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THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Crl. Appeal No.D-47 of 2017

**Present :**

**Muhammad Iqbal Kalhoro, J.**  
**Faheem Ahmed Siddiqui, J.**

Appellant : Qadeer, who is present on bail, through Mr.Mazher Ali Bhutto, advocate.

Respondent : The State, through Mr. Sardar Ali Shah, Deputy Prosecutor General.

Date of hearing: 06.02.2018.

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

**Muhammad Iqbal Kalhoro, J-** This Criminal Appeal is directed against the judgment, dated 09.09.2017, passed by the learned Special Judge for Anti-Narcotic Substance/Sessions Judge, Larkana, in Special Case No.62 of 2016, arising out of FIR No.62/2016, registered at Police Station Hyderi, under section 9(b) of Control of Narcotic Substances Act, 1997, whereby the appellant was convicted and sentenced to suffer R.I for one year and six months and to pay fine of Rs.11,000/-, in case of default thereof, to undergo Simple Imprisonment for four months more with benefit of Section 382-B, Cr.P.C.

2. Appellant was arrested by ASI Zakir Hussain Sandhano, posted at CIA Larkana from a road leading to Akil near village Channa Goth on spy information on 24.08.2016 at 1700 hours and allegedly from him charas weighing 500 grams containing eight pieces was recovered. Such memo was prepared at the spot and the appellant was arrested formally. Thereafter he and recovered property were brought at Police Station where instant FIR was lodged.

3. After usual investigation, the challan was submitted against the appellant and in due course a formal charge was framed against him but he pleaded not guilty and opted for trial. Resultantly the prosecution in order to prove its case examined complainant,

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namely, Zakir Hussain as Ex-5, he has produced FIR and memo of arrest and recovery; PC Ali Hassan Pirzado at Ex-6; author of the FIR ASI Zakir Hussain at Ex-5 and Investigating Officer of the case, namely, ASI Arif Ali Soomro at Ex-7. After conclusion of the evidence of the prosecution, the statement of the appellant under section 342, Cr.P.C was recorded in which he has denied the evidence of the prosecution witnesses and has professed his innocence. The learned trial Court after hearing the parties has convicted the appellant vide impugned judgment in the terms as stated above.

4. Being aggrieved by the aforesaid judgment, the appellant has preferred this appeal. The matter is fixed today for hearing. Although the paper book is not available but since in the Court file all the depositions of witnesses have been placed, we have heard the parties.

5. Learned defense counsel has pointed out to certain contradictions in the evidence of prosecution witnesses and has submitted that the appellant has been falsely implicated in this case. Learned D.P.G has conceded that there are contradictions in the prosecution evidence.

6. A perusal of record shows that the complainant in his evidence has deposed that after arrest of the accused and recovery of charas, the same was weighed through digital scale, whereas the mashir in his deposition has revealed that charas was weighed through a manual scale. The complainant has disclosed that after recovery of charas the appellant was handcuffed, whereas the mashir has contradicted it by stating that the appellant was tied with the Roomal at the spot. These contradictions appear to be material being on the salient features of the case. Additionally, we have noticed that during evidence of the complainant and mashir, initially the property was not produced in the Court, however, subsequently it was produced but in a sealed condition. The evidence of the complainant and mashir does not

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show that the property was de-sealed and shown to them for the purpose of identification to the effect that it was the same property which was recovered from the appellant. It is also a matter of record that appellant was arrested after the spy information was communicated to the complainant in advance, and his deposition further shows that the place from where the appellant was arrested was also a thickly populated area, but despite that the record does not show that any effort was made by him to procure presence of independent witness to see the recovery from the appellant. All the above discussed material has led us to a conclusion that the prosecution has not been able to prove its case against the appellant. Resultantly, we allow this appeal. The conviction and sentence awarded to the appellant by the learned trial Court vide impugned judgment dated 09.09.2017 are set aside and the appellant is acquitted of the charge. The appellant is present on bail, his bail bond stands cancelled and surety discharged.



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*Above Judgement  
 complied and attd  
 24-05-2019*

*[Signature]*  
 20/05/19  
 Appellant