IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-202 of 2003

PRESENT

Mr. Justice Naimatullah Phulpoto
Mr. Justice Zulfiqar Ahmad Khan.

Date of Hearing:	*27.04.2017*
Date of Judgment:	*27.04.2017*
Appellant/accused:	*Ali Raz S/o Ramzan Kalhoro: Through Mr. Tarique Ali Mirjat, Advocate.*
The State:	*Through Syed Meeral Shah Bukhari, Deputy Prosecutor General, Sindh.*

J U D G M E N T

***NAIMATULLAH PHULPOTO, J*:-** Appellant through this Criminal Appeal has impugned the judgment dated 22.10.2003, passed by Special Judge (CNS), Hyderabad in Special Case No.10 of 2000, arising out of Crime No.03 of 2000 for offence under Section 9(c) Control of Narcotic Substances Act, 1997, whereby the learned Judge convicted the appellant for offence under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to 10 years R.I and to pay a fine of Rs.50,000/- and in default in payment of fine, to suffer S.I for 06 months more. Benefit of Section 382(B) Cr.P.C was extended to the appellant.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 01.02.2000 at 07:15 p.m., SIP Muhammad Ahmed Qureshi lodged report on behalf of the State at P.S Baldia, stating therein that vide roznamcha entry No.20 at 05:30 p.m., he alongwith ASI Sajjad Ali Bhatti, PCs Sudheer and Muhammad Arif, left police station in a police mobile for patrolling. While patrolling, when the police reached near Gharibabad Chowk, the present accused was standing there, who while seeing the police mobile tried to run away but he was surrounded and caught-hold by the police. On inquiry, the accused disclosed his name as Ali Raz S/o Ramzan Kalhoro. SIP Muhammad Ahmed Qureshi conducted personal search of the accused in presence of mashirs and from his possession 97 pieces of charas in the shape of pencil were recovered. Cash of Rs.500/- were also recovered. Charas was weighed in presence of mashirs; it was 1500 grams. Entire property was sealed on the spot for sending the same to the chemical examiner. Mashirnama of arrest and recovery was prepared in presence of mashirs ASI Sajjad Ali Bhatti and PC Muhammad Arif. Thereafter, the accused and case property were brought to the police station, where, FIR was lodged against the accused on behalf of the State; it was recorded vide Crime No.03 of 2000 for offence under Section (c) Control of Narcotic Substances Act, 1997.

3. During the investigation, 161 Cr.P.C statements of P.Ws were recorded. Sample was sent to the Chemical Examiner

for analysis. On conclusion of the investigation, final report was submitted against the accused under Section 9(c) Control of Narcotic Substances Act, 1997.

4. Learned Trial Court framed the charge against the accused under Section 9(c) Control of Narcotic Substances Act, 1997 at Ex-2. Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, the prosecution examined P.W-1 SIP/complainant Muhammad Ahmed Qureshi at Ex-5, who produced mashirnama of arrest and recovery at Ex-5/A, FIR at Ex-5/B and report of the chemical examiner at Ex-5/C. ASI Sajjad Ali was examined at Ex-6. Thereafter, the prosecution side was closed at Ex-7.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-8, in which the accused pleaded false implication in this case and denied the prosecution allegations. Accused stated that he has been involved in this case falsely as he had dispute with one constable. He has further stated that he is constable in SRP and produced record in support of his plea.

7. Learned Special Judge (CNS), Hyderabad after hearing learned Counsel for the parties and scrutiny of the evidence, convicted the appellant under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced as stated above.

8. Trial Court in the judgment dated 22.10.2003 has already discussed the evidence in detail and there is no need to repeat it, so as to avoid duplication and un-necessary repetition.

