

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Spl. Cr. Appeal No.D-227 of 2016

Before :

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Khadim Hussain Tunio

Appellant : Maroof Bugti through Mr. Sajjad Hussain
Kolachi, advocate.

Respondent : The State through Mr. Syed Sardar Ali Shah,
Additional Prosecutor General.

Date of Hearing : 30.11.2021

Date of Decision : 30.11.2021

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- Through instant Special Criminal Appeal, the appellant has impugned judgment dated 10.11.2016 passed by the learned Special Judge CNS, Khairpur in Special Case No. 60/2016, whereby he has convicted the appellant for an offence punishable under section 9(c) of the Control of Narcotics Substances Act, 1997 and awarded him punishment to suffer R.I for four years and six months and to pay fine of Rs.20,000, in case of non-payment of fine amount to suffer S.I for five months more, however, he is extended benefit of section 382-(b) Cr.P.C.

2. Facts of the prosecution case in nutshell are that during the course of patrolling, the complainant SIP Ali Asghar Almani alongwith other police personnel apprehended appellant Maroof Bugti on 30.04.2016 at 0015 hours from Mirwah Bridge near Bakhar Kanasra link road and recovered 2000 Grams of charas from his possession in presence of mashirs. Such Memo of arrest and recovery was prepared

and thereafter accused was brought at Police Station where instant case was registered against him on behalf of the State.

3. After lodging of FIR, investigation was conducted and on its completion charge sheet was presented before the court of law.

4. A formal charge was framed against the appellant to which he did not plead guilty and claimed to be tried.

5. At trial, prosecution had examined in all three witnesses i.e (P.W-1) complainant of this case namely SIP Ali Asghar Almani at Ex.04, (P.W-2) mashir PC Ghulam Abbas Mirj at at Ex. 05 and (P.W-3) SIP Abdul Sattar Bozdar at Ex. 06, thereafter, side of the prosecution was closed vide his statement at Ex.07.

6. The statement of accused under section 342 Cr.P.C was recorded at Ex.08 wherein he has denied the prosecution allegation and has stated that he has been implicated in the present case due to his enmity prior with the police and that he was taken by the police of Kotdiji police station three days prior and when his mother approached the SSP Khairpur with an application dated 27.04.2016, police booked him in the false case after three days of his illegal arrest. He examined his grandfather Ranjho Khan as DW-1, his father Jarroas DW-2 and his mother Mst. Umeda Khatoon as DW-3 who produced a photostat copy of the application dated 27.04.2016 directed to SSP Khairpur for the illegal confinement of her son.

7. The trial Court finding the appellant guilty for offence punishable under Section 9(c) of the Control of Narcotics Substances Act, 1997, convicted and sentenced him as mentioned hereinabove.

8. Learned counsel for the appellant inter-alia contends that the judgment passed by trial court is against the criminal administration

of justice; that the impugned judgment is perverse and shocking; that the trial Judge while awarding the conviction has not considered the contradictions made in the evidence of the PWs; that no independent witness has been cited by the prosecution and all the PWs are police personnel; that the police failed to collect any private person of locality to act as mashir; that the alleged chars has been foisted upon the appellant and in fact he was arrested three days prior to his arrest and when his mother approached the SSP Khairpur, her son the appellant was booked in this false case, therefore, learned counsel for the appellant prays for his acquittal.

9. Mr. Syed Sardar Shah learned Additional Prosecutor General has vehemently opposed the acquittal of the appellant on the ground that appellant is nominated in the FIR; that the alleged charas has been recovered from the possession of present appellant; that the offence committed by the appellant is heinous one and against the society; that although there are some minor contradictions in the evidence of PWs, but the same may be ignored while deciding the appeal.

10. We have given due consideration to the submissions of learned counsel for the appellant and the learned D.P.G. and have perused the evidence available on the record.

11. We have scanned the evidence adduced by the prosecution and have come to the conclusion that the prosecution has failed to bring at home the guilt of the appellant in view of the material contradictions in the evidence of the prosecution witnesses and the defence plea agitated by the appellant. It is further noticed that the police party did not associate any private person to witness the arrest and recovery. Non-association of the private is gross violation of the provisions of

section 103, Cr.P.C, which is meant for maintaining transparency and sanctity to the process of investigation. No doubt section 25 of the C.N.S.A. 1997 is an exception to the general rule under extra ordinary circumstances, yet necessity of employing private persons as mashirs cannot be overlooked wherever same is possible. It is also pertinent to note here that the alleged recovered charas was received by the chemical examiner on 02.05.2016 whereas the recovery was made on the intervening night of 29.04.2016 and 30.04.2016, establishing a considerable amount of delay in the transmission of the same. Nothing has been brought on record to establish the safe custody of the contraband, even the incharge of *malkhana* has not been examined to support and prove the safe custody during the intervening period and transmission of the same to the chemical examiner. Prosecution witnesses have failed to disclose where the contraband was kept, even, which casts further doubt on the prosecution case. PC Jabbar, through whom the alleged recovered charas was sent to the chemical examiner has not been examined either

12. Coming to the defence plea agitated by the appellant, he was allegedly picked up by the police 3 days prior to his actual arrest *i.e.* on 27.04.2016 which is also evident from the application dated the same day by appellant's mother, directed to SSP Khairpur for her son's release from illegal confinement of PS Kotdiji. The appellant also examined his grandfather, his father and his mother who all remained firm on their stance about the illegal arrest of the appellant on 27.04.2016 and when word got out of the application by the appellant's mother, the appellant was booked in the case falsely on 30.04.2016 while making up a false story about his arrest. This version appears to be reasonable and truthful. The appellant could not have been present at the place of

incident if he was already in police custody which falsifies the prosecution case and casts serious doubt.

13. It is well-settled legal principle regarding dispensation of justice in criminal cases that for extending benefit of doubt, it is not necessary that there should be many circumstances creating doubt, if there is single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then he will be entitled to the benefit, not as a matter of grace and concession but as a matter of right. Reference is made to the case of **Tariq Pervez v. The State (1995 SCMR 1345)**.

14. In view of the foregoing reasons, we allowed the instant appeal by our short order dated 30.11.2021; whereby impugned judgment was set aside and appellant was acquitted.

These are the reasons for the said short order.

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