

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Acquittal Appeal No. D- 46 of 2013.

Date of hearing	Order with signature of Judge
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11.02.2020.

For hearing of main case.

Mr. Abdul Ahad Buriro, S.P.P, ANF Sukkur, for appellant.
Mr. Ali Anwar Kandhro, Additional Prosecutor General.
Mr. Saeed Ahmed Bijrani, Advocate for Respondents No.01.

Heard learned counsel for respective parties. For the reasons, to be
recorded later on, instant criminal acquittal appeal is dismissed.


JUDGE


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CIRCUIT COURT KARACHI

IN THE HIGH COURT OF SINDH, (KARACHI)

Criminal Acquittal Appeal No. **D-46** of **2013**

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Shamsuddin Abbasi

Appellant : The State / ANF, through A.D. Law, Govt. of Pakistan, Ministry of Interior, Narcotics Control Division, ANF. Regional Directorate, through Abdul Ahad Buriro, Special Public Prosecution ANF., Sukkur

Respondents : (1) Wahid Bux s/o Muhammad Soomar
(2) Habibullah s/o Wahid Bux,
through Mr. Saeed Ahmed Bijrani, advocate

Date of Hearing : 11.02.2020
Date of Order : 11.02.2020

ORDER

ZAFAR AHMED RAJPUT, J- Impugned in this Criminal Acquittal Appeal is the judgment, dated 15.07.2013, passed by the learned Sessions Judge/ Special Judge For CNS, Kashmore at Kandhkot in CNS Case No.33 of 2012, arisen out of Crime No.08/2012, registered at P.S. ANF Sukkur, under sections 6, 9 (c), 14 and 15 of the CNS Act, 1997, whereby the respondents were acquitted of the charge by extending them the benefit of doubt.

2. As per allegations, on 24.08.2012, respondents Wahid Bux s/o Muhammad Soomar and Habibullah s/o Wahid Bux, who are father and son *inter se*, were respectively found in possession of 17.950 and 4 kilograms of charas at the gate of Irrigation Colony No.1, Kashmore.

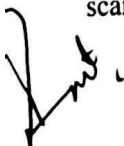
3. At the trial, prosecution examined complainant Ghulam Abbas as P.W-1 at Ex:4, who produced mashirnama of arrest and recovery at Ex:4-A, F.I.R. at

Ex:4-B, letter to chemical examiner at Ex: 4-C, chemical examiner's report at Ex:4-D, and PC Zafar Rehman as P.W-2 at Ex:5. The statements of respondents were recorded under section 342, Cr. P.C at Ex:7 and Ex:8, respectively, wherein they claimed innocence and pleaded that they were implicated in the case on the instance of complainant's gardener, namely, Lal Bux Langho. They; however, did not examine themselves on oath as their own witnesses under section 340 (2), Cr. P.C. After assessing the evidence on record, the learned trial Court acquitted the respondents under section 265-H(i), Cr. P.C., vide impugned judgment. Aggrieved by the same, the complainant has preferred this Criminal Acquittal Appeal.

4. Learned counsel for the appellant has mainly contended that the trial Court while acquitting the respondents did not properly appreciate the evidence of the prosecution witnesses, who have fully connected the respondents with the commission of the offence, which has resulted in grave miscarriage of justice. He has further contended that the trial Court has un-necessarily given weight to minor contradictions and infirmity in investigation while recording acquittal order and extending the respondents benefit of doubt. He has also contended that the trial Court has failed to consider that the respondents had merely denied the allegations and they did not examine themselves on oath to disprove the charge against them; as such, the impugned judgment is not sustainable in law.

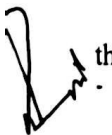
5. Conversely, learned counsel for the respondents has fully supported the impugned judgment.

6. We have heard the learned counsel for the appellant and respondents and scanned the material available on record with their assistance.



7. According to the prosecution, on receiving information from superior officers that the respondents were running a den of narcotics in Kashmore, Inspector Ghulam Abbas Memon, S.H.O., ANF, Sukkur along with his subordinate staff, namely, ASI Salman, Hawaldar Maqsood, LNK Yousuf, PC Asad, PC Zaheer, driver/constables Zafar Rehman, Saifullah Khoso, Shahzad Akhter, PC Aijaz and others proceeded from police station under daily diary entry No. 06 at 06:30 a.m. and reached the gate of Irrigation Colony, Kashmore where on pointation of spy, he apprehended the respondents who were holding brown gunny bag and plastic shopper in their hands. On search, seventeen slabs of charas were found in the gunny bag carrying by the respondent No.1 and four slabs in the plastic shopper holding by the respondent No.2, which on weighing came to 17.950 and 4 K.gs., respectively; the same were sealed for chemical analysis. Both the respondents were arrested under the mashirnama prepared in presence of P.C Aijaz Shah and driver P.C Zafar Rehman.

