

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.195 of 2024

Present:
Naimatullah Phulpoto, J.
Irshad Ali Shah, J.

Appellant: Muhammad Ibrahim through M/s. Muhammad Yousif Narejo, Kamran Ali Kalhoro and Ms. Anjli Talreja, advocates

The State: Mr. Saleem Akhter Burioro, Additional Prosecutor General

Date of hearing: 03.09.2024

Date of announcement: 03.09.2024

JUDGMENT

IRSHAD ALI SHAH, J. The facts, in brief, necessary for the disposal of the instant appeal are that the police party of PS Ibrahim Hyderi led by SIP Abdul Qadir while patrolling within the jurisdiction of his Police Station on receipt of spy information that the appellant and others were selling charas went at the place of incident apprehended the appellant and one Sohail, secured from them 1050 gram of Charas and unlicensed pistol of 30 bores respectively; the charas secured from the appellant was weighed to be 1050 gram; two of the accused named Muhammad Shoaib and Shakir; it is said made their escape from the place of the incident leaving behind their respective shoppers containing 1050 and 1020 grams of charas. The appellant was booked accordingly. At trial, the appellant denied the charge and the prosecution to prove the same, examined four witnesses and then closed its' side. The appellant in his statement recorded under section 342 Cr.PC denied the prosecution's allegation by pleading innocence; he did not examine himself on oath, however, examined his uncle Muhammad Aslam in his defence to prove his innocence. On completion of the trial, he was convicted under Section 6,9-(1)(3)(c) of CNS Act, 1997 and sentenced to undergo rigorous imprisonment for 14 years and to pay a fine of Rs.400,000/- and in default in payment whereof to undergo simple imprisonment for 05

months with benefit of Section 382(b) Cr.P.C by learned IVth Additional Sessions Judge (CNS) Malir Karachi vide judgment dated 27.02.2024, which is impugned by the appellant before this Court by preferring the instant CrI. Appeal.

2. Heard arguments and perused the record.

3. As per the complainant and P.W/mashir PC Waris Ali, they went to the place of the incident on receipt of spy information. If it was so, then they were under an obligation to have associated with them an independent person to witness the incident to maintain transparency; it was not done by them for any obvious reason, therefore, such omission on their part could not be overlooked. As per the complainant, the information was communicated to him by the spy through the cell phone. He in that respect was belied by P.W /mashir PC Waris Ali by stating that the spy came to them by foot. Such inconsistency in their evidence could not be overlooked; the same has reduced the evidentiary value of their evidence. No independent person was associated or examined in investigation by I.O SIP Muhammad Pinyal to ascertain the correctness of the incident; such omission on his part suggests that it was a table investigation. The table investigation could hardly be relied upon to maintain conviction. Evidence of P.W WHC Ali Khan is only to the extent that he kept the property with him in *malkhana*; his evidence needs no discussion. The appellant in his statement recorded under Section 342 Cr.PC has pleaded innocence and has also examined his uncle Muhammad Aslam to prove his innocence. If their evidence is taken into consideration in juxtaposition, then it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.

4. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex Court that;

“4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such

doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

5. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside; he is acquitted of the charged offence and to be released forthwith, if not required to be detained in any other custody case.

6. Above are the reasons for our short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE

JUDGE

Nadir*