

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Crl. Appeal No. D – 30 of 2015

Before;

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

1. For hearing of MA-1420/2019
2. For hearing of main appeal.

Appellant: Fateh Muhammad son of Gul Hassan,
through Mr. Ghulamullah Chang, Advocate.

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

Date of hearing: 13-11-2019.

Date of decision: 13-11-2019.

J U D G M E N T

1. Granted.
2. It is alleged that on arrest from the appellant was secured 1010 grams of charas by police party of PS A-Section Latifabad led by Inspector Rana Pervaiz Akhtar, for that he was booked and reported upon.

At trial, appellant did not plead guilty to the charge and prosecution to prove it, examined PW-1 complainant Inspector Rana Pervaiz Akhtar; PW-2/mashir PC Muhammad Naeem and PW-3 SIO/Inspector Sardar Khan and then closed the side.

The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that he has been involved in this case falsely by the police at the instance of Rasheed Mari with whom he is disputed over landed property. He

did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

On conclusion of the trial, learned 3rd Additional Sessions Judge/ Special Judge CNS, Hyderabad found the appellant to be guilty for offence punishable u/s 9(c) of CNS Act, and then convicted and sentenced him to undergo Rigorous Imprisonment for seven years with fine of Rs.10,000/= and in case of his failure, to make payment of fine to undergo Simple Imprisonment for 30 days with benefit of section 382-B Cr.P.C vide his judgment dated 27.03.2015, which is impugned by the appellant before this Court by preferring the instant appeal.

It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police at the instance of Rasheed Mari with whom he is disputed over landed property; there is no independent witness to the incident; the sample of the charas has been sent to the chemical examiner with delay of about three days; neither the incharge of Malkhana nor the person who taken the sample of charas to chemical examiner has been examined by the prosecution to prove the safe custody and transmission of the charas and its sample. By contending so, he sought for acquittal of the appellant.

Learned A.P.G for the State has recorded no objection to the acquittal of the appellant.

We have considered the above arguments and perused the record.

There is no independent witness to the incident despite their availability at the place of incident as is admitted to be by PW Mashir PC Muhammad Nadeem. The sample of the charas has been subjected to chemical examining on 4th day of its recovery without any plausible explanation to such delay. Neither the incharge of the Malkhana nor the person who taken the sample of charas to the chemical examiner, the prosecution has been able to examine to prove the safe custody and transmission of the charas and its sample.

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”.

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.

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.”

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 present in Court on bail. His bail bond is cancelled and surety is discharged.

The instant appeal is disposed of accordingly.

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