

IN THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi**

**Criminal Acquittal Appeal No.543 of 2010**

Appellant : The State/ANF  
Through Mr. Habib Ahmed,  
Special Prosecutor ANF

Respondent No.1 & 2 : Babar Khan S/o Kamran Khan  
Muhammad Wasim S/o  
Taj Muhammad  
Through Mr. Muhammad Ali Nawaz  
Advocate

Date of Hearing : 05-12-2019

Date of Judgment : 24-12-2019

**J U D G M E N T**

**ZULFIQAR ALI SANGI---J.**, The State/ANF on being aggrieved and dissatisfied with the judgment dated 01.06.2010 passed by the learned Judge, Special Court-II (CNS), Karachi in Special Case No.356/2004 under FIR No.06/2004 for the offence under section 9/C CNS Act, 1997 at PS ANF-I, Karachi whereby the Respondents/Accused No.1 and 2 namely (1) Babar Khan S/o Kamran Khan and (2) Muhammad Wasim S/o Taj Muhammad were acquitted under section 265-H(1) Cr.P.C, have filed this appeal against their acquittal.

**2.** The brief facts of the case are that on 09.03.2004 complainant SI Jehangir Khan alongwith ASI Naeem Khan, PC Shamrez Khan, PC Pervez Shah, PC Siraj Khan, PC Ayaz Ahmed, Driver Ather Naeem and other ANF officials proceeded on patrolling duty in Sohrab Goth, Super Highway. When they reached at Al-Asif Square, they received spy information that Babar Khan, Muhammad Wasim and Shabbir @ Laljee who were dealing in drug business, will come in a Suzuki

bearing No.KB-9374 having heavy quantity of Charras and will proceed towards Chanacer Goth. On such information, the police party alongwith the informer reached at the junction of the road which leads towards Malir Cant and started surveillance. At about 2330 hours one Suzuki was coming from Kochi Camp and the informer pointed out Suzuki as the same. In the said Suzuki two persons were sitting on the back side (open space) whereas one person was found on driving seat and said Suzuki was signaled to stop. As soon as the Suzuki slowed down one person jumped out from the Suzuki and crossed the road and jumped into a Corolla which was parked across the road and sped off towards Kochi Camp. However, one person who was sitting at the driving seat and the other person who was sitting back side on the jute borries were apprehended. The person sitting on driver seat disclosed his name as Babar Khan whereas the person who was found sitting on borries disclosed his name as Muhammad Wasim. The borries lying on back side of the Suzuki were checked and in foil packing Charras was recovered. Each bori was containing 100 packets of Charras. Every packet recovered from the bori was separately weighed and found to weigh one Kg and in total each bori was containing 100 Kgs of charras. Both borries with recovered packets of charras were put in same and sealed at the spot for sending to chemical examiner. On personal search, Rs.50/- were found from the accused Babar Khan and Rs.170/- from accused Muhammad Wasim. When the Suzuki was searched thoroughly they found the ownership documents in the name of Babar Khan and receipt of tax payment, insurance documents and main part of the Registration book. Thereafter, the recovered charras, accused persons who were arrested at the spot and the articles recovered during personal search were sealed and

seized under memo at the spot. Thereafter the accused persons, case property and recovered articles were brought to police station and FIR No.06/2004 was lodged against accused persons. On the next day i.e. 10.03.2004 the engine and chassis number of Suzuki was checked, verified and such mashirnama was prepared. During investigation the accused persons disclosed that one Imran @ immi s/o unknown, Ali Ahmed S/o Unknown and Muhammad Shabbir @ Laljee are also partners in their drug dealing. After completion of investigation, challan against the accused was submitted in the Court of law. Accused Muhammad Shabbir alias Laljee, Imran @ Immi and Ali Ahmed were shown as absconders.

**3.** The charge was framed against both the accused vide Ex.5, to which both the accused pleaded not guilty and claimed to be tried. Their pleas were recorded at Ex.6 and Ex.7. Thereafter, absconding accused Shabbir alias Laljee was arrested on 14.10.2006 and after being granted bail the said accused jumped bail.

**4.** In order to prove its case the prosecution examined two witnesses complainant namely Jehangir Khan who was also an investigating officer of the case and other witness (mashir) namely Naeem Khan. Both the witnesses exhibited certain documents and other items to prove the case of the prosecution. Thereafter, learned SPP closed the prosecution side vide statement dated 20.03.2010.

**5.** Statement of the accused persons were recorded under section 342 Cr.P.C. vide Ex.15 and Ex.16 respectively wherein they denied the allegations leveled against them and claimed false implication.

