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THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Crl. Appeal No.D-53 of 2019

Present :
Zafar Ahmed Rajput, J.
Shamsuddin Abbasi, J.

Appellant : Fakharuddin son of Rajibuddin Mandan, through Mr. Abdul Raheem Mahar, advocate.

Respondent : The State, through Mr. Muhammad Noonari, Deputy Prosecutor General.

Date of hearing: 19.02.2020.

Date of decision 19.02.2020.

J U D G M E N T .

Zafar Ahmed Rajput, J- Appellant Fakharuddin son of Rajibuddin was booked in Crime No.4/2019 at Police Station Market on 21.01.2019 in respect of an offence under section 9 (c) of the Control of Narcotics Substances Act, 1997. He was tried by the learned Sessions Judge/Special Judge CNS, Larkana, vide Special Narcotics Case No.16 of 2019 and convicted, vide judgment dated.17.08.2019, for the said offence and sentenced to suffer R.I for three years and to pay fine of Rs.20,000/-, in default thereof, he should suffer S.I for six months more. The benefit of section 382-B, Cr.P.C was, however, extended to him.

2. According to prosecution, the appellant was apprehended while in possession of Charas weighing 4000 grams and subsequently a report regarding a sample of recovered substance was received from the Chemical Examiner in positive.

3. Heard the learned counsel for the appellant and D.P.G for the State and scanned the material available on record with their assistance.

4. After going through the evidence brought on record of the case, we have noticed that in the case in hand the prosecution has failed to prove the safe custody of the recovered substance at the Police Station and even a safe transmission of the recovered substances from the Police Station to the office of Chemical Examiner. It reflects from the memo of arrest and recovery (Ex.4/B) that police party recovered a black plastic bag containing 4000 grams Charas in

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six slabs, which was sealed at the spot and as per deposition of PW-3, Inspector/SHO Sartaj Ahmed, the Investigating Officer, he kept the case property in 'Malkhana' vide entry No.1 of Register No.19, which he has produced as Ex.6/C. A perusal thereof shows that no date is mentioned on it, however, it is mentioned that black coloured plastic bag containing 4000 grams Charas was kept in 'Malkhana' which was taken to Chemical Examiner vide Road Certificate No.21 dated.23.01.2019, but as per report of Chemical Examiner (Ex.6/C), he received white cloth parcel containing six black brown colour slabs. It is matter of record that nothing is mentioned ^{- about.?} sealing the recovered substance in white cloth either in memo of arrest and recovery or in FIR and even it does not reflect from the alleged entry of 'Malkhana' that the property was kept in white sealed parcel, which shows that the substances sent to Chemical Examiner for analyses was not the same which was allegedly recovered from the appellant. It has been observed in the cases of *Abdul Ghani and others v. The State and others* (2019 SCMR 608), *Faizan Ali v. The State* (2019 SCMR 1649), *The State through Regional Director ANF v. Imam Bakhsh and others* (2018SCMR 2039), *Ikramullah and others v. The State* (2015 SCMR 1002) and *Amjad Ali v. The State* (2012 SCMR 577) that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through any independent evidence there it cannot be said with any degree of confidence that the prosecution had succeeded in proving its case against an accused person beyond reasonable doubt.

5. In view of above facts, reasons and discussion, we are of the considered view that the prosecution has in fact failed to prove its case against the appellant beyond reasonable doubt. It is settled principle of law that for basing conviction against the accused there should be strong evidence before the Court and if doubt even slightest arises in the prudent mind as to the guilt of the accused benefit of the same has to be extended in favour of the accused. This appeal is, therefore, allowed. Consequently, the conviction and sentence of the appellant Fakharuddin son of Rajibuddin, are set aside and he is acquitted of the charge by extending benefit of doubt to him. Appellant is on bail, his bail bonds are cancelled and surety discharged. D 1