IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No. D – 49 of 2018

Cr. Jail Appeal No.D-50 of 2018

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

Appellant: Eidhan Bhatti son of Ghulam Mustafa,
through Mr. Muhammad Amir Qureshi, Advocate.

Respondent: The State, through Rameshan Oad, A.P.G.

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

J U D G M E N T

It is the case of prosecution that the police party of PS Phuleli led by Inspector Rana Pervaiz Akhtar while on patrolling, came to know through spy information that few persons with narcotics are going on their motorcycle. On such information, he and his police personals started checking at Dargha of Jurial Shah. There were found coming four persons on two motorcycles, they were signaled to stop, on that they fired at the police party with intention to commit their murder. They were also fired at, resultantly appellant and co-accused Haq Nawaz fell down on the ground after sustaining fire shot injuries, on such from co-accused Haq Nawaz was secured pistol of 9 mm bore and 1250 grams of heroin powder. On search from the appellant, was secured pistol of 30 bore and 1210 grams of heroin powder. Such recovery was sealed. The rest of the two culprits it is said made their escape good. The appellant and

co-accused were booked accordingly for the above said offence individually.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 complainant Inspector Rana Pervaiz Akhtar at (Ex.3), he produced Roznamcha entries, memo of arrest and recovery and FIR of the present case; PW-2 PC Muhammad Nadeem at (Ex.04); PW-3 SIO/SIP Ghulam Rabani at (Ex.05), he produced report of chemical examiner 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.

4. 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 Rigorous Imprisonment for five years and to pay fine of Rs.20,000/=and in case of his failure, to make payment of fine to undergo Simple Imprisonment for one month with benefit of section 382-B Cr.P.C vide judgment dated 19.03.2018, which is impugned by the appellant before this Court by preferring the instant appeals.

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

6. There is no independent witness to the incident, though the police party was having advance information of the incident. Co-accused Haq Nawaz it is said has died of injuries allegedly sustained by him at the hands of the police. The appellant too has been acquitted in police encounter case by the Court having jurisdiction. The property has been subjected to chemical examination on 3rd day of its recovery without any explanation to such delay. The prosecution on account of its failure to examine the Incharge of the Malkhana and the person who took the substance to chemical examiner, has not been able to prove safe custody and transmission of the narcotic substance.

7. 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".

8. 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.

9. 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."*

10. 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.

11. The instant appeals are disposed of accordingly.

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Ahmed/Pa