

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.D-58 of 2016

Muhammad Nawaz alias Karo

Versus.

The State

Appellant : Muhammad Nawaz alias Karo	Through Mian Taj Muhammad Keerio, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing	18.05.2017.
Date of judgment	18.05.2017.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This appeal is directed against the judgment dated 10.05.2016 passed by learned Sessions Judge / Special Judge for CNS, Jamshoro @ Kotri, in Special Case No.79 of 2015, arising out of Crime No.55/2015, registered at Police Station (PS) Bhan, under section 9(c) of Control of Narcotic Substances Act, 1997 (CNSA), whereby the appellant Muhammad Nawaz alias Karo has been convicted u/s 9(c) CNSA and sentenced to suffer RI for 07 years and to pay the fine of Rs.200,000/-. In case of default in payment of fine he was ordered to suffer R.I. for 06 month more (the impugned judgment). Benefit of Section 382-B Cr.P.C. was also extended to the accused. Whereas co-accused Baradi was acquitted in the said crime under section 265-H(i) Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the FIR are that present accused Muhammad Nawaz alias Karo, who was already involved in Crime No.51/2015 of PS: Badin, was arrested on 26.07.2015 at 1400 hours from Khabbars near Sakhi Suleman Shah graveyard by a police party headed by SIP Jamaluddin Dasti along with other police personnel, whereas his companion (Baradi who was later arrested and tried in this case) fled away from the scene. Accused Muhammad Nawaz alias Karo was said to be found possessing a plastic bag (Theli) wherein 12 big and small pieces of charas as well as one knife were available. Four notes of Rs.100/- each denomination, two notes of Rs.50/-denomination, total Rs.500/- were also secured from the side pocket of his shirt. Charas was weighed and it contained 3500 grams. The recovered charas and knife were sealed for chemical analysis and memo of arrest and recovery was prepared on the spot in presence of mashirs ASI Sadaruddin Qambrani and ASI Nasrullah Solangi. Thereafter, accused and case property were brought at police station where F.I.R. was lodged by complainant SIP Jamaluddin Dasti on behalf of the State under section 9(c) CNSA.

3. During investigation, Investigation Officer recorded 161 Cr.P.C. statements of the PWs. Contraband item / charas was sent to the chemical examiner on 03.08.2015 through HC Ghulam Abbas and positive chemical report was received. On the conclusion of investigation challan was submitted against the accused for offence u/s 9(c) of CNSA showing co-accused Baradi as absconder. During trial of the case, co-accused Baradi also joined trial after obtaining bail and was acquitted vide the impugned judgment.

4. Trial court framed charge against accused at Ex.5 u/s 9(c) of CNSA to which, accused pleaded not guilty and claimed to be tried vide Exs.6 and 7. At the trial prosecution examined PW-1 complainant SIP Jamaluddin Dasti At Ex.8, who produced memo of arrest and recovery at Ex.8-A, FIR at Ex.8-B, departure and arrival entries at Ex.8-C and 8-D, report of chemical examiner at Ex.8-E, attested copy of FIR No.51/2015 of PS Bhan at Ex.8-F, departure entry for investigation of Crime No.55/2015 at Ex.8-G; PW-2 mashir / ASI

Sadaruddin Qambrani at Ex.9. Thereafter, side of prosecution was closed at Ex.10.

5. Statements of accused were recorded u/s 342 Cr.P.C. at Ex.11 and 12. Accused denied the prosecution allegations and claimed their innocence. Accused Muhammad Nawaz in the said statement has further stated that his sister had filed petition against police. He produced copy of said petition at Ex.11-A, copy of judgment at Ex.11-B, true copy of judgment at Ex.11-C, copy of petition at Ex.11-D, true copy of order at Ex.11-E and copy of judgment at Ex.11-F and hence he had been falsely implicated by the police in revenge for his sister filing a CP against the police. Accused neither examined themselves on oath nor led any evidence in defence to disprove the prosecution allegations.

6. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above and acquitted the co-accused Baradi. Hence accused / appellant Muhammed Nawaz alias Karo has filed this appeal.

7. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition

8. Mian Taj Muhammad Keerio, learned advocate for appellant has contended that prosecution case is highly doubtful; the place of incident was located at busy spot but no member of the public was made as independent mushir to attest the arrest and recovery; there are material contradictions in prosecution evidence, hence it cannot be safely relied upon; that there was delay in sending the case property to the chemical examiner and tampering with the case property during such period could not be ruled out. It is argued that alleged recovery was made on 26.07.2015, whereas the sample was sent to chemical analyzer on 03.08.2015 with a delay of 08 days and no evidence has been brought on the record that contraband item / charas was in the safe custody during that period. He further argued that HC Ghulam Abbas through whom the said contraband item /

charas was sent to the chemical examiner has also not been examined. Lastly he argued that the accused has been falsely involved in this case. In support of his contentions, learned counsel for the appellant relied upon the cases of **Ikramullah & others v. the State** (2015 SCMR 1002), **The State through Prosecutor General Sindh v. Muhammad Sabir alias Sabir** (2016 PCr.L.J 859) and **Ghulam Mustafa alias Mushtaq Ali v. the State** (2013 P.Cr.L.J.860).

9. Syed Meeral Shah, learned Additional Prosecutor General Sindh very fairly conceded to the contentions of learned counsel for the appellant and did not support the impugned judgment.

10. We have carefully considered the contentions of Mr. Muhammad Jameel Ahmed, learned advocate for appellant, Syed Meeral Shah, learned Additional Prosecutor General Sind for the State, scanned the entire evidence and considered the relevant law.

11. We have come to the conclusion that the prosecution has failed to establish its case for the reasons that it was case of spy information and the police had plenty of time to call independent mushirs in this thickly populated area which it failed to do despite having ample time and opportunity to do so which would have given much greater credibility to their case; furthermore according to the prosecution there was no body around so it does not appear that the appellant was selling narcotics to anyone and in this respect the police even failed to send a fake purchaser to test this aspect of the case; it appears to us improbable that one person managed to escape on foot (Baradi) when confronted with a police mobile carrying armed police officials which in our view makes the police version of events highly suspicious; such aforesaid suspicion is further underlined when it is considered that the sister of the accused had filed a constitutional petition in the High Court against police officers including the SHO of

PS Bhan for allegedly kidnapping and maltreating her son and the arrest of the appellant has been made by officers of PS Bhan thus prima facie it appears that the police may have foisted this case on the appellant in order to keep his sister quiet and to take revenge for her filing the CP against them which suggests malafide on the part of the police especially when the other defects in the police version of events are taken into account; that there was an unexplained delay of 8 days in sending the recovered narcotic for chemical analysis

12. Most significantly however in our view there is no evidence that the recovered property was kept in safe custody during this 8 day period. There is no entry in the malkhana of the recovered property or evidence from the in charge of the malkhana that the property was kept in safe custody and even PC Ghulam Abbass who handed over the recovered property according to the chemical report has not been examined and as such it cannot be conclusively shown that the recovered property was in safe custody during this period and could not have been interfered with. Under these circumstances in our view the chemical report although stated to be positive cannot be safely relied upon. In this respect reliance is placed on the case of **IKRAMULLAH & OTHERS V/S. THE STATE** (2015 SCMR 1002), the relevant portion of which is reproduced hereunder:-

"5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him

for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit."

13. For the reasons discussed above we are of the considered view that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345) where it was held as under with regards to the benefit of doubt which we firmly believe exists in this case-

"It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

14. Thus, for the above stated reasons, we hold that the prosecution has failed to prove its case against the appellant, therefore, while extending the benefit of doubt, appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charge. The appellant is on bail. His bail bond stands cancelled and surety is hereby discharged.

15. These are the reasons for our short order of even date.