

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

Cr.Appeal.No.D- 145 of 2006

Present:-  
Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 16.05.2017.  
Date of judgment: 19.05.2017.

1. Appellant Anwar s/o Ghabi Khan  
By caste Rind.

Through Mr. Muhammad Sharif  
Siyal, Advocate.

2. Ashooq s/o Chandomal  
By caste Bheel.

The State:

Through Syed Meeral Shah, D.P.G.

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

***NAIMATULLAH PHULPOTO, J:*** Appellants Anwar and Ashok were tried by the learned Sessions Judge / Special Court for CNS Nawabshah. By judgment dated 4<sup>th</sup> August 2006 the appellants were convicted u/s 9 (b) of CNS Act, 1997 and sentenced to suffer RI for 03 years and to pay the fine of Rs.20,000/- each. In case of default in payment of fine appellants were ordered to suffer RI for 03 month more. Benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 17.04.2003 at 3-30 p.m Inspector Altaf Hussain Kalhoro left PS Sakrand alongwith his subordinate staff namely ECs Lakhadino, Muhammad Sail, Zulfiqar Ali, Ghulam Hyder, Ghulam Mustafa, Mukhtiar Ahmed, Dad Muhammad and Shah Muhammad left Excise PS Sakrand vide entry No.628 for arrest of the accused involved in the narcotics. When the excise officials reached at Chandia Farm Sakrand-Nawabshah road they saw two persons standing there in the suspicious manner. Both the accused while seeing the police mobile tried to run away but they were surrounded and caught hold by the Excise police. On inquiry, one accused disclosed his name as Anwar s/o Ghaibi Khan by caste Rind r/o Mehran colony Taluka Sakrand and another accused disclosed his name as Ashooq s/o Chandoo by caste Bheel r/o Mehran colony Sakrand. In presence of the mashirs ECs Lakhadino and Dad Muhammad personal search of the accused was conducted. From the fold of Shalwar of accused Anwar one plastic shopper bag containing three pieces of charas was recovered. From his further personal search cash of Rs.250/- was recovered. Charas was weighed it was 1000 grams. Out of it 200 grams were taken as sample for sending to the chemical examiner. Remaining 800 grams were also sealed. Personal search of accused Ashok was also conducted. From the personal search, one piece of charas was recovered it became 150 grams and was sealed for sending the same to the chemical examiner. Mashirnama of arrest and recovery was prepared. Thereafter, accused and case property were brought to Police Station. FIR bearing crime No.3/2003 was lodged against the accused on behalf of State for offence u/s 9(b) of CNS Act, 1997.

3. During investigation, Investigation Officer recorded 161 Cr.P.C. statements of the PWs. Samples recovered from both the accused were sent

to the chemical examiner for analysis. On conclusion of investigation, challan was submitted against the accused for offence u/s 9(b) of CNS Act, 1997.

4. Trial Court framed charge against both accused at Ex.2 u/s 9(b) of CNS Act, 1997. To which, accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined PW-1 EC Lakhandino at Ex. 6, who produced mashirnama of place of wardat, arrest of accused and recovery at Ex.7, PW 2 Excise Inspector Altaf Hussain Kalhoro at Ex.8, who produced the FIR at Ex.8-A, chemical examiner's report at Ex.8-B. Thereafter, learned DA closed the prosecution side vide statement at Ex.9.

6. Statements of accused were recorded u/s 342 Cr.P.C.at Ex.10 and 11. Both accused denied all the incrementing pieces of evidence against them and stated that PWs have deposed against them due to enmity as they are the police officials and interested. Accused have examined in defence DW Sharafuddin at Ex.14. Thereafter, the defence side was closed vide statement at Ex.15.

7. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellants as stated above. Hence, this appeal.

8. Facts of this case and evidence find an elaborate mention in the judgment of trial court therefore, there is no need to repeat the same.

9. We have carefully heard Mr. Muhammad Sharif Siyal, learned advocate for appellants, Syed Meeral Shah, learned D.P.G. for the State and scanned the entire evidence.

10. Mr. Muhammad Sharif Siyal, learned advocate for appellants has mainly contended that the evidence of the Excise officials was not reliable as

the evidence of Altaf Hussain Kalhoru AETO was materially contradicted with the evidence of the mashir. It is further contended that AETO could not identify the case property recovered from both the accused before the trial court. It is also submitted that safe custody of the charas has also not been established at the trial court. It is also contended that the departure entry No.628 dated 17.04.2003 has not been produced by the AETO and the prosecution case was highly doubtful. In support of his contentions, learned counsel has placed reliance on the cases reported as *TARIQ PERVEZ V/S. THE STATE (1995 SCMR 1345)* and *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)*,

11. Syed Meeral Shah, learned D.P.G. conceded to the contentions raised by the learned advocate for the appellant and did not support the judgment of the trial court.

12. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

13. In our considered view, the prosecution has failed to establish its' case against the appellants beyond any shadow of doubt for the reasons that the Excise officials had left police station vide roznamcha entry No.628 dated 17.04.2003 but the said entry has not been produced before the trial court to satisfy the court that the Excise officials had actually left the police station on the relevant date. It is matter of record that private Datsun pick-up was used by the Excise officials but there was no explanation that why the official vehicle was not used. Record reflected that not a single word has been deposed by the AETO that the charas was in safe custody at the Excise Police Station after its' recovery. EC Ghulam Mustafa who had taken sample to the Sukkur Chemical Laboratory has also not been examined. AETO has failed to identify the case property/charas recovered from both the accused

before the trial court. There was no evidence that the sample was taken by the AETO from all the pieces for sending to the chemical examiner which has also created doubt in the prosecution case. Material discrepancies with regard to the number of the pieces recovered from the possession and received by the chemical examiner have also come on record. In the above circumstances, rightly reliance has been placed upon the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)*, the relevant portion is reproduced hereunder:-

“5. 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 the 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.”

14. For the above stated reasons, we have no hesitation to hold that the prosecution case was doubtful. In the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*, the Honourable Supreme Court has observed as follows:-

***“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”***

15. For the above stated reasons, we hold that there are several circumstances which created doubt in this case as such prosecution has failed to prove its' case against the accused. While extending the benefit of doubt, appeal is allowed. The conviction and sentence recorded by the trial court are set aside. Appellants are acquitted of the charge. Appellants are on bail, their bail bonds stand canceled and sureties are hereby discharged.

JUDGE

JUDGE

Tufail



