

**IN THE HIGH COURT OF SINDH,  
HYDERABAD CIRCUIT**

**Criminal Appeal No. D-26/2017**

Present: Aqeel Ahmed Abbasi & Yousuf Ali Sayeed, JJ

Appellant : Mst. Marvi Bhatti, through Mr. Riaz Ali Panhwar, Advocate.

Respondent : The State through Mr. Syed Meeral Shah Bukhari, APG

Date of hearing : 22.06.2017

Date of Judgment :

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** The Appellant has assailed the Judgment dated 13.03.2017 passed by the learned Special Judge (Narcotics), Shaheed Benazirabad in Special Case No. 598/2016 whereby she was found guilty and convicted of possession of 3250 grams of charas, punishable under S.9(c) of the Control of Narcotic Substances Act, 1997, and sentenced to undergo rigorous imprisonment for 06 years and 06 months along with fine of Rs.30,000/-, and in default thereof to further undergo simple imprisonment of 06 months. The benefit of S.382-B Cr. P.C. was also extended to her.

2. Briefly, the case of the prosecution is that the Appellant was apprehended at 0720 hours on 18.10.2016 at Shalimar Bus Stand, Deh 25, Bano Taluka, Sakrand on the basis of spy information received by SIP Asghar Ali, and the aforementioned quantity of charas was recovered from her possession, in the form of six large pieces and one small piece, contained in a black shopping bag. The other police personnel who were party to the arrest were HC Rano Khan and PC Amanullah Mallah (the mashirs of the Memo of Arrest and Seizure), PC Mushtaque Ahmed Mugheri (said to be a member of the patrolling party), and LPC Fahmida Zardari, the lady-constable called in following the tip-off. On this basis, FIR Number 173/16 was registered at P.S. Sakrand the same day at 0810 hours by SIP Asghar Ali on behalf of the State.

3. The learned trial Court framed the Charge of possession against the Appellant under S.9(c), to which the Appellant pleaded not guilty and claimed trial. The Prosecution examined the SIP Asghar Ali (PW-1), who was the Complainant as well as the Investigating Officer, and HC Rano Khan (PW-2). Based on their depositions and the evidence produced the learned trial Court found the Appellant guilty in terms of the Impugned Judgment. Neither Lady Constable Fahmida Zardari, who is said to have searched the Appellant, nor PC Amanullah Mallah, one of the Mashirs to the Memo of Arrest and Seizure, were examined by the Prosecution as witnesses.
  
4. Learned counsel for the Appellant contended that the evidence was insufficient for the trial Court to have recorded a conviction, and that the entire case of the prosecution was marred by gaps and defects that were gravely prejudicial to the Appellant and undermined the very concept of a fair trial. He submitted that the so-called facts narrated in the FIR were a fabrication that had been designed to falsely implicate the Appellant.
  
5. Having examined the matter, we have noted that as per the deposition of SIP Asghar Ali (PW-1), the police party is said to have departed from P.S. Sakrand on patrol at 6.00 A.M. Whilst this is said to be recorded in Roznamcha Entry No.30 (Ex. No. 3-C-1), a perusal of the said Roznamcha reveals that the same does not bear any date. Furthermore, it was stated that following their departure from the P.S., the police party went to Cinema chowk, where they stayed half an hour. It is further stated that they then went to National Highway road near Pai Farim, where they also stayed half an hour. Thereafter, they came from bypass and stopped their mobile there and stayed there for half an hour, when the spy information is said to have been received, and on this basis they proceeded towards Shalimar bus stand. Yet despite the aforementioned stops/intervals, the police party is shown to have been in place and apprehended the Appellant at 7.20 AM, having also called for the lady constable after receiving the tip-off and awaited her arrival prior to heading for the bus stand.

6. It also merits consideration that in his deposition, SIP Asghar Ali (PW-1) stated that he received spy information that one lady having charas in a black shopper was standing at the Bus stop. He did not say that the identity of the lady had been revealed to him by the informant. However, under cross-examination he stated "I received spy information that one lady having shopper with charas namely Marvi was standing at the Shalimar Chowk". Additionally, SIP Asghar Ali (PW-1) deposed that the Memo of Arrest and Seizure (Exh.3-A) and the Mashirnama of Place of Incident (Ex.3-B) had both been prepared by him. However, it is evident that the handwriting of both these documents is different, which was sought to be explained away under cross-examination as being due to a difference of pen. However, from an examination of these documents in juxtaposition, it is evident that this explanation is not at all plausible. Even otherwise, HC Rano Khan (PW-2) conceded under cross-examination that the handwriting of both documents is different.
  
7. More crucially, the Memo of Arrest and Seizure (Ex. No. 3-A) is silent as to the manner in which the charas allegedly recovered from the Appellant was sealed and the subsequent chain of custody also remains unclear in as much as there was nothing brought on record to show how such case property was kept/handled prior to being sent to the Chemical Examiner. Furthermore, the letter said to have been addressed by SIP Asghar Ali under cover of which the allegedly seized charas was sent for chemical examination was not produced in evidence, nor was the police officer who supposedly conveyed the letter and charas to the office of the chemical examiner called upon to depose as to the aspect of safe custody. As such, the prosecution has not been able to establish that after the alleged recovery, the substance so recovered was kept in safe custody and safely transmitted to the office of the Chemical Examiner without being tampered with or replaced while in transit, as observed by the Honourable Supreme Court in the case reported as Ikramullah & others v. The State 2015 SCMR 1002. We have also observed that as per the Chemical Examiners Report (Ex. No. 3-E), one of the pieces of charas received for analysis was said to have been wrapped in a plastic 'panni', whereas there is no such mention in the Memo or Arrest and Seizure. Furthermore, when questioned in this regard, SIP Asghar Ali (PW-1) stated under cross-examination that "It is correct that one small piece of charas was wrapped in panni, whereas HC Rano Khan (PW-2) contrarily stated that "the charas was not wrapped in other plastic 'panni', which casts further doubt on the matter.

8. It is well settled that the standard of proof beyond a reasonable doubt is a fundamental principal of all criminal trials, and even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of an accused entitles him to the benefit thereof, not as a matter of grace or a concession, but as a matter of right. However, in the instant case, a conviction was recorded despite the aforementioned discrepancies on record, which in our view, serve to create appreciable doubt as to the veracity of the prosecution's case.
  
9. When faced with the aforementioned discrepancies in the prosecution evidence, the learned APG was unable to put forward any argument to controvert the same or support the finding of guilt recorded in the impugned Judgment.
  
10. As such, the Impugned Judgment cannot sustain, and this Appeal succeeds. These are the reasons for our short Order dated 22.06.2017 whereby the Appeal was allowed with the result that the Appellant was acquitted of the charges and the conviction and sentence awarded to her was set aside.

JUDGE

JUDGE

Karachi  
Dated \_\_\_\_\_