

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.**

Cr. Revision Appln. No.D- 20 of 2023.

Present:

Mr.Justice Muhammad Saleem Jessar.

Mr. Justice Zulfiqar Ali Sangi.

Applicant/Convict : Through M/s Shahid Ali Memon and  
Syed Zameer Hussain Rizwana Parveen Memon, Advocates  
(on bail) a/w Applicant Syed Zamir Hussain Shah

Respondent. : The State through Mr.Aftab Ahmed Shar,  
Addl. Prosecutor General, Sindh.

Date of hearing : 22.10.2024.  
Date of judgment : 22.10.2024.

**J U D G M E N T.**

**ZULFIQAR ALI SANGI-J.:-** The appellant stands booked under Crime No.60 of 2022 registered at Police Station Hingorja for the offence under Section 9(a) of C.N.S Act 1997 therefore, he was tried by the Court of Civil Judge/Judicial Magistrate, Sobhodero @ Ranipur (Trial Court) vide Criminal Case No.189 of 2022 Re: The State v. Syed Zamir Hussain Shah. After full dressed trial, the trial Court found him guilty of the charge hence convicted and sentenced him to suffer S.I for one year with fine of Rs.10,000/= . In default thereof he was further directed to suffer S.I for 15 days more with benefit of Section 382(b) Cr.P.C in terms of judgment dated 11.01.2023. Being aggrieved by that judgment, the appellant filed Criminal Appeal No.01 of 2023 before the Court of Sessions which subsequently was assigned to Additional Sessions Judge-1/(MCTC)/ Special Judge for CNS, Khairpur Mir's (Appellate Court) Re: Syed Zamir Hussain Shah v. The State. The appellate Court, after due notice and hearing the parties, dismissed his appeal by maintaining judgment passed by the trial Court in terms of his judgment dated 06.3.2023. Since, under scheme of Criminal Procedure Code 1898, no provision for filing second appeal is provided, hence the appellant/convict has maintained instant Criminal Revision Application against the judgments passed by two Courts below.

2. Briefly the prosecution case against the applicant/accused is that complainant ASI Mahi Khan Shar lodged FIR at P.S Hingorja alleging therein that on 12.09.2022 at 1600 hours near Shah Awais Graveyard, link Road leading towards Setharja from Hingorja, police party headed by ASI Mahi Khan Shar during patrolling apprehended appellant/ accused Syed Zamir Hussain Shah and recovered 160 grams of charas in shape of one piece. On his personal search, different denomination notes were recovered viz. one note of Rs.500/=, four notes of Rs.100/= and one note of Rs.50/= total cash of Rs.950/- was also secured from his possession. Due to non-availability of private mashirs, PC- Guftar Ali and PC Izhar Ali Jamro were associated as mashirs. The alleged contraband was sealed at the spot under memo prepared in presence of police mashirs. Thereafter, apprehended accused and recovered case property were brought to Police Station where he lodged FIR on behalf of the State to the above effect.

3. Thereafter, on completion of usual investigation, challan was submitted against accused U/S 9(a) of CNS Act 1997. After completing the legal formalities the trial Court framed a formal charge against the accused at Ex.2 to which he pleaded not guilty and claimed his trial vide plea at Ex.3.

4. The prosecution in support of its case, examined complainant ASI Mahi Khan Shar, Mashir PC Guftar Ali Mangnejo, SIO SIP Muhammad Ameen Bhutto and PC Ahmed Ali Shahani. Thereafter prosecution side was closed vide statement at Ex.20. Applicant/accused was examined under Section 342 CR.P.C wherein he claimed himself as innocent he, however did not examine himself on oath nor led any defence evidence.

5. On conclusion of trial, the learned trial Court, after hearing the counsel for both the parties, convicted and sentenced applicant/ accused as above vide impugned judgment dated 11.01.2023 which was challenged by him in appeal before learned Appellate Court/1<sup>st</sup> Additional Sessions Judge/(MCTC)/ Special Judge for CNS, Khairpur who dismissed his appeal vide impugned judgment dated 06.03.2023, hence the applicant filed instant Cr. Revision Application.

6. It is mainly contended by learned counsel for the applicant/ accused that learned trial court as well as appellate Court have failed to

appreciate and appraise the material available on record properly and passed impugned judgments in hasty manner without applying judicious mind which are not sustainable in law; that there is inordinate delay of four days in transmitting the case property to the laboratory, which creates very doubt in the case of prosecution; that the prosecution also failed to prove under whose custody the property was lying after alleged recovery nor the entry of Malkhana kept under Register NO.19 was produced during the trial; that the prosecution evidence suffer from major contradictions on material points which make the prosecution case highly doubtful. Lastly, contended that by extending benefit of doubt the applicant may be acquitted.

7. On the other hand, learned Addl: P.G has supported the impugned judgments and has contended that the prosecution has proved its case beyond a reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence; that this is a crime against society therefore the applicant is not entitled for any lenient view and this Criminal Revision Application may be dismissed.

8. We have heard learned Counsel for the applicant/accused, and learned Addl.P.G appearing on behalf of the State as well as perused the record made available before us.

