IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D- 206 of 2019

Before;
Mr. Justice Irshad Ali Shah
Mr. Justice Amjad Ali Sahito

Appellants: Munawar son of Anwar rind,
Through Mr. Muhammad Sharif Siyal, advocate.

State: Mr. Shahid Ahmed, D.P.G

Date of hearing: **17.12.2019**
Date of decision: **17.12.2019**

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that on arrest from the appellant was secured 1100 grams of charas by police party of PS Sakrand led by complainant SIP Asghar Ali Awan, 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 Complainant SIP Asghar Ali Awan and his witnesses, then closed the side.

3. The appellant in his statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that the charas has been foisted upon him by the police, he, however did not examine anyone in his defence or himself on oath to disprove the prosecution allegation against him.

4. On conclusion of the trial, learned Ist Additonal Sessions Judge/MCTC, Shaheed Benazirabad found the appellant to be guilty for offence punishable u/s 9(c)of CNS Act and then convicted and sentenced the appellant to undergo Rigorous Imprisonment 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 six months with benefit of section 382-B Cr.P.C vide his judgment dated 28.10.2019, which is impugned by the appellant before this Court by way of instant appeal.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; there is no independent witness to the incident and the material contradictions have been ignored by learned trial Court while passing the impugned judgement. By contending so, she sought for acquittal of the appellant.

6. Learned D.P.G for the State has prayed for dismissal of the instant appeal by supporting the impugned judgment.

7. We have considered the above arguments and perused the record.

8. Admittedly, the complainant went at the place of incident on advanced information, yet he has failed to associate with him any independent person to witness the possible arrest and recovery. It was stated by the complainant that he weighed the charas through computerized scale and 161 Cr.P.C statements of the witnesses were written by “Munshi”, that “Munshi” has not been examined by the prosecution. Be that as it may, the complainant in that respect is belied by Pw Mashir PC Amanullah by stating that the charas was weighed through conventional scale with weights and his 161 CrPC statement was recorded by the complainant. Such inconsistency between the evidence of the complainant and his witness could not be overlooked. Neither the entry of “Malkhana” is produced nor incharge of the Malkhana has been examined

by the prosecution to prove the safe custody of the charas allegedly recovered from the appellant.

9. 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".*

10. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

11. In case of ***Muhammad Masha vs The State (2018 SCMR 772),*** it was observed by the Hon'ble Supreme Court of Pakistan that;

> ***"4….Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v.***

The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”

12. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, consequently, 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 the present case.

13. The instant appeal is disposed of accordingly.

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J U D G E

Ahmed/Pa