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JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Appeal No.D-78 of 2019

Date of hearing	Order with signature of Judge
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For hearing of main case.

Present:

*Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Irshad Ali Shah*

Date of hearing: 16.09.2020

Date of decision: 16.09.2020.

Mr. Ahmed Bux Abro, Advocate for the appellant.
Mr. Abdul Ahad Buriro, S.P.P for A.N.F.

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IRSHAD ALI SHAH, J.- It is case of prosecution that the appellant

was in possession of 710 grams of Charas, by police party of P.S,
A.N.F, Sukkur, for that he was booked and reported upon.

2. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it, examined complainant/Investigation Officer ASI Attaullah and PW/Mashir PC Karim Bux and then closed its' side.

3. The appellant in his statement recorded u/s.342 Cr.PC denied the prosecution allegation by pleading innocence by stating that the Charas has been foisted upon him by the police. He did not examine anyone in his defence or himself on oath.

4. On conclusion of the trial, learned 1st Additional Sessions Judge/MCTC/Special Judge (CNS) Larkana, found the appellant guilty for an offence punishable under section 9 (b) C.N.S Act, 1997 and

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then convicted and sentenced him to undergo rigorous imprisonment for One year and nine months with fine of Rs.13000/- and in case of default whereof to undergo simple imprisonment for four months and 15 days, with benefit of Section 382-B Cr.PC, vide his judgment dated 12.11.2019, which is impugned by the appellant before this Court by way of instant criminal appeal.

5. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; there is no independent witness to the incident and the evidence of PWs being inconsistent and doubtful has been relied upon by learned trial Court without cogent reasons. By contending so, he sought for acquittal of the appellant. In support of his contention, he relied upon cases of *Ameer Hamza alias Hamza Vs. The State (2015 PCr.LJ-1402)* and *Abdul Ghani and others Vs. The State and others (2019 SCMR-608)*.

6. Learned S.P.P for A.N.F by supporting the impugned judgment has sought for dismissal of the instant criminal appeal.

7. We have considered the above arguments and perused the record.

8. Despite information, no independent witness was associated by the complainant before proceeding to the place of incident, without any cogent reason, such omission on the part of complainant could not be overlooked. The complainant came at the

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place of incident on information after covering distance of 87 kilometers (as per FIR) and found the appellant at the pointed place, obviously to be arrested by him without resistance, which appears to be surprising. No intimation was given by the complainant to the official at P.S Darri, for his arrival within their jurisdiction, in connection with discharge of his duty; such omission on his part could not be overlooked. As per the complainant and PW/Mashir PC Karim Bux, on search from the appellant was secured Charas in shape of 42 pieces, it was weighed to be 710 grams through the scale, which was brought by PC Mairaj. How the scale was made available at the place of incident by PC Mairaj, when he as per roznamcha entry and FIR of the present case was not named as a member of police party which allegedly went at the place of incident? It appears to be strange. On de-sealing the parcel, the Charas was found in shape of 34 pieces alongwith 4/5 broken pieces. If it was so, then it was short by eight pieces to total recovery. Where those pieces of Charas gone? No explanation to such shortfall is furnished by the prosecution. The report of the Chemical Analyzer is silent about number of pieces of Charas sent to him by the complainant for chemical analysis. There is nothing in report of Chemical Analyzer which may suggest that each and every piece of Charas was subjected to chemical analysis individually. As per PW/Mashir PC Karim Bux, his statement was recorded by PC Qasim and such fact is also affirmed by the complainant. In that situation, PC Qasim was to

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have been examined by the prosecution having conducted the investigation of the case to some extent. His non-examination could not be overlooked. In these circumstances, it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond the shadow of doubt and he is found entitled to such benefit.

9. In case of **Tariq Parvez Vs. The State (1995 SCMR-1345)**, it has been held by the Honourable Apex Court that;

“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts---If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right”.

10. For what has been discussed above, the impugned judgment is set-aside. Consequently, the appellant is acquitted of the offence, for which he was charged, tried and convicted by learned trial Court. He is present in Court on bail, his bail bond is cancelled and surety is discharged.

11. The instant criminal appeal is disposed of accordingly.

The above order has been complied
On 31-10-2020
Accountant