

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Special Crl. Jail Appeal No. D - 52 of 2023

Before:

Mr. Justice Irshad Ali Shah
Mr. Justice Zulfiqar Ali Sangi

Appellant: Shoaib Anwar son of Anwar Ali by caste Dayo
(Now confined in Central prison Sukkur)
Through Mr. Rukhsar Ahmed Junejo, Advocate.

The State: Through Syed Sardar Ali Shah Rizvi, Additional P.G.

Date of hearing: 07-02-2024.
Date of decision: 07-02-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that the appellant was found in possession of 500 grams of the charas in shape of two pieces, for that he was booked upon by the police party of PS Jhangro and on conclusion of the trial, he was convicted u/s 9 (b) of CNS (Amendment) Act, 2022 and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs. 50,000/-, and in default whereof to undergo simple imprisonment for two months with benefit of section 382(B) Cr.P.C by learned Sessions/Special Judge (CNS), Sukkur vide judgment dated 29-08-2023, which is impugned by the appellant by preferring the instant Crl. Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police only to show its efficiency; there is no independent witness to the incident; the incharge of 'malkhana' has not been examined by the prosecution to prove its safe custody and the evidence of the prosecution witnesses being doubtful in its character has been believed by learned trial Court without lawful justification; therefore, the appellant is entitled to his acquittal by extending him benefit of doubt, which is opposed by learned

A.P.G for the State by supporting the impugned judgment by contending that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt.

3. Heard arguments and perused the record.

4. There is no independent witness to the incident. Complainant ASI Atta Hussain Shah and PW/mashir PC Qurban Ali are inconsistent with regard to the availability of independent person at the place of incident; such inconsistency on their part could not be over looked. As per PW/PC Shaman Ali he took the property to Chemical Examiner on 27-02-2023. It was on 3rd day of its recovery. No plausible explanation to such delay has been offered by the prosecution. Incharge of the *malkhana* has not been examined to prove the safe custody of the charas during intervening period, such omission on the part of the prosecution could not be ignored. As per I.O/ASI Alauddin the appellant was having some scratches on his face. Who caused such scratches to him? No plausible explanation to it is offered, which prima-facie suggests that the appellant was maltreated at the time of incident by the police or someone else. The appellant during course of his examination u/s 342 Cr.P.C by denying the prosecutions' allegation has stated that he has been involved in this case by the police at the instance of his brothers with whom he is disputed over property; such plea on his part in the circumstances of the case could not be lost sight of.

5. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

6. In case of *Ikramullah & ors vs. the State (2015 SCMR-1002)*, it has been observed by Hon'ble apex court that;

“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 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”.

7. In case of Muhammad Mansha Vs The State (2018 SCMR 772), it has been held by the Hon’ble 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”.

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside, consequently he is acquitted of the offence, for which he was charged, tried, convicted and sentenced by the learned trial court and shall be released forthwith if not required to be detained in any custody case.

9. The instant CrI. Jail Appeal is disposed of accordingly.

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