

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Special Crl. Appeal No.D-33 of 2023

Present:

Mr. Yousuf Ali Sayeed, J
Mr. Zulfiqar Ali Sangi, J

Appellant: Sagar Baboo son of Manesh Baboo
Through M/s Mehfooz Ahmed Awan, Farhan
Ahmed Shaikh and Attiq-ur-Rehman Shaikh,
Advocates for appellant.

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

Date of hearing: 25.10.2023
Date of decision: 13.03.2024

J U D G M E N T

Zulfiqar Ali Sangi, J.- The appellant named above has filed instant Criminal Appeal, whereby he has impugned the judgment dated 07.06.2023 passed by the Additional Sessions Judge/Special Judge Narcotics (MCTC) Ubauro, in Special Case No.14 of 2023 (*Re. The State Vs. Sagar Baboo son of Manesh Baboo Hindu*, arising out of Crime No. 259 of 2022 offence u/s 9(1), (3)(e) Control of Narcotic Substance Act (Amended Act-2022), registered at Police Station, Ubauro whereby he was convicted and sentenced to suffer imprisonment for 'Life' and to pay fine of Rs.10,00,000/- (One million) and in case of failure to pay fine, he shall suffer S.I, for six months more, with benefit of 382-B Cr.P.C, hence he preferred the instant appeal.

2. Precisely, the facts of the case are that on 13.12.2002 at 2030 hours complainant SIP Anwar Ali Korai left police station for patrolling within jurisdiction. After visiting different places, when they reached at bypass Ubauro near Islami Kanta, where SIP Muhammad Hashim Shar SHO PS Reti and SIP Jamsher Ali Siyal SHO PS Khenju along with their sub-ordinate staff arrived there. Upon receiving directions from high-ups they started conducting checking of vehicles. It was about 1830 hours they saw one person alighted from a coach coming from Daharki having a blue color shopper in his hand. Police party found suspect stopped him, took such shopper in their possession. On checking, it was found containing 14 slabs of Chars. On inquiry, accused disclosed his name to be Sagar Baboo son of Mahesh Baboo by caste Hindu r/o

Muki Jado Mal Mohalla Mirpur Mathelo and further disclosed that he was taking the above said Chars to Ubauro for selling the same. Due to non-availability of private persons, SIP Muhammad Hashim and SIP Jamsher Siyal were appointed as mashirs. On personal search from his flank pocket two currency notes of Rs.500/- were recovered. On weighing 06 slabs, each slab was found to be of 1000 Kilograms, while 08 slabs, each slab were found 500 grams. Complainant took samples from each slab for the purpose of Chemical Examination. The recovered property was sealed at the spot in presence of above named mashirs. Then, memo of arrest and recovery was prepared in presence and with the signatures of above named mashirs. Thereafter, arrested accused and recovered property was brought at PS where instant FIR was lodged.

3. During investigation 161 Cr.P.C statements of the PWs were recorded, samples were sent to the chemical examiner for report. Positive report of the chemical examiner was received. On the conclusion of usual investigation, challan was submitted against the appellant/accused u/s 9(1), (3)(e) Control of Narcotic Substance Act (Amended Act-2022).

4. After completing legal formalities, the trial Court framed charge against the appellant/accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove accusation against the appellant/accused, the prosecution has examined 05 witnesses who all produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellant was examined under section 342 Cr.P.C, wherein he denied the allegations leveled against him and pleaded his innocence. After hearing the parties and assessment of the evidence against the accused, trial Court convicted and sentenced the appellant/accused as stated above against the said conviction he has preferred instant appeal.

7. Learned counsel for the appellant/accused argued that accused is innocent and has falsely been implicated in this case by the police to show their efficiency; that the alleged property has been foisted upon appellant/accused; that all the PWs are police officials and no

independent corroboration in shape of private witness is brought on record; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court which is insufficient to warrant conviction against the appellant/accused; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant/accused; that the material contradictions appeared in the statements of prosecution witnesses on crucial points, but those have not been taken into consideration by the learned trial Court while passing impugned judgment; that the judgment passed by the trial Court is liable to be set-aside. Lastly, he prayed that the appellant/accused may be acquitted by extending him the benefit of doubt.

