

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D- 162 of 2019

Before;

Mr. Justice Irshad Ali Shah

Mr. Justice Amjad Ali Sahito

Appellant: Ali Gul alias Munir Ahmed son of Agan Khan
Narejo,
Through Mr. Muhammad Zaman Zaur, advocate.

State: Ms. Rameshan Oad, A.P.G.

Date of hearing: 23.12.2019

Date of decision: 23.12.2019

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal as per prosecution are that on arrest from the appellant was secured 2500 grams of charas by police party of PP Jatia of PS Shahdadpur led by complainant SIP Iftikhar Ali Bajwa, 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 Iftikhar Ali Bajwa and his witnesses 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 by stating that he has been involved in this case falsely at the instance of his relatives. The appellant, 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 Special Judge For CNS Cases, Sanghar 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 five years and six months and to pay fine of Rs.25,000/= and in case of his failure, to make payment of fine to undergo Simple Imprisonment for five months and fifteen days with benefit of section 382-B Cr.P.C vide his judgment dated 28.08.2019, 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 sample of the charas has been subjected to chemical examination with un-plausible delay of four days and none has been examined by the prosecution to prove safe custody of the charas and transmission of the sample whereof to the Chemical Examiner. By contending so, he prayed for acquittal of the appellant. In support of his contention he has relied upon case of ***Abdul Ghani and others vs The State and others (2019 SCMR 608)***.

6. Learned A.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, there is no independent witness to the incident. The charas allegedly recovered from the appellant as per complainant was kept at police Malkhan. No incharge of the malkhana is examined by the prosecution to prove the safe custody of the charas. The sample of the charas as per report of Chemical Examiner was delivered in his office on 4th day of its recovery, such delay is not explained by the prosecution. The sample of the charas as per SIO / SIP Ahmed Ali was taken to the Chemical Examiner by PC Imran Ali. PC Imran Ali has not examined by the

prosecution. His examination was necessary to prove the safe transmission of the samples of the charas to the Chemical Examiner. His non-examination as such could not be overlooked.

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 discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt to such benefit the appellant is found to be entitled.

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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