8. After going through the evidence brought on record of the case we have observed that in the case in hand the copies of departure and arrival entries of police party have not been produced by the prosecution to prove their departure from and arrival at police station. As per F.I.R., the complainant had received information from his superior officials about running of a den of narcotics by the respondents but in the same breath the complainant introduced a spy in F.I.R. who travelled along with raiding party of ANF from Sukkur and reached Kashmore where he identified the respondents. It is strange and would hardly appeal to a prudent mind that a police spy in Sukkur could soldier on with police party to indentify the respondents in Kashmore, which is situated at the distance of 140 kilometers from Sukkur. The complainant, who has also acted as investigation officer, has admitted in his cross-examination that he had not seen the den of the respondents. No reason has been assigned as to why the ANF



police party consisting of more than ten officials did not raid on the so-called den of the respondents to eliminate it, especially when they already succeeded in arresting the respondents at the gate of the colony. We have also observed that the prosecution has also failed to prove safe custody of the recovered charas and its safe transmission to Chemical Examiner. The alleged recovery of charas was affected on 24.08.2012. The complainant/ I.O has deposed in cross-examination that he sent the entire case property to chemical examiner after two days and in the meantime case property was lying in Mal Khana. As per report of Chemical Examiner, the case property was received by him on 27.08.2012 (*on third day of its recovery*). Neither the copy of the entry of Mal Khana register has been produced nor has the official who deposited the case property with the office of Chemical Examiner been examined by the prosecution in order to prove safe custody of the recovered substance at the ANF police station and its safe transmission from said place to the office of Chemical Examiner. It has been held by the Apex Court 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 Bukhsh and others (2018 SCMR 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 sample of the recovered substance is not proved by the prosecution through any independent evidence, it cannot be said with any degree of confidence that the prosecution had succeeded in proving its case against an accused beyond reasonable doubt.

9. The material on record approves the assessment of learned trial Court. It is well settled principle of law that for basing conviction against an accused there should be strong evidence before the trial Court and if the 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.

10. We do not find any merit in arguments of learned Counsel for the appellant. The learned trial Court has recorded the reasons for its order of acquittal which are based on evidence on record. So far the contention of mere denial of allegations and not examining of respondents on oath to disprove the charge against them is concerned, it is well settled principle of law that the initial burden lies upon the prosecution to establish its case against the accused beyond any reasonable doubt. There is no cavil to the proposition of law that Section 340 (2) Cr. P.C. has no compulsive effect on an accused and no adverse inference can be drawn against him, if he does not opt to make statement on oath. Sub-section (2) only confers a power on Court to inform the accused that he has right under the law to make a statement on oath and it is his option to make a statement on oath or not.

11. It may also be observed that the extraordinary remedy of an appeal against an acquittal order is different from an appeal against the judgment of conviction and sentence because presumption of double innocence of the accused is attached to the order of acquittal. Thus, on the examination of the order of acquittal as whole, credence is accorded to the findings of the subordinate Court whereby the accused had been exonerated from the charge of commission of the offence. Therefore, to reverse an order of acquittal, it must be shown that the acquittal order is unreasonable, perverse and manifestly wrong. The order of acquittal passed by the trial Court which is based on correct appreciation of evidence will not warrant interference in appeal. The Honourable Supreme Court while dealing with the appeal against acquittal has been pleased to lay down the principle in the



case of Muhammad Shafi Vs Muhammad Raza & another (2008 SCMR 329), as under:-

“An accused is presumed to be innocent in law and if after regular trial he is acquitted, he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference.”

12. In view of above facts, reasons and discussion, the impugned acquittal order does not suffer from any illegality or infirmity and misreading or non-reading of evidence leading to miscarriage of justice; therefore, the same is not open for interference by this Court under section 417 (1), Cr. P.C. r/w section 48 of the CNS Act, 1997. This criminal acquittal appeal, therefore, stands dismissed.

13. Above are the reasons of our short order, dated 11.02.2020, whereby instant criminal acquittal appeal was dismissed.



JUDGE



JUDGE