

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Special CrI. Appeal No. D - 78 of 2023

Present;

Irshad Ali Shah, J.
Zulfiqar Ali Sangi, J

Appellants: Muhammad Sharif son of Ghulam Qadir Khushk and Sabir son of Jaffar Machhi (Confined in Central Prison Khairpur) **Through** Mr. Ameer Hussain Solangi, Advocate.

The State: Through Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

Date of hearing: 29-02-2024.

Date of decision: 29-02-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. The appellants were found in possession of 02 and 03 total 05 kilograms of the *Bhang* by Police party of PS Mohbat Dero, for that they were booked and reported upon. On conclusion of trial they were convicted u/s 9 (b) of CNS Act, 1997 and sentenced to undergo rigorous imprisonment of three years with fine of Rs. 10,000/- and in default in payment whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C by learned Ist Additional Section/(MCTC)/(CNS), Naushahro Feroze vide judgment dated 30th October 2023, which is impugned by them before this Court by preferring the instant Special CrI. Appeal.

2. It is contended by learned counsel for the appellants that the evidence of the PWs being doubtful has been believed by learned trial Court without lawful justification; therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt, which is opposed by learned Additional P.G for the State by supporting the impugned judgment by contending that the offence, which the appellants has allegedly committed is affecting the society at large.

3. Heard arguments and perused the record.

4. It was stated by complainant ASI Ali Akbar and PW/Mashir PC Sajid Ali that on the date of incident they with rest of police personnel were conducting snap checking at Bhanwar Mori during course whereof the appellants were found coming there on their motorcycle; both of them were having sacks; the sack secured from appellant Muhammad Sharif was found containing 03 kilograms of *Bhang* while the sack secured from appellant Sabir was found containing 02 kilograms of *Bhang*, those were sealed, they were arrested formally under the memo prepared at the spot and then were taken to Police Station Mohbat Dero, there they were booked in the present case formally and further investigation of the case was conducted by I.O/SIP Sultan Ahmed. On asking, it was stated by the complainant that the entry whereby he and his staff left the Police Station was kept by WHC Khamiso Khan; the appellants were searched upon by him; the *Bhang* secured from the appellants was weighed at nearby shop. The complainant in that respect is belied by PW/PC Sajid Ali by stating that the entry whereby the complainant and his staff left the police station was kept by WASI Hidayatullah; the appellants were searched upon him and the *Bhang* secured from the appellants was weighed through digital scale, which was available with them in investigation kit. Such inconsistencies between the evidence of the complainant and PW/Mashir being material could not be lost sight; those have reduced the evidentiary value of their version, which could hardly be relied upon to maintain conviction. I.O/SIP Sultan Ahmed on asking was fair enough to admit that the *Bhang* was sent to the Chemical Examiner with delay of about 10 days and motorcycle whereby the appellants were found coming has not been made as case property. No plausible explanation to such omission is

offered by him, which suggest that investigation of the present case on his part was casual one. Incharge of the *Malkhana* has not been examined by the prosecution; his examination was essential to prove the safe custody of the *Bhang*. Evidence of PW/PC Ameer Bux is only to the extent that he took the case property to the Chemical Examiner, as said above it was with unexplained delay of about 10 days to its recovery. His evidence needs no discussion. The appellants during course of their examination under section 342 Cr.P.C have pleaded innocence, such plea on their part could not be lost sight of in the circumstances of the present case.

5. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit they are 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 appellants by way of impugned judgment are set-aside, consequently they are acquitted of the offence, for which they were 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 Special Crl. Appeal is disposed of accordingly.

JUDGE

JUDGE