

S/o Custody not proved

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IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.684 of 2021.

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Appellant	Ghulam Qadir S/o Taj Muhammad through Mr. Abdul Latif Memon, Advocate.
Respondent	The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General Sindh.
Date of Hearing	12.08.2022
Date of Order	12.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Ghulam Qadir S/o. Taj Muhammad was tried before the Model Criminal Trial Court/1st Additional District & Sessions Judge Malir, Karachi in Session Case No.741/2021 pursuant to FIR No.745/2020 registered at Police Station Steel Town under Section 6/9-C, CNS Act, 1997 vide judgment dated 22.11.2021; whereby he was convicted of the said offence and hence was sentenced to suffer RI for 10 years and pay fine of Rs.500,000/- and in case of failure to pay fine, the accused would undergo 06 months SI in addition to the main sentence. However, the appellant was granted the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 30.12.2020 at about 12.15 a.m. at Kalcha Rasta Soomar Goth, opposite Al-Khidmat Hospital Gulshan-e-Hadeed Phase-II, Karachi a police party headed by SIP Mian Muhammad Hasnain of PS Steel Town apprehended the present accused and from his possession, recovered 02 packets Cannabis Chars total weighing 2015 grams in presence of mashirs hence the instant FIR was registered.

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3. After usual investigation, the case was challaned and the accused was sent-up to face the trial.

4. The prosecution in order to prove its case examined 03 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations levelled against him and claimed false implication by the police because he refused to pay the bribe.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 22.11.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

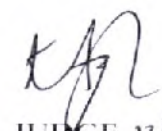