

18.02.2020.

Mr. Asdul Akad Burido, SPP, ANF, Sukkur.  
" ———— "

Arguments heard. For the reasons  
to be recorded before, no criminal offence  
appears to be determined.

for  
Judge

for  
Judge

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Criminal Acquittal Appeal No. **D-08** of 2015

**Present:**

**Mr. Justice Zafar Ahmed Rajput**

**Mr. Justice Shamsuddin Abbasi**

**Appellant** : The State / ANF, through Assistant Director  
In charge P.S ANF, Sukkur, Govt. of Pakistan  
Ministry of Narcotics Control, ANF Clifton,  
Karachi, through Mr. Abdul Ahad Buriro,  
Special Prosecutor, ANF.

**Respondent** : Wazir s/o Muhammad Azim, (Nemo)

**Date of Hearing** : 18.02.2020

**Date of Order** : 18.02.2020

**ORDER**

**ZAFAR AHMED RAJPUT, J-** This criminal acquittal appeal is directed against the judgment, dated 28.03.2015, passed by the learned Sessions Judge, Shikarpur / Judge, Special Court For CNS in Special Case No.320 of 2012, arisen out of Crime No.01/2012, registered at P.S. ANF, Sukkur under section 9 (c) of the CNS Act, 1997 whereby the respondent/accused was acquitted of the charge by extending him the benefit of doubt.

2. As per allegations, on 21.01.2012, respondent/accused was arrested by Sub-Inspector Muhammad Afzal Kharal of ANF, Sukkur while transporting 240 kilograms of charas in a Toyota Hilux bearing No. LHG- 7708 from Quetta to Shikarpur via Jacobabad road, near Sui Gas Office. During investigation, the accused disclosed that Arif Pathan, Abdul Hameed and Dadu Khan were also his associate in the business.

3. After usual investigation, ANF submitted the challan against the accused. Trial Court framed the formal charge (Exh.7) against the accused to which he pleaded not guilty and claimed trial vide plea Exh.8.

4. At the trial, prosecution examined complainant/investigating officer Sub-Inspector Muhammad Afzal Kharal as P.W-1 at Exh:9, who produced mashirnama of arrest and recovery at Exh:9/A, extracts of entries regarding departure from and arrival at P.S at Exh:9/B & C, F.I.R. at Exh:9/D, Chemical Examiner's report at Exh:9/E, letter regarding registration of case against accrued Arif Pathan, Abdul Hameed and Dadu at Exh:9/F to H, letter sent to the Director Excise & Taxation Motor Registration Wing, Lahore at Exh:9/I and reminder of said letter at Exh:9/J. Mashir, ASI Syed Salman Shah examined as P.W-2, at Exh.10. Statements of accused was recorded under section 342, Cr. P.C at Exh:12, wherein he denied the prosecution case against him and claimed innocence by asserting that he was falsely implicated by the ANF at the instance of one Abdul Rashid Jakhau, the employee of ANF and resident of Shikarpur, who exchanged hot words with him two days prior to his arrest. He; however, declined to examine himself on oath as his own witness under section 340 (2), Cr. P.C. and to lead evidence in his defense. After assessing the evidence on record, the learned trial Court acquitted the accused under section 265-H(1), Cr. P.C., vide impugned judgment. Aggrieved by the same, the complainant/ANF has preferred this criminal acquittal appeal.

5. Learned Special Prosecutor, ANF has maintained that the impugned judgment is patently illegal, improper, erroneous and against the law; that the trial Court has wrongly given benefit of doubt to the accused by misreading the evidence on record; that the huge quantity of charas was recovered from the cavities of the Toyota Hilux being driven by the accused which is well supported with the positive report of chemical examiner and the evidence of prosecution witnesses does not suffer from any major contradictions or discrepancies; that the trial Court has failed to consider that the accused miserably failed to prove the defense plea by adducing any convincing evidence and hence, the impugned

judgment being unsustainable in law is liable to be set aside and the accused be convicted for the alleged offence and sentenced for capital punishment with fine and confiscating of his moveable and immovable properties. 115

6. We have heard the learned S.P.P for the appellant and scanned the material available on record.

7. According to the prosecution, on 21.01.2012, P.W-1 complainant / I.O Sub-Inspector Muhammad Afzal Kharal on receiving spy information from higher authorities that smuggler Wazir Ali was bringing narcotics from Baluchistan via Shikarpur-Jacobabad in Toyota Hilux No. LHG-7708, he formed a raiding party headed by him and consisting upon Subedar Nazim, ASI Syed Salman, Hawaldar Maqsood, Lance Naik Arshad Ali, Sepoys Ahmed Shaikh, Nadir, Shah Muhammad, PCS Zaheer Ahmed, Abdul Hafeez and Muhammad Hafeez left police station in vehicle under entry No. 10 at 0530 hrs, and reached near Sui Gas Office where they held *nakabandi*. At 0700 hrs, they saw the pointed vehicle which they got stopped. The driver disclosed his name as Wazir Ali. On search, they found two secret cavities under the vehicle, which they got opened and recovered 240 foil packets of red color having mark of identification "**original gold**". Each of the packets was containing two slabs of charas and weight of each packet came to one kilogram. The complainant sealed all the 240 packets by putting 40 packets in nylon bag; in all six bags were prepared for sending to chemical examiner and the accused was arrested under the mashimama of arrest and recovery prepared in presence of ASI Syed Salman and PC Muhammad Hafeez.

8. After going through the evidence brought on record of the case, we have observed that it is an admitted position that at the time of recording evidence of both the prosecution witnesses the case property produced in Court was found



wrapped in transparent wrapper on which "*2012 Sher-i-Sindh*" was written and the substance was further wrapped in red and white colour printed wrapper on which "*original gold*" was written while, neither in mashirnama nor in F.I.R. it is mentioned that the charas was packed in transparent plastic wrapper on which "*2012 "Sher-i- Sindh"*" is written. It may also be observed that it is case of the prosecution, which has also been deposed by both the prosecution witnesses, that the accused was driving Toyota Hilux No. LHG-7708 and from its secret cavities the alleged substance was recovered. Both the prosecution witnesses were examined on the same day viz. 16.09.2014. The vehicle brought by the P.W-1 complainant/ investigating officer Sub-Inspector Muhammad Afzal Kharal from ANF, Sukkur being case property at the time of recording evidence of P.Ws not Toyota Hilux but Datsun. On realizing such discrepancies in prosecution case coupled with the contradictions in the evidence of prosecution witnesses observed and recorded by the trial Court in impugned judgment, it cannot be said with any degree of confidence that the prosecution has succeeded in proving its case against the accused beyond reasonable doubt.

9. The material on record approves the assessment of learned trial Court. We do not find any merit in arguments of learned Special Prosecutor, ANF. The learned trial Court has recorded the reasons for its order of acquittal which are based on evidence on record. 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. 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.”*

11. 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.

12. Above are the reasons of our short order, dated 18.02.2020, whereby instant criminal acquittal appeal was dismissed.