

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Crl. Appeal No. S - 86 of 2021

Appellant: Ghulam Abbas son of Gul Sher Sohno by caste Sahito,
Through M/s Syed Tanveer Abbas Shah and
Badaruddin Memon advocates.

The State: Through Mr. Aftab Ahmed Shar, Additional Prosecutor
General.

Date of hearing: 11-03-2024.

Date of decision: 11-03-2024.

J U D G M E N T

IRSHAD ALI SHAH-J; It is the case of the prosecution that the appellant was found transporting 100 packets of Gutka duly kept in two sacks through his car, which were containing the substance injurious to human lives, for that he was booked and reported upon by the police. On conclusion of trial without specifying the Penal Section for which he was convicted was sent on Probation for one year with the condition that in case he would violate the Probation then he would be taken into custody to serve out imprisonment for one year and to pay fine of Rs. 100,000/- (One lac) and in default in payment whereof to undergo simple imprisonment for three months by learned Additional Sessions Judge, Moro vide Judgment dated 02-10-2021 which is impugned by the appellant before this Court by preferring the instant 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 by foisting upon him the case property; therefore, he is entitled to be acquitted of the charge by extending him benefit of doubt; which is opposed by learned Additional P.G for the State by supporting the impugned Judgment.

3. Heard arguments and perused the record.

4. Despite advance information, no independent person was associated by complainant ASI Ghulam Abbas to witness the incident; such omission on

his part could not be over looked. Only two packets have been subjected to Chemical Examination that too with delay of about one month with no plausible explanation to such delay, which has exposed the recovery to tampering. The appellant has not been confronted with report of Chemical Examiner during course of his examination u/s 342 Cr.P.C to have his explanation on it, as such it could not be used against him as evidence. In these circumstances, it would be safe to conclude that the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

5. In case of *Haji Nawaz vs. The State (2020 SCMR 687)*, it has been held by Apex Court that;

“The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342 Cr.P.C then the same cannot be considered against him for the purpose of recording his conviction.”

6. In case of *Faheem Ahmed Farooqui vs. The State (2008 SCMR 1572)*, it is held by Apex Court that;

“Single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful”.

7. For what has been discussed above, the impugned judgment is set-aside, consequently the appellant is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court; his bail bond if any is cancelled and surety is discharged.

8. The instant Crl. Appeal is disposed of accordingly.

JUDGE