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THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Crl. Appeal No.D-76 of 2012

Present :

Zafar Ahmed Rajput, J.
Khadim Hussain Tunio, J.

Appellant : Wazeer Ahmed, who is present on bail, through Mr.Abid Hussain Qadri, advocate.

Respondent : The State, through Mr. Khadim Hussain Khooharo, Additional Prosecutor General.

Date of hearing: 14.11.2017.

J U D G M E N T .

Zafar Ahmed Rajput, J.- This Criminal Appeal is directed against the judgment, dated 08.07.2011, passed by the learned Ist. Additional Sessions/Special Judge Narcotics Dadu, in Special Case No.799 of 2009, arisen out of FIR No.200/2009, registered at Police Station Thariri Muhbat, under section 9(c) of Control of Narcotic Substances Act, 1997, whereby the appellant was convicted under section 9 (c) of the said Act, and awarded sentence to suffer R.I for five years and to pay an amount of Rs.20,000/- as fine or in default thereof, to undergo R.I for one month further, with benefit of Section 382-B, Cr.P.C.

2. Briefly stated the facts of the case are that on 01.11.2009 at 1200 hours, from near Railway crossing, situated on link road leading from Radhan to Larkana, the appellant was arrested by the police party headed by ASI Ghulam Abbas Babar of Police Station Thariri Muhbat on being found in possession of 1100 grams Charas.

3. After usual investigation, police submitted the challan against the appellant, thereafter he was formally charged, to which he pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to substantiate charge against the appellant, examined complainant Inspector/ SHO Ghulam Abbas as P.W-1 at Ex-4, he produced departure entry No.5,

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mashirnama of arrest and recovery, entry No.6, FIR and report of Chemical Examiner at Ex-5 to 9. He also produced sealed parcel containing Charas as article 1 and three currency notes; one of Rs.100 and two notes of Rs.50/- each as article 2 to 4. SIO Ghulam Serwar Soomro, the Investigating Officer, examined as PW-2 at Ex-10 and he produced mashirnama of place of wardat at Ex-11. HC Leemon Solangi, the mashir, examined as PW-3 at Ex-12 and ASI Riaz Ahmed Soomro, who incorporated entry No.6, in a book under section 154, examined as PW-4 at Ex-13. The statement of the appellant under section 342, Cr.P.C was recorded at Ex-15, wherein he claimed his innocence. He, however, neither examined himself on oath under section 340(2), Cr.P.C nor produced any witness in his defence. Upon assessment of evidence on record, the learned trial Court convicted and sentenced the appellant as mentioned above.

5. We have heard the learned counsel for the appellant and learned Addl. P.G as well as perused the material available on record with their assistance.

6. It has been brought on record through the prosecution witnesses that on 01.11.2009, complainant ASI/SHO Ghulam Abbas Babar proceeded from Police Station Thariri Muhbat along with his subordinate staff, namely, HC Leemon Khan, PC-Nizakat Ali to Radhan for patrolling in Government vehicle vide entry No.5 (Ex-5) at 1100 hours and when reached Railway Phatak Radhan Station, where upon spy information, that one person was coming from Larkana to Dadu for selling Charas, they reached link road in front of Railway Station at about 1200 hours, where one person alighted with the support of "Besaqi" from a van, who seeing the police party tried to escape but he was apprehended by the police party and from his personal search two big pieces of Charas lying in polythene bag in his left side of Shalwar and one note of Rs.100 and two notes of Rs.50/- from side pocket of his shirt were recovered. The Charas on being equalized at the spot came to

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1100 grams, out of which, 10 grams was separated for Chemical Analysis. The recovered property was sealed and such mashirnama of arrest and recovery (Ex-6) was prepared by the said ASI/SHO at the spot in presence of mashirs HC Leemon Khan and PC Nizakat Ali. Subsequently they brought the appellant and the case property at Police Station where the said ASI/SHO recorded complaint in the Roznamacha Register vide entry No.6 (Ex-7) and then he sent the said entry to Police Station Thariri Muhbat, where it was incorporated in the FIR (Ex-8); then he handed over FIR, mashirnama and custody of appellant to SIO Ghulam Serwar Soomro.

7. The perusal of record shows that although it is the case of the prosecution that the appellant was arrested by the police party when he alighted from Van at Link road in front of Radhan Station but neither the Van number nor even the name of Van driver has been mentioned either in the mashirnama or in the FIR. It is also the case of the prosecution that there were two pieces of Charas lying in polythene bag which were recovered from the appellant while in cross examination, PW-1 ASI/Complainant Ghulam Abbas Babar has admitted that he separated 10 grams Charas for Chemical Analysis from one piece. Besides, it is an admitted position that the sample of 10 grams Charas allegedly recovered from the appellant on 01.11.2009 was sent to Chemical Analyzer for analysis after the delay of 12 days on 13.11.2009. It has not been explained where and in whose possession the sample remained for 12 (twelve) days before sending it to the Chemical Examiner, and whether it was kept in the safe custody or otherwise. In such circumstances, possibility of tampering with the property/sample cannot be ruled out and this fact alone casts serious doubt on alleged recovery of Charas from the possession of the appellant.

8. Resultantly, this appeal is allowed. The conviction and sentence awarded to the appellant by the learned trial Court vide

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impugned judgment dated 08.07.2011 are set aside and the appellant is acquitted of the charge. The sentence of the appellant was suspended by this Court vide order dated 24.10.2012, therefore, his surety stands discharged from the liability of the bail bond.