**6.** Learned Special prosecutor for ANF contended that the prosecution has proved its case against the respondents beyond

shadow of reasonable doubt but the trial court acquitted the accused on flimsy grounds; that huge quantity of charass was recovered from the respondents which cannot be foisted upon them easily; that no ill-will or enmity was suggested against the officials of ANF which suggests that respondents were not implicated in a false case; that the trial court did not consider the evidence produced by the prosecution properly; that this is case of misreading and non-reading of evidence; that the grounds on which the respondents were acquitted were not readily understandable from the impugned judgment. Lastly he prayed for setting aside the acquittal judgment and submitted that the respondents be convicted as the prosecution had proved its case against the accused before the trial Court through cogent evidence and that the respondents had been acquitted based on a misreading and non-reading of the evidence for reasons which were not sustainable under the law especially as they have committed a heinous offence which is against society.

**7.** Learned counsel for the respondents contended that prosecution has not proved the case against the respondents beyond shadow of the reasonable doubt; that there are major contradictions in the evidence of the prosecution witnesses which made the case of prosecution doubtful; that report of chemical examiner is not in line with the prosecution case; that recovery of huge quantity of Narcotics and heinousness of offence is no ground for conviction; that the judgment of trial court is well reasoned and based on proper appreciation of evidence; that no illegality or irregularity is pointed out by the prosecutor in the impugned judgment; that the impugned judgment was passed on 01-06-2010 and present appeal was filed on 09-09-2010 and is time barred by law as S.417 Cr.P.C

provides limitation for filling acquittal appeal of only 30 days and delay has not been explained. Lastly he prayed that the appeal may be dismissed.

**8.** We have heard the counsel for the parties and perused the entire record with their able assistance and considered the relevant law.

**9.** Before going to the merit of the instant case we need to decide whether the acquittal appeal filed by ANF is time barred as alleged by the counsel for the respondents.

**10.** Admittedly the impugned judgment was passed on 01-06-2010 and the instant appeal was filed on 09-09-2010. The right of appeal is provided by Section 417 Code of criminal Procedure (Cr.PC). In order to understand properly the import of section 417 Cr.P.C. we set out the same below for ease of reference:-

*“[417. Appeal in case of acquittal. (1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.*

*(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.*

*(2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.]*

*(3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be*

*entertained by the High Court after the expiry of sixty days from the date of that order.*

*(4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).*

*(5) An appeal against an order of conviction or acquittal under sections 354-A, 376, 376-A, 377 or 377-B of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall be decided within six months.]”*

**11.** The above provision of law clearly indicates that the right to such appeal has been conferred and categorized into three classes. Under sub-section (1), it is exclusively the Provincial Government, who may direct the Public Prosecutor to avail the same before the High Court and no period of Limitation is provided in sub-section (1). Under sub-section (2), when an order of acquittal is passed in a case instituted upon a complaint then the remedy of filing an appeal against such order in the form of special leave to appeal has been conferred only to the complainant which remedy in terms of sub-section (3) can be availed by him within sixty days from the date of order of acquittal. Subsequently sub-section (2A) was added which conferred the right to appeal against an order of acquittal, whether original or appellate to a person aggrieved against such order, who may avail the same of filing acquittal appeal within thirty days.

**12.** On a careful scrutiny of above provision in our view it is clear that the prescribed period of Limitation of thirty days and sixty days respectively is available only for those criminal acquittal appeals which are filed by the “complainant” or “person

aggrieved” respectively. We have found no specific period of Limitation under the amended provision as regards the acquittal appeals under sub-section (1) to section 417, Cr.P.C. is prescribed. We have also examined the Article 157 of the Limitation Act, 1908, which reads as under:-

Description of Appeals	Period of limitation	Time from which period begins to run
157. Under the Code of Criminal Procedure, 1898, from an order of acquittal.	Six months	The date of the order appealed from.

**13.** On a careful scrutiny of above provisions of law we are of the view that the instant acquittal appeal is regulated by Article 157 of the Limitation Act 1908, as reproduced above, which provides limitation of six months in filling acquittal appeals to the state, therefore we hold that the acquittal appeal filed by ANF is within time. Reliance is placed on case of **The State, through Advocate-General Sindh, Public Prosecutor, Sindh, Karachi V. Raza Muhammad and another. (1999 YLR 178)** and **The State V. Syed Ali Baqar Naqvi and others (2014 SCMR 671)**.

**14.** Turning to the merits of the case in hand. It is well settled by now that the scope of appeal against acquittal is very narrow in nature and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as was held by the Supreme Court in the case of **State Versus Abdul Khaliq and others (PLD 2011 SC 554)**.

