

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 132 of 2021

Present:-

Ahmed Ali M. Shaikh, CJ &
Yousuf Ali Sayeed, J

Appellant : Kashif son of Shah Muhammad,
through Nadeem Ahmed Azar,
Advocate.

Respondent : The State through Ali Haider Saleem,
APG

Date of hearing : 13.04.2021

JUDGMENT

YOUSUF ALI SAYEED, J. The Appellant was apparently apprehended on 21.04.2020 at 0415 hours by a patrolling police party led by ASI Muhammad Ameen (the “**Complainant**”), when his personal search allegedly yielded 2050 grams of charas.

2. A First Information Report, bearing Crime Number 87 of 2020 (the “**FIR**”), was then registered in the matter by the Complainant at P.S. SIU, and following the usual investigation, the matter came to be challaned and sent up before the Sessions Judge Karachi, West (the “**Trial Court**”), where the Appellant was charged in the ensuing Special Case, bearing No. 297 of 2020, under S.9(c) of the Control of Narcotic Substances Act, 1997 on account of a contravention of Section 6 thereof, to which he pleaded not guilty and claimed trial.
3. Of the several officials said to have comprised the arresting police party on the given day, the Prosecution examined the Complainant (PW-1) and one of the Mashirs to the arrest and recovery, namely ASI Akber Shah (PW-2), with the former producing Departure Entry No. 67 (Ex. 3/A), the Memo of Arrest and Recovery (Ex. 3/B), the FIR (Ex. 3/C) and the Memo of Site Inspection (Ex. 3/D), and in addition

also examined SIP Tariq Shah Zaman, the Investigating Office of the Case (PW-3), who produced Departure Entry No. 70 (Ex. 5/A), Arrival Entry No. 72 (Ex. 5/B), Letter addressed to the Chemical Examiner (Ex.5/C), and the Chemical Examiners Report (Ex. 5/D). After closure of the prosecutions evidence, the Appellants Statement under S. 342 Cr.PC, taking the stand that he had been falsely implicated in the matter and had in fact been otherwise picked up along with one Akhtar Hussain, with a sum of Rs.80,000/- being recovered from his person at the time and a demand for a further sum of Rs.500,000/- being made, with his implication in the case following as a consequence of his refusal to accede to that demand. In furtherance of that plea, the Appellant came forward to himself give evidence in terms of S.340(2) Cr.P.C. and his aforementioned companion was also produced as a defence witness (DW-1), who deposed accordingly.

4. Based on the depositions of the witnesses and the evidence produced, the Trial Court arrived at the conclusion that the prosecution had successfully proven the charge against the Appellant, with a finding of guilt accordingly being recorded against him in terms of the judgment rendered in the aforementioned Special Case on 21.09.2020 (the "**Impugned Judgment**"), and his being sentenced to rigorous imprisonment for a period of 5 years and 6 months and also to pay a fine of Rs.25,000/-, and in the event of default to suffer simple imprisonment for a further period of 5 months and 15 days, with the benefit of Section 382-B extended. Being aggrieved, the Appellant has preferred the instant Jail Appeal through the Superintendent, Central Prison and Correctional Facility, Karachi.
5. Learned counsel for the Appellants assailed the Impugned Judgment, contending that the so-called event narrated in the FIR and other police papers were a fabrication, designed to falsely implicate the Appellant; that there were no independent witnesses and that the evidence produced was

insufficient for the Trial Court to have recorded a conviction. He maintained that the Appellant had been otherwise arrested without cause whilst plying his rickshaw in which his visually impaired friend, Akhtar Hussain (DW-1), had been a passenger, and had then been falsely implicated in the underlying criminal case as aforementioned.

6. Conversely, the learned APG defended the Impugned Judgment, relying on the Report of the Chemical Examiner to contend that as the substance recovered from the Appellant had been found to be charas, this served to establish his guilt so as to prove the charge against him, hence his conviction ought to be sustained.

7. Having considered the matter in light of the record, we have observed that while the absence of independent witnesses is not of itself necessarily destructive of the prosecutions case, that factor assumes significance in the particular context of the case at hand when viewed in conjunction with the fact that PW-1 deposed that on 21.04.2020, his duty hours were from 8 PM to 8 AM and had left for patrolling the PS at 0130 hours, which suggests that the relevant date of the arrest and seizure would then be 22.04.2020, whereas the FIR and other police papers all bear the preceding date (i.e. 21.04.2020). Although this discrepancy could perhaps have passed as an inadvertent error had it been confined to the FIR and Memo of Arrest and Seizure penned by PW-1, the existence of the same discrepancy on the Entries and other documents prepared by a different functionary (i.e. PW-3) coupled with the fact that all such documents also ostensibly appear to have been prepared in the same handwriting, lends credence to the defense plea and gives rise to doubt as to whether such documents were indeed prepared in the manner projected and whether the entire incident as to the arrest and seizure in fact took place in the manner sought to be portrayed by the prosecution, especially when examined in juxtaposition with the stance

of the Appellant, as endorsed by the defense witness. Indeed, the Investigating Officer, SIP Tariq Shah Zaman (PW-3) conceded under cross-examination that even the Statements of the prosecution witnesses recorded by him under S.161 Cr.PC were wrongly dated 22.02.2020, and this was sought to be explained as a typographical error with it being stated that the actual date was 22.04.2020. In our view the aforementioned discrepancies serve to create sufficient doubt as to the veracity of the prosecution's case.

8. As such, it being well settled that the standard of proof beyond a reasonable doubt is a cardinal principal of all criminal trials, and that even a single circumstance serving to create reasonable doubt in a prudent mind as to the guilt of an accused entitles him to the benefit of the presumption of innocence, we had accordingly determined for the aforementioned reasons upon culmination of the hearing on 13.04.2021 that the Impugned Judgment could not sustain, hence had made a short Order in open Court whereby the Appeal was allowed, with the Appellant being acquitted of the charge and the conviction and sentence awarded to him being set aside.

JUDGE

Karachi
Dated _____

CHIEF JUSTICE