9. Mr. Tarique Ali Mirjat, learned Advocate for the appellant has mainly contended that the prosecution has failed to produce arrival and departure entries in the evidence. It is also contended that there is variation in the weight of charas recovered from the possession of the appellant and the substance received by the chemical examiner. Learned Counsel for the appellant submits that charas was recovered from the possession of the appellant on 01.02.2000 but the charas was sent to the chemical examiner for analysis on 04.02.2000 and the prosecution has not plausibly explained with regard to the delay in sending the charas to the chemical examiner. It is argued that it has not come in the evidence at all that charas was in safe custody for the for four days. Learned Counsel for the appellant further submits that there are contradictions in the evidence of the prosecution witnesses with regard to the availability of the private persons at the time of the arrest of the accused. Learned Counsel for the appellant also submits that the evidence of the police officials was dishonest and they have deliberately suppressed the fact regarding the service of the appellant in police department. It is submitted that Trial Court did not appreciate the evidence in accordance with the settled principles of law and on the basis of weak evidence, the appellant has been convicted. In support of his contentions, he has relied

upon the cases reported as *ASHIQUE HUSSAIN LEGHARI V/S. THE STATE (2001 P.Cr.L.J 1736), MIAN MUHAMMAD ARSHAD V/S. THE STATE (2003 P.Cr.L.J 865), QAYUM V/S. THE STATE (2005 P.Cr.L.J 2034) and IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002),*

10. Syed Meeral Shah Bukhari, learned D.P.G conceded to the contentions raised by learned Advocate for the appellant that there was no evidence that charas was in safe custody at *Malkhana* before sending it to the chemical examiner. Learned D.P.G admits that there is variation in the weight as shown by the prosecution and the quantity received by the chemical examiner. He did not support the judgment.

11. We have carefully heard learned Counsel for the parties and deeply examined the evidence available on the record. We have come to the conclusion that prosecution has filed to prove its case against the appellant beyond shadow of doubt for the reasons that it was day time and the accused was arrested from a place which was surrounded by the hotels but SIP Muhammad Ahmed Qureshi did not bother to call any independent or respectable person of the locality to make him mashir in this case to witness the recovery proceedings. Moreover, the prosecution has failed to produce arrival and departure entries in order to satisfy the Court that police officials have actually left for patrolling on the relevant day. On this aspect of the case, the learned Counsel for the appellant has rightly relied upon the case of

Ashique Hussain Leghari V/s. The State (supra), in which, it is mentioned that “non-production of such document had cut the root of prosecution case”. The relevant portion reads as under:-

> *“We have considered the arguments rendered by learned Counsel for the parties and have gone through the material available on the record and the evidence adduced by the prosecution. Admittedly, the complainant has mentioned in the F.I.R the number of Entry i.e. No.1, dated 22.12.1999 and yet such document has not been produced before the trial Court and we are fortified by the law on this point cited by learned Counsel for the appellant.”*

12. We have also noticed that according to the case of the prosecution, 1500 grams of charas were recovered from the possession of the accused but the report of the chemical examiner reflects; (i) Gross weight of parcel including the content as 1428 grams and (ii) Net weight of contents without any wrappers as 1395 grams. Learned D.P.G could not explain this variation. We have also noticed that there are material contradictions in the prosecution case. Moreover, the WHC, to whom the case property was handed over by SIP Muhammad Ahmed Qureshi for keeping it in safe custody in the *Malkhana* has not been examined. There was delay in sending the charas to the chemical examiner and such delay has also not been explained by the prosecution and there is no evidence that charas was in safe custody from the date of recovery and it was sent to the chemical examiner. In this respect, learned Counsel for the appellant has relied upon the case

of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002), wherein, the Honourable Supreme Court has held as under:-*

> *"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. In these circumstances, we are unable to rely upon the evidence of the police officials without independent corroboration, which is lacking in this case. In this case, there are several circumstances, which create doubt in the prosecution case. It is well settled law that it is not necessary that there should be 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 as held by Honourable Supreme Court in the case of *TARIQ PERVEZ V/S. THE STATE (1995 SCMR 1345).*

14. For the above stated reasons, we are of the considered view that the case against the appellant has not been proved by the prosecution beyond the shadow of doubt, therefore, in these circumstances the benefit of doubt should go to the appellant. Consequently, the appeal in hand is allowed; impugned judgment dated 22.10.2003 is *set aside* and the appellant is acquitted of the charge. Appellant is present on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

JUDGE

Shahid