

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Appeal No.D-69 of 2016

PRESENT:

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Muhammad Iqbal Kalhoro,

Appellant : Safdar alias Akhtiar Laghari, through Mr. Ahmed Bux Abro, Advocate.

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

Date of hearing: 08-11-2016.

Date of Judgment: 08.11.2016.

J U D G M E N T.

MUHAMMAD IQBAL KALHORO, J.- Appellant was convicted by learned Sessions/Special Judge, CNS, Larkana through impugned judgment dated 24.10.2016 in Special Case No.80/2015 being Crime No.112/2015 registered at Police Station Darri, Larkana, for the offence under Section 9(b) of the Control of Narcotic Substances Act, 1997.

The allegations against the appellant are that on 03.12.2015, at about 3.00 p.m, on being found in possession of 750 grams of Charas, he was arrested and brought to police station, where instant F.I.R was registered against him.

In the trial, prosecution examined three witnesses, namely, PC Safdar Ali, complainant ASI Mohammad Ibrahim Khoso and mashir PC Zulfiqar Ali and at the end of which vide impugned judgment the appellant was convicted and sentenced to suffer R.I. for one year and nine months, with fine of Rs.13000/-, in default of which to undergo simple imprisonment for four months and fifteen days more. The benefit of Section 382-B, Cr.P.C has also been extended to the appellant. Being dissatisfied with the said judgment, the appellant has preferred this appeal.

Learned Counsel for the appellant has argued that there ~~is~~ a number of contradictions in the prosecution case, the benefit of which has to be given to the appellant not as a matter of grace but as a right and to support this point, learned Counsel has referred to the evidence of the witnesses and states



that the complainant in his evidence has stated that during patrolling in the area, they had not made any snap checking, whereas mashir of the case has stated that during patrolling they had conducted snap checking of the vehicles. Apart from above, learned Counsel has also pointed that the incriminating contraband was neither produced in evidence nor it was de-sealed and shown to the witnesses to be the same property which was recovered from the appellant. Lastly, learned Counsel has relied upon the cases reported as *Tariq Pervez v. The State* (1995 SCMR 1345), *Noorab Khan v. The State* (PLD 2005 Peshawar 197) and *Ameer Hamza alias Hamza v. The State* (2015 P.Cr.L.J 1402).

Learned Assistant Prosecutor General has not supported the impugned judgment. His view is that since the property was neither produced as an article nor de-sealed and shown to the witnesses, it has resulted into a material irregularity which has dealt a serious blow to the prosecution case, making it doubtful.

We have considered the arguments of the parties and perused the material available on record including the case laws cited at the bar. We have noted that after recovery of the alleged Charas, it was sent to the Chemical Analyzer vide letter dated 09.12.2015 and the same after examination was sent back to the trial Court in a sealed condition. But during the trial in the evidence of the witnesses, said property viz. Charas was neither produced in the Court as an article nor it was de-sealed and shown to the witnesses for the purpose of identification to the effect that it was the same Charas, which was recovered from the appellant. In the evidence, it has been simply recorded by the trial Court that the property produced in the Court is same, which does not sufficiently establish the same to be the Charas recovered from the appellant. While keeping in view this fact coupled with the discrepancy, which has been referred to by the learned defence Counsel in his arguments, we are of the opinion that prosecution has not been able to prove its case beyond a reasonable doubt and learned APG has correctly and fairly not supported the impugned judgment. Consequently, we allow the appeal and acquit the accused/appellant of the charge. He shall be released forthwith if not required in any other custody case.