IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No. D – 84 of 2019.

Before;
Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellant: Noor Hassan son of Sher Khan Chandio, through Mr. Mir Naeem Akhtar Talpur, Advocate.

Respondent: The State, through Mr. Shahzado Saleem Nahiyoon, D.P.G.

Date of hearing: 07-11-2019.
Date of decision: 07-11-2019.

J U D G M E N T

MUHAMMAD IQBAL MAHAR, J. The facts in brief necessary for disposal of instant appeal are that on arrest from the appellant it is alleged to have been secured 1050 gram of charas (which on chemical examination was found to be 1003) by police party of CIA Center Tharparkar at Mithi led by SIP Hameer Jee for that he was booked and reported upon.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant SIP Hameer Jee, PW-2 mashir PC Gul Muhammad, PW-3 SIO/SIP Khan Muhammad and then closed the side.

3. The Appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, but did not examine him on oath or anyone in his defence to disprove the prosecution allegation against him.

5. On conclusion of the trial, learned trial Court found the appellant guilty for an offence punishable u/s 9(c)of CNS Act, and then convicted and sentenced him to undergo R.I for four years and six months and to pay fine of Rs.20,000/=and in case of his failure, to make payment of fine to undergo Simple Imprisonment for five months vide its judgment dated 09.05.2019, which is impugned by the appellant before this Court by preferring the instant appeal.

6. We have heard learned counsel for the parties and perused the record.

7. There is no independent witness to the incident. WHC Natho of PS Mithi, who allegedly recorded FIR of the present case has not been examined by the prosecution for no obvious reason. The charas on chemical examination was found to be 1003 grams which belied the complainant and his witness that it was 1005 grams. The charas has been subjected to chemical examination with delay of about six days, such delay could not be lost sight of. The incharge of the Malkhana and PC Kewal, who took the charas to chemical examiner have not been examined by the prosecution to prove safe custody and transmission of the charas. Their non-examination could be resolved in favour of appellant.

8. In case of ***Ikramullah & ors vs. the State (2015 SCMR-1002),*** it has been observed by Hon'ble apex court that;

> *"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 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".*

9. The discussion involved a conclusion that the case of the prosecution is not free from doubt and appellant is appearing to be entitled to such benefit.

10. In case of ***Tarique Pervaiz vs. The State (1995 SCMR 1345),*** it has been held by Hon'ble Apex Court that;

> *"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."*

11. Based upon above discussion, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The

appellant is in custody, he shall be released forthwith in present case.

12. The instant appeal is disposed of accordingly.

J U D G E

J U D G E

Ahmed/Pa