

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.  
Special CrI. Appeal No. D - 81 of 2023

Present;

*Irshad Ali Shah, J.*  
*Zulfiqar Ali Sangi, J*

Appellant: Imran Ali son of Rasool Bux bycaste Khokhar  
(Confined in Central Prison Khairpur) **Through** Mr.  
Sajjad Hussain Kolachi, Advocate.

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

Date of hearing: 20-03-2024.

Date of decision: 20-03-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that appellant was found in possession of 11 kilograms of *Bhang* duly packed in sack by police party of PS B-Section Khairpur, for that he was booked and reported upon. On conclusion of trial he was convicted u/s 9 (C) of CNS Act, 1997 and sentenced to undergo rigorous imprisonment for seven years with fine of Rs. 100,000/- 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), Khairpur vide judgment dated 15-11-2023, which is impugned by him before this Court by preferring the instant Special CrI. 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 the *Bhang* upon him and the evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons; therefore, the appellant 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 by contending that the offence which the appellant has committed is affecting the society at large.

3. Heard arguments and perused the record.

4. It was stated by complainant ASI Bux Ali that on the date of incident he with rest of the police personnel was conducting patrol within jurisdiction of PS B-Section Khairpur, when reached at Thaheem bridge, found the appellant standing there; by his side was lying a sack, it was found containing *Bhang*; it was weighed to be 11 kilograms; it was sealed under memo prepared at the spot and the appellant with the recovery so made was taken to PS B-Section Khairpur, there he was booked in the present case formally. On asking, it was stated by him that the memo of arrest and recovery was written by PW/PC Nasim Abbas. PW/mashir PC Muhammad Pannah when was examined insisted that memo of arrest and recovery was prepared by the complainant himself. Such inconsistency in their evidence could not be over looked. It was further stated by PW/mashir PC Muhammad Pannah that all the formalities of the case were completed at PS B-Section Khairpur. If it was so, then it prima-facie suggests that the appellant was not dealt with fairly even at the time of his arrest by the complainant. PW/PC Sono Khan who has taken the property to the Chemical Examiner has not been examined by the prosecution; his examination was essential to prove the safe transmission of the property to the Chemical Examiner; therefore, his non-examination could not be over looked. I.O/SIP Kaleemullah was fair enough to admit that the report of Chemical Examiner, which has produced by him in evidence is not genuine. Where the original Report of Chemical Examiner has gone? No explanation to it is offered by the prosecution. The appellant has

pleaded innocence; such plea on his 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 appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

6. 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".*

7. 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 other custody case.

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

**JUDGE**

**JUDGE**