

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

Cr. Appeal No.S-189 of 2020.

For hearing of main case.

Date of hearing : 18.11.2022  
Date of judgment : 18.11.2022

Appellant Sikandar : Through Mr. Muzamil Khan,  
S/o Haleem Arisar, Advocate

The State : Through Ms. Sana Memon,  
Assistant P.G.

**JUDGMENT**

**Muhammad Saleem Jessar. J.-** Through instant Criminal Appeal, appellant named above has called in question the judgment dated 25.11.2020 passed by learned Sessions Judge, Umerkot vide Sessions Case No.70 of 2020 (Re: The State v. Sikandar) arising out of Crime No.17 of 2020 registered at P.S Chhor under Section 4, 5, 8 of Sindh Prohibition, Preparation, Manufacturing, Storage, Sell & Use of Gutka Manpuri Act, 2019, whereby he has been convicted and sentenced to suffer rigorous imprisonment of three years and to pay fine Rs.200,000/-, in default thereof, to suffer S.I for six months more.

2. The facts in brief as per prosecution case are that on 07.05.2020, complainant SIP Sultan Ahmed Khan Keerio while patrolling with his subordinate staff received spy information that Sikandar son of Haleem Arisar (present appellant) is selling Gutka Manpuri in his shop. On such information, they reached to his shop at 1300 and recovered 28 packets of Z-Gold Gutka, each packet contained 110 sashays (total 3080 sashays), 33 packets of JND Gutka, each packet contained 110 sashays (total 3630 sashays), 17 packets of Adab Gutka, each packet

contained 100 sachets (total 1700 sachets). The accused was arrested and he alongwith case property was brought to P.S where instant FIR was lodged against him on behalf of the State.

3. After completion of usual as well legal formalities a formal charge against the appellant was framed at Ex-2, to which he pleaded not guilty and claimed to be tried.

4. To prove its charge, the prosecution examined PW-01 SIP Sultan Ahmed (complainant) at Ex-3, who produced memo of arrest and recovery, copy of FIR and roznamcha entries at Exs-3/A to 3/C respectively. PW-2 Nawab Ali, Mashir of the case, was examined at Ex-4, who produced memo of inspection at Ex-4/A and lastly PW-3 Rustan Ali, I.O of the case, was examined at Ex-5, who produced entry of Malkhana Register, departure and arrival entries, letter to chemical examiner, departure and arrival entries of PC Odho Mal and report of chemical examined at Exs-5/A to 5/C respectively. Thereafter, prosecution closes its side vide statement at Ex-6.

5. The statement of accused under Section 342 Cr.P.C was recorded at Ex-7, in which he denied the allegations made by the prosecution against him and claimed his innocence by not examining himself on oath, nor leading any evidence in his defense.

6. Learned trial Court after hearing learned Counsel for the parties convicted and sentenced the appellant/accused in the terms as stated above; hence, this appeal has been filed.

7. Learned Counsel for the appellant submits that appellant is a government servant, working as Primary School Teacher and has falsely been implicated by the police as he got strained relations with one landlord Aijaz Nohri on whose instigation police have cooked up instant case and implicated him by foisting alleged Gutka etc. He further submits that per

charge Ex-02, 28 packets of Z-Gold Gutka, each packet containing 110 sachets (total 3080 sachets), 33 packets of JND Gutka, each packet containing 110 sachets (total 3630 sachets), 17 packets of Adab Gutka, each packet containing 100 sachets (total 1700 sachets), 40 packets of AKG Gutka, each packet containing 105 sachets (total 4200 sachets) the grand total becomes 12610 sachets are shown to have allegedly been secured from appellant's shop; however, per report furnished by the Director, Laboratories & Chemical Examiner to the Government of Sindh, Karachi vide letter dated 17.06.2020 (Ex-5/B), it reveals that only parcel containing one packet Z-Gold Toboco Gutka Sachet was received by the laboratory. He further submits that though the recovery was effected on 07.05.2020; yet the I.O sent alleged Gutka to laboratory on 13.05.2020 with delay of about six days for which no explanation has been furnished by the prosecution. He; therefore, submits that due to above discrepancies the prosecution has failed to prove its charge against the appellant which creates doubt into the veracity of prosecution evidence; hence, entitles the appellant to his acquittal.

8. Learned Assistant P.G Sindh though opposes the appeal; however, she could not controvert the factual position of the record.

9. Heard and perused the record.

10. Admittedly, the incident is said to have occurred on 07.05.2020 when the alleged recovery of Gutka etc. was effected. Per report of the chemical examiner, the property was received in the laboratory on 13.05.2020 with delay of about six days for which no plausible explanation has been furnished by the prosecution for such an inordinate delay and sending of parcel to laboratory with delay shows that the police might have maneuvered for alleged Gutka and then submitted the same to the laboratory in order to strengthen the rope of their case. However, instead of their endeavours they could not fulfill the

job according to the contents of FIR. Per charge as well FIR and memo of recovery, the huge quantity of Gutka was shown to have been recovered from appellant's possession; however, all this has been belied by the report of chemical examiner, which reveals availability of one parcel. Such discrepancy on the part of prosecution shows that prosecution had not come with its clean hands and thus the case of the prosecution becomes doubtful. The appellant is a government servant, associated with noble profession of the education; therefore, it is expected that being government servant he cannot be indulged in such an activity. Moreover, the alleged contraband was not shown / confronted to appellant at the time of his statement recorded under Section 342 Cr.P.C. In such circumstances, the prosecution has miserably failed to prove its charge against the appellant beyond any reasonable shadow of doubt. It is well settled principle of law that if there creates a single doubt about the guilt of accused, the benefit whereof should go to accused as of his right but not grace or concession. In this respect, reliance can be placed upon the case titled as Muhammad Akram v. The State (2009 SCMR 230), wherein at page-236, it has been held as under:-

*“ It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”*

11. For what has been discussed hereinabove, I am of the view that prosecution has miserably failed to prove its charge against the appellant beyond reasonable shadow of doubt and this Court in absence of the prosecution evidence

cannot take the steps forward in upholding the impugned judgment; hence, the same needs to be interfered with in presence of the reasonable doubts in the prosecution story as well keeping in view the dictum laid down by the Apex Court as referred to above. Hence, instant Criminal Appeal is hereby allowed and the impugned judgment dated 25.11.2020 handed down by learned Sessions Judge, Umerkot, vide Sessions Case No.70 of 2020, is set aside and consequently appellant is acquitted of the charge. He is present on bail; his bail bond stands cancelled and surety is hereby discharged.

JUDGE

Shahid