**15.** We find that the learned trial court has given cogent reasons for acquittal of the respondents in its findings in paras No. 15 and 16 of the impugned judgment which paragraphs are re-produced as under:-

*“15. The evidence available on record of the case shows that chemical examination report has been produced as Exh.12/D dated 24.03.2004 and it mentions the same had been sent by SHO ANF Gulshan Iqbal on 11.03.2004 by letter No. Nil dated 10.03.2004 by the hand of Inspector Khaliduddin. The chemical examination report Exh.12/D mentions the description of articles contained in the parcel as follows:-*

*Bori No.1: Contains one hundred aluminum packets each packet further contains one greenish brown hard slabs with smell like Charas.*

*Bori No.2: Also contains one hundred aluminum foil packets each packet further contains one greenish brown hard slab with smell like Charras, except one packet No.100 which contains two greenish brown semi soft slab also with smell like Charras.*

*Test performed : Bori No.1 and 2 :*

*Weights : 1 gross wt. of two hundred packets including the contents 205 Kgs. 300 gms.*

*2. Net wt. of contents (Charras) of two hundred packets without any wrapper 200 K.G. 150 gms.*

*The perusal of chemical examination report Exh.12/D and the evidence of the witnesses as discussed above, the chemical examination report is not inconsonance with the description of 200 Kilograms of Charras recovered in two borries Article-B and Article-C, each bori containing 100 packets of Charras with foil packing weighing hundred Kilograms each. The case property as described by both the witnesses PW1 SI Jehangir Khan and PW2 SI Naeem Khan that each packet contained one slab is contradicted by the chemical examination report as one packet No.100 contained contains two greenish brown semi soft slab also with a smell like Charras, and gross weight of 200 packets exceeds the weight mentioned in the FIR and Memo of arrest and recovery and in the deposition of both the witnesses and in the charge sheet, which is 200 Kgs. 300 Grams and even the net weight of contents also is not in consonance with the said documents, which mentions 200 Kgs. and 150 Grams, as such a doubt has been created with regard the recovery made from the accused and sent to chemical examiner. Reliance is placed on SBLR 2008 Sindh 561 (Ali Murad V/s. The State) ‘wherein the gross weight of the sample was 25 grams and net weight was 13 grams as per Expert Report whereas according to the witnesses they separated 20 grams narcotic from the recovered case property as sample and it was observed that the sample received by Chemical Analyzer was not the same*



*which was sent to him for examination and report therefore, the chemical analyzer's report loses its importance, and it was held that prosecution has failed to prove that property allegedly secured from the possession of appellant was the alleged contraband and failed to prove the case against appellant beyond any reasonable doubt and allowed the appeal'. It is settled proposition of law that for granting benefit of doubt to an accused it is not necessary that there should be many circumstances to create doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right and I am fortified in my views by SCMR 1995 Page 1347.*

*16. The accused had taken the plea that they had been arrested from Nursery and further there is not mentioned in the FIR and in Memo of arrest and recovery the Entry number by which the police party had left the Police Station, and non-production of copy of Station diary has created serious doubt with regard to genuineness of prosecution story and reliance can be placed on 2004 MLD Karachi Page-1253 and 2010 PCLRJ FSC Page-157.*

**16.** Besides the above conflicts as discussed above by the learned trial court we find the following material defects in the prosecution case.

- a) We find tempering in the report of Chemico Bacteriological Laboratory Karachi in the date of receiving the case property, report is available at page-85 of the paper book.*
- b) Both the witnesses not deposed a single word about the person who brought the case property to the Chemico Bacteriological Laboratory nor Investigation officer stated a single word about the person to whom he handed over the property for the said purpose.*
- c) Report of Chemico Bacteriological Laboratory Karachi which is available at page-85 of the paper book showed that the property was brought by Inspector Khalid Uddin, said inspector was not examined during investigation nor was produced before the trial court in support of prosecution case.*
- d) The place of preparation of mashirnama of arrest and recovery was disputed by the PW-1 and 2, according to the mashirnama of arrest and recovery available at page-79 of paper book accused were transporting the charras on Suzuki Pickup No. KB-9374 whereas PW-1 stated in cross examination that he had prepared the mashirnama of recovery on the spot on the Dalla of the Pickup, and the PW-2*

*stated during his cross examination that mashirnama Exh. 12/A was prepared at 2330 hours by SI Jehangir on the spot by sitting at the Dalla of the mobile.*

**17.** In view of above, the impugned judgment seems to be an elaborate, speaking one hence does not suffer from misreading, non-reading or non-appraisal of evidence and is in accordance with law and as such does not warrant interference of this court. Furthermore, as mentioned above it is well settled principle of law that an appeal against acquittal has distinctive features and the legal approach to deal with the appeal against conviction is distinguishable from appeal against acquittal because presumption of double innocence is attached in the latter case. As mentioned earlier on Judgment of acquittal can only be interfered with when it is found based on the evidence as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on ***Inayat Ullah Butt v. Muhammad Javed etc. (PLD 2003 SC 563), Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others (2017 SCMR 1710).***

**18.** Based on the above discussion, we have found that the acquittal of the respondents does not suffer from any illegality so as to call for our interference with the impugned judgment. Based on the law concerning an appeal against acquittal and the fact that the learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of the respondents and we see no legal justification to disturb the same as such the appeal against acquittal of the respondents is dismissed.

**19.** The appeal is disposed of in the above terms.

**JUDGE**

**JUDGE**