8. Conversely, learned Addl. P. G appearing for the State opposed the appeal on the ground that prosecution has successfully proved its case against the appellant/accused beyond a reasonable doubt and all the witnesses including complainant/seizing officer have fully implicated the appellant/accused in their evidence recorded by the trial Court; that all the necessary documents including the entries of station diary, the memo of recovery and FIR have been produced; that during the cross-examination defence counsel had not shaken evidence of the prosecution witnesses and there appear no major contradictions in their evidence. Lastly, he submitted that appellant/accused was rightly convicted by the trial Court and prayed that the appeal of appellant/accused may be dismissed.

9. We have heard learned counsel for appellant and learned Addl. P.G for the State and have carefully examined the entire evidence produced by the prosecution with their able assistance.

10. We have reassessed the entire evidence of prosecution witnesses with the assistance of defence counsel and the prosecutor and found major contradictions in their evidence which rendered the case of prosecution doubtful. The complainant in his evidence deposed that they saw the accused on the bulbs of street light while mashir SIP Muhammad Hashim deposed that they saw the accused on headlights of vehicle. Whereas, I.O, in his cross-examination stated that complainant informed him that he had done all the proceedings at the time of arrest and recovery on the headlight of vehicle. He further deposed that at the place of incident no other source of light was

available. The complainant further deposed that coach was stopped beside one cabin situated at Islami Kanta, while mashir SIP Muhammad Hashim deposed that bus was stopped at the curve of National Highway where accused alighted from it which reflects that both the witnesses are not supporting each other in respect of arrest and recovery from the appellant and from their evidence it can easily be held that one of them was not available and is telling a lie. The arrest of the appellant is also doubtful as the Complainant in his evidence deposed that one PC Abdul Sami Soomro first caught hold the accused, while mashir SIP Muhammad Hashim deposed that SIP Anwar arrested the accused. Further the complainant deposed that they were standing at the distance of about 400 to 500 paces away from the Islami Kanta while mashir deposed that they were conducting the checking at the distance of about 15 to 20 meters away from Islami Kanta, the I.O, in his cross-examination has deposed that place of incident was situated at the distance of 50 to 60 paces away from Islami Kanta. On the other hand I.O, in his examination-in-chief deposed that place of incident was situated beside Islami Kanta Deh Garang at the distance of about 02 Kilometers away from the Police Station again the place of arrest and recovery is doubtful and the presence of all the police officials at the time and arrest become doubtful. The investigation officer in his cross-examination stated that at call distance one cabin and hotels are situated but he did not ask the cabin owner for acting as mashir. The complainant and I.O, in cross-examination have admitted that in the Chemical report it is mentioned that old chars was sent for examination. The complainant and I.O, have also admitted that the knife through which samples were taken has not been shown as case property. As per contents of FIR complainant secured cash amount from the accused, but in the cross-examination he admitted that cash amount and knife were not sealed at the spot. This fact has also been admitted by the Mashir while deposing that knife and currency notes were neither sealed at the spot nor its numbers were noted down. The mashir in his cross-examination has stated that his statement was recorded by Munshi who was with the I.O, and he recorded his statement with pen. But when such statement was confronted to him in the Court, he admitted that same was computerized and not in handwriting. The complainant and mashir have deposed that the mashirnama was prepared by PC Muhammad Ali but the said PC

Muhammad Ali/author of mashirnama has not been brought at the trial to confirm arrest and recovery and preparation of the mashirnama.

11. The brother of appellant moved application for justice and on that application SIP Aftab Ahmed conducted an inquiry and submitted such report wherein he found that appellant is innocent. The said SIP Aftab Ahmed was not produced by the prosecution but he was examined by the trial court as a Court witness who deposed that he collected the CDR record of the complainant, witnesses and the accused, and as per the CDR record at time of arrest and recovery the complainant and the witnesses were found at different places not at the place where recovery and arrest was shown by them. The investigation officer (court witness) deposed that According to the CDR the location of SIP Jamsheer was at Khairpur Panj Hati, SIP Muhammad Hashim (Mashir) was at Daharki and SIP Anwar Ali Korai (complainant) was at Ubauro. **After completing the inquiry/investigation he submitted a report wherein he gave the finding that accused was falsely implicated in the case.** Moreover at the time of recording statement of accused in terms of Section 342 Cr.P.C, the case property allegedly recovered from the accused has not been put to him for confronting the same which is mandatory requirement of law so also a question regarding its claim has not been put to him which too creates doubt in the case of prosecution.

12. The above-noted contradictions and the lacunas in the evidence of prosecution witnesses indicate that the complainant and mashir were not the true eyewitnesses of the incident and no such incident of the arrest of the accused and recovery of hashish/charas from the appellant had occurred as alleged by the prosecution. Taking notice of the contradictions in the evidence of the complainant and the mashir so also of the investigation officer, we are clear in our mind that the prosecution has failed to prove its case against the appellant beyond a shadow of reasonable doubt and the recovery from the appellant has not been satisfactorily proved. Both the witnesses have contradicted to each other on material aspects of the case. No implicit reliance can be placed on their evidence in view of aforesaid contradictions in the evidence of prosecution witnesses. It is observed that mere heinousness of the charge and recovery of a huge quantity of the alleged contraband is no ground to convict the accused. The prosecution is under a

bounden responsibility to drive home the charge by proving each limb of its case. It is further to be noted that in a stringent law such as the CNSA, where capital punishment or imprisonment for life can be awarded even on the testimonies of police officials, in order to bring home guilt against an accused, it is necessary for the prosecution to prove their case through reliable, unimpeachable, and confidence-inspiring evidence beyond any reasonable doubt. The harder the punishment, the stricter the standard of proof. Reliance can be placed the case of ***Ameer Zeb v. The State (PLD 2012 SC 380)***, where it was observed as under:

"Punishments provided in the Control of Narcotic Substances Act, 1997 were quite stringent and long, if not harsh, and, thus, a special care had to be taken that a court trying such an offence had to be convinced that the entire quantity allegedly recovered from the accused person's possession was indeed narcotic substance. We, reverently and respectfully, tend to agree with the latter view and would like to add that the rule of thumb for safe administration of criminal justice is: "The harsher the sentence the stricter the standard of proof." (Underling is provided by us for emphasis.)

In the said Ameer Zaib's case it was also observed that;

"We may also observe that in such cases it is the accused person who is at the receiving end of long and stringent punishments and, thus, safeguards from his point of view ought not to be allowed to be sacrificed at the altar of mere comfort or convenience of the prosecution."

13. It is well settled principal of law that for the purposes of extending benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance can be placed on the cases of ***Tajamal Hussain v. The State (2022 SCMR 1567)***, ***Sajjad Hussain v. The State (2022 SCMR 1540)***, ***Abdul Ghafoor v. The State (2022 SCMR 1527 SC)***, ***Kashif Ali v. The State (2022 SCMR 1515)***, ***Muhammad Ashraf v. The State (2022 SCMR 1328)***, ***Khalid Mehmood v. The State (2022 SCMR 1148)***, ***Muhammad Sami Ullah v. The State (2022 SCMR 998)***, ***Bashir Muhammad Khan v. The State (2022 SCMR 986)***, ***The State v. Ahmed Omer Sheikh (2021 SCMR 873)***, ***Najaf Ali Shah v. The State (2021 SCMR 736)***, ***Muhammad Imran v. The State (2020 SCMR 857)***, ***Abdul Jabbar***

v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).

14. Thus based on the particular facts and the circumstances of the present case and by relying on the above precedents of the Apex Courts, we find that the prosecution has failed to prove the case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence. Therefore, we allow the instant appeal, set-aside the impugned judgment dated 07-06-2023, passed by the Additional Session Judge/Special Judge for Control of Narcotic Substance (MCTC) Ubauro, in Special Case No.14/2023 arising from Crime No.259/2022 U/s 9(1)(3)(e) of CNS Act, 1997 (*Amended Act-2022*) of Police Station, Ubauro and acquit the appellant **Sagar Baboo son of Manesh Baboo Hindu** from the charges by extending him the benefit of the doubt. He shall be released forthwith if not required in any other custody case.

15. The above Crl. Appeal is disposed of in the above terms.

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