9. On perusal of the record it appears that on 12.9.2022 at 1600 hours, the applicant was arrested and recovery of the contraband was alleged to have been recovered from him. The Chemical Examiner's report reveals that the contraband was received at laboratory on 16.9.2022 after expiry of the 72 hours as prescribed under Rule 4(2) of the Control of Narcotics Substances (Government Analyses) Rules, 2001, and for this purpose even there is no plausible explanation brought on record by the prosecution as to why such inordinate delay was caused in the completion of this exercise by the Investigating Officer. This is fatal to the prosecution case. Reliance can be placed on the cases of ***Muhammad Aslam vs. The State (2011 SCMR 820)***, ***Shamsullah vs. The State (2013 MLD 1527)*** and ***Abdul Majeed vs. The State (2014 Y L R 2050 [Sindh] 11)***. Not only there is a violation of Rule 4(2) of the Control of Narcotics Substances (Government Analyses) Rules, 2001, the safe custody of the recovered contraband too is not proved by the

prosecution. On reassessment of the evidence of prosecution witnesses, we do not find a single word in their evidence in respect as to whether the recovered property was kept in malkhana in safe custody or at some other place. The complainant deposed that after registration of FIR, he handed over the custody of accused along with recovered chars as well the mashirnama to the investigation officer SIP Muhammad Ameen Bhutto on 12.09.2022; however, the investigation officer in his examination-in-chief has not deposed a single word that where he kept the recovered chars for four days and stated that he received property on 12.09.2022 and handed over the same to PC Ahmed Ali Shahani on 16.09.2022. The I.O/SIP Muhammad Ameen Bhutto failed to depose the R.C Number under which the case property was transmitted to the laboratory for chemical examination and he also failed to maintain the entry in daily diary register under which the despatcher left to deposit the seized property at chemical laboratory. Based on the above evidence it stand established that the prosecution has not proved the safe custody of the property which create very serious doubt in its case. The Supreme Court in the cases of ***Mst. Razia Sultana vs. The State and another (2019 SCMR 1300)***, ***State vs. Imam Bakhsh (2018 SCMR 2039)***, ***Zahir Shah alias Shat vs. The State through Advocate General, Khyber Pakhtunkhwa (2019 SCMR 2004)*** and ***Qaiser and another vs. The State (2022 SCMR 1641)***.

10. The Complainant ASI Mahi Khan stated in his cross-examination that PC Guftar Ali arrested the accused firstly while Mashir PC Guftar Ali claimed that accused was arrested by PC Izhar Hussain Jamro firstly; PC Guftar Ali deposed that his statement under Section 161 Cr.P.C was recorded by ASI Mahi Khan; however, same was contradicted by I.O/SIP Muhammad Ameen Bhutto who deposed that he recorded statements of P.Ws under Section 161 Cr.P.C; the complainant as well as witness of inspection of place of incident failed to disclose the time as to when the place of occurrence was inspected on his pentation which also casts doubt. 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 chars from the applicant 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 applicant beyond a shadow of reasonable doubt and the recovery from the applicant 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 the 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 on the case of ***Ameer Zeb vs. 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."*

11. 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 vs. The State (2022 SCMR 1567)***, ***Sajjad Hussain vs. The State (2022 SCMR 1540)***, ***Abdul Ghafoor vs. The State (2022 SCMR 1527 SC)***, ***Kashif Ali vs. The State (2022 SCMR 1515)***, ***Muhammad Ashraf vs. The State (2022 SCMR 1328)***, ***Khalid Mehmood vs. The State (2022 SCMR 1148)***, ***Muhammad Sami Ullah vs. The State (2022 SCMR 998)***, ***Bashir Muhammad Khan vs. The State (2022 SCMR 986)***, ***The State vs. Ahmed Omer Sheikh (2021 SCMR 873)***, ***Najaf Ali Shah vs. The State (2021 SCMR 736)***, ***Muhammad Imran vs. The State (2020 SCMR 857)***, ***Abdul Jabbar 7 vs. The State (2019 SCMR 129)***, ***Mst. Asia Bibi vs. The State (PLD 2019 SC 64)***, ***Hashim Qasim vs. The State (2017 SCMR 986)***, ***Muhammad Mansha vs. The State (2018 SCMR 772)***, ***Muhammad Zaman v. The State (2014 SCMR 749 SC)***, ***Khalid Mehmood vs. The State (2011 SCMR 664)***, ***Muhammad Akram vs. The State (2009 SCMR 230)***, ***Faheem Ahmed Farooqui vs. The State (2008 SCMR 1572)***, ***Ghulam Qadir vs. The State (2008 SCMR 1221)*** and ***Tariq Pervaiz vs. The State (1995 SCMR 1345)***.

12. Based on the above discussion and our reassessment of the evidence on record, we are of the view that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt; therefore, we allow the instant Cr. Revision Application and set-aside the conviction and sentences awarded by the trial court vide judgment dated: 11.01.2023, maintained by the appellate court vide judgment date: 06.03.2023 and acquit the applicant by extending him the benefit of - doubt. The applicant is on bail as being his sentence was suspended his bail bond is canceled and surety is discharged.

13. The above are the reasons of our short order dated: 22.10.2024.

**JUDGE**

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