

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

Cr. Appeal No.D-109 of 2020
[Awal Sher versus The State]

BEFORE:

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Muhammad Saleem Jessar

Appellant : **Through Mr. Imtiaz Ali Abbasi, Advocate**
The State : **Through Ms. Rameshan Oad A.P.G**
Date of hearing : **08.06.2023**
Date of judgment : **13.06.2023**

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J: Through this criminal appeal, appellant has impugned the Judgment dated 25.11.2020 handed down by learned Special Judge CNS Hyderabad (Trial Court) in Special Case No.181 of 2019 [Re: The State versus Awal Sher], outcome of Crime No.76 of 2019 registered at P.S Phuleli Hyderabad for offence punishable under Section 9(c) of Control of Narcotics Substance Act, 1997 whereby he has been convicted under Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for twelve (12) years and six months with fine of Rs.60,000/- and in case of failure in payment of fine, he has been directed to further suffer S.I for nine (09) months more; he has also been awarded benefit of Section 382-B Cr.P.C.

2. Facts of the prosecution case, per FIR lodged by Complainant SIP Ghulam Rabbani, are that 30.05.2019 he alongwith HC Nafees Ahmed and PC Muhammad Akram left the police station in government vehicle bearing No.SP-956 under entry No.24 at 1730 hours for patrolling in the area; during patrolling when they reached at Islamabad Phatak, one person gave them signal and without disclosing his name and parentage informed them that one person is selling chars at the corner of Kumbhar Para Street; on such information they proceeded towards pointed place and reached there at about 1800 hours and saw one person having black shopper in his hand; the said person on seeing police party tried to escape in the street, but they apprehended him at the spot; then they checked the black shopper, held by said person, and found five packets of charas therein; the recovered charas was weighed at the spot, which became 10 KG and 100 grams; on inquiry the apprehended person disclosed his name as Awal Sher son of Qasim

Khan by caste Yousuf Zai R/O Unit No. 07 Latifabad, Pathan Goth, Hyderabad; from his personal search they recovered one note of Rs.500/- and three notes of 100/- total Rs. 800/-; thereafter they sealed the recovered chars and arrested the accused at the spot and prepared such memo of arrest and recovery and brought him at P.S and lodged the FIR.

3. After registration of FIR investigation was entrusted to SIP Azhar Ali Memon, who on completion of investigation submitted challan before the learned trial Court. Then copies were supplied to appellant at Ex.01 and formal Charge was framed against him at Ex.02, to which he pleaded not guilty and claimed trial vide his plea at Ex.02/A. In order to prove the charge prosecution examined four (04) witnesses at Ex.03 to 06, who exhibited and recognized certain documents at Ex.03/A to 06/D, then prosecution closed its side at Ex.07. Statement of appellant, as required under Section 342 Cr.P.C was recorded at Ex.08, wherein he denied the allegations of the prosecution witnesses and alleged false implication, however, he neither examined himself on Oath nor produced any witness in his defense. Finally learned trial Court after hearing the arguments of the learned counsel for the parties and assessing the evidence on record convicted and sentenced the appellant, as mentioned supra.

4. Learned counsel for the appellant, inter-alia, contended that impugned judgment is entirely against the norms of law; that the impugned judgment is based on surmises and conjecture and is result of misreading and non-reading of evidence; that prosecution witnesses have not uttered any single word that they had seen any customer purchasing alleged chars from the appellant; that during course of evidence Complainant admitted that neither signatures of mashirs nor crime number are mentioned over black coloured bag; that Complainant had further admitted that description and alleged chars is not mentioned in memo of arrest as well as FIR; however, all these important aspects have been ignored by the learned trial Court. Finally he contended that complete chemical report is missing from the paper book and R@P's therefore it is unknown who the report relates to and the amount of narcotic sent for chemical analysis and thus the chemical report is of no legal value against him and as such for any or all of the above reasons he be acquitted of the charge by extending him the benefit of the doubt.

5. On the other hand learned APG submits that prosecution has fully prove the case against appellant and there are no contradictions in their evidence; that appellant has failed to prove any enmity and/or malafide on part of Complainant; that appellant was arrested at the spot with huge quantity of contraband, hence he

has rightly been convicted and sentenced by the learned trial Court. She prayed for dismissal of appeal. However when confronted by the court she conceded that the chemical report was incomplete in both the paper book and R@P's and as such it could not be used to link the appellant to the recovered narcotics.

6. We have heard the learned counsel for the parties as well as learned Additional P.G and have also perused the material available on record.

7. We have found that there is a major contradiction in the evidence of the witnesses as to how many packets of chars was recovered at the spot. Whilst one PW gives evidence that 5 packets were recovered witness gives evidence that only 4 packets were recovered. **Most significantly** however, no complete chemical report was exhibited. Thus, it is unknown who the exhibited chemical report was against, how much charas was deposited with the chemical examiner, who took the narcotics to the chemical examiner and what date it was received by the chemical examiner and in the absence of such information it is almost impossible to determine the accuracy of the report, who it was against and the amount of narcotics which it concerned.

8. Thus, we find that we cannot safely rely on the chemical report as against the appellant and in the absence of a chemical report specifically against him, showing the amount of the narcotic deposited with the chemical examiner and as such the chemical report has lost its legal value and thus is excluded from consideration. This being the case the appellant by being extended the benefit of the doubt the appellant is acquitted of the charge and the appeal is allowed.

9. The appeal is disposed of in the above terms.