

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Special CrI. Jail Appeal No. D - 04 of 2024

Present;

Irshad Ali Shah, J

Zulfiqar Ali Sangi, J

Appellant: Ashique Hussain son of Meeral Khan bycaste Lund,
(Confined in Central Prison Khairpur)
Through Mr. Saeed Jamal Lund, Advocate.

The State: Through Mr. Muhammad Farooque Ali Jatoi, Special
Prosecutor ANF.

Date of hearing: 27-03-2024.

Date of decision: 27-03-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that on arrest from the appellant was secured 2250 grams of charas in shape of three pieces, for that he was booked and reported upon. On conclusion of trial, he was convicted u/s 9(C) of CNS (Amendment) Act, 2022 and sentenced to undergo Rigorous Imprisonment for nine years and to pay fine of Rs.80,000/-, and in default in payment whereof to undergo simple imprisonment for five months with benefit of Section 382(B) Cr.P.C by learned Sessions Judge/Special Judge (CNS), Khairpur vide judgment dated 22-12-2023, which is impugned by the appellant before this Court by preferring the instant Special Criminal 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 by foisting charas upon him and evidence of the PWs being doubtful in its character has been believed by learned trial Court without lawful justification; therefore, he is entitled to his acquittal by extending

him benefit of doubt, which is opposed by learned Special Prosecutor ANF by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt. In support of his contention, he relied upon case of *Zain Ali Vs. The State (2023 SCMR 1669)*.

3. Heard arguments and perused the record.

4. It was stated by complainant SIP Mst. Hania Fatima and PW/mashir ASI Ashbeel Victor that on the date of incident it was intimated to them by an spy that the appellant is coming at Shah Hussain Bus stop to supply Narcotics substance to his customer; on such information; they with rest of the police personal and spy proceeded towards the pointed place. If it was so, then it was obligatory upon the complainant party to have associated with her independent person to witness the incident to exclude the possibility of foistation; it was not done; therefore, such omission could not be overlooked. It was further stated by them that the appellant was found available at Shah Hussain Bus stop with his motorcycle; was apprehended on pointation of spy. On asking, both of them were fair enough to say that distance between PS ANF Sukkur and place of incident is about 30/32 kilometers; if it was so then the complainant and her witnesses might have consumed sufficient time in reaching there; the availability of the appellant there to be apprehended by the police that too with his motorcycle appears to be surprising. It was further stated by them that the appellant was having a plastic shopper, it was secured; it was found containing three pieces of charas; those were weighed to be 2250 grams; from each piece was taken out 10 grams of charas for chemical examination, the property so secured and separated was sealed at the spot under memo. On asking, why such

memo was not prepared in presence of independent person? It was stated by them that none was found ready to extend cooperation. If it was so, at least their names were to have been noted down to substantiate their explanation; it was not done by them; such omission could not be ignored. It was further stated by them that the appellant with the property so secured then was taken to PS ANF Sukkur, there he was booked in the present case formally; the samples of the charas were dispatched to the chemical examiner through PW/PC Manshir Ahmed, such dispatch was with delay of about two days to its recovery. It was confirmed by PW/PC Manshir Ahmed during course of his examination that he took the samples of charas to the chemical examiner. The appellant during course of his examination u/s 342 Cr.P.C has denied the prosecution's allegation by stating that he with co-villagers arranged a protest against local Administration of District Khairpur, which annoyed Ghulam Abbas Kubar, the local Office bearer of Ruling party, who got him involved in this case falsely through ANF Police, when he was sitting at Kinara Hotel Setharja. In order to prove his innocence, he has examined Sajid Hussain, the owner of the Kinara hotel and Abdul Sattar a hawker in his defence. His such plea could not be over looked in the circumstances of the 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. The case law which is relied upon by learned Special Prosecutor ANF is on distinguishable facts and circumstances; in that case the quantity of Narcotics substance was huge one. It was being transported by keeping the same in secret cavities of the vehicle and there was no advance information about its being transported. In the instant case there was advance information with the complainant party and there was ample time with them to have associated with them independent person to witness the incident.

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 Special Crl. Jail Appeal is disposed of accordingly.

JUDGE

JUDGE

ARBROHI