witness is not be read as a reliable evidence. This line of argument is not admissible in view of the fact that this witness was crossed at length by the counsel for the accused/ appellant and, therefore,

appellant is not at all prejudiced. It appears that the order sheet was written by the trial court in the earlier part of the day, when the witnesses were not present. Later on the witness under consideration presented himself and got ~~the~~ himself examined when the counsel for both the sides were also present.

It has also been contended that the order sheet entry dated 24.1.1998 reads:

"ملزم برضمانت حاضر۔ فاضل انسپکٹر لیگل حاضر۔ ایک گواہ  
آمدہ محرر کی شہادت قلمبند ہوئی۔ اب مثل برائے جرح  
برگواہ ۵-۲-۹۸ پیش ہووے۔"

The record on the other hand indicates that Iqbal (PW-4) Moharrir was examined on 24-1-1998 and chance for cross was given to the appellant, but he did not availed of that opportunity. According to the counsel, no proceedings had taken place on 5-2-1998. Later on many chances were given, as per order sheet, to this witness to appear for cross, but he did not come and finally on 11.7.1998, the evidence of prosecution was closed without having given a chance of cross upon PW-4 and this way appellant has been prejudiced. The factual position is that on 24-1-1998 PW-4 was examined in chief, whereas the appellant was present. He was given a chance for cross, but he did not avail it. During his statement under section 342 Cr.P.C when appellant was asked a question about the sending of sample to the Chemical Examiner and the report thereof, he could have agitated at that stage that his counsel had not yet crossed this

*Ahsan*

witness who had taken the samples to the office of Chemical Examiner and had brought the report Ex.P.A.

On the contrary he has replied:

"میرا اس رپورٹ کے ساتھ کوئی تعلق نہیں - کیونکہ میرے قبضے سے کوئی ہیروئین برآمد نہ ہوئی تھی۔"

I do not find that the appellant has been prejudiced on this count. Hence this contention is rejected.

5. It has also been contended that the complainant PW-2 has admitted that the recovered heroin was sent to P.S. through PC Iqbal who handed it over to Moharrir Shimla Shah vide memo Ex.PC/1. Now this Shimla Shah has not been examined. Therefore the chain of keeping the incriminating material in safe custody is broken which makes the sanctity of the parcels dubious. In fact the record does not indicate that Shimla Shah was made the custodian of the recovered material. Raiz Hussain PW-2 has simply deposed as under:


"ملزم کے قبضے سے برآمدہ ہیروئین اور رقم کو برائے فرد ایگزیبٹ پی بی قبضہ پولیس میں لے کر فرد پر گواہان کے دستخط کروائے۔ استغاثہ ایگزیبٹ پی سی مرتب کر کے برائے قائمی مقدمہ بدست محمد اقبال ۱/سی ۲۸۱ ارسال تھانہ کیا جس پر رپورٹ ایگزیبٹ پی سی ۱/ محرتھانہ شملہ شاہ نے مرتب کی جو اس کی قلمی اور دستخطی ہے مذکورہ کے دستخط اور تحریر بوجہ رفیق کار ہونے شناخت کرتا ہوں۔"

Consequently this contention fails.

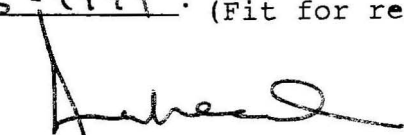
6. As the contentions regarding violation of section 103 Cr.P.C is concerned, by now it has become stare decisis that

the police witnesses of recovery are as good witnesses as any other person from public unless proved otherwise. There is no enmity proved between the police and appellant. Consequently this contention is rejected.

7. In view of the above-mentioned discussion, I find that the prosecution has proved the guilt of the appellant beyond reasonable doubts. Hence the impugned judgment is upheld and the appeal is dismissed.

  
(Abdul Waheed Siddiqui)  
Judge

Announced in open Court  
on 3.5.1999 (Fit for reporting)

  
(Abdul Waheed Siddiqui)  
Judge.

Latif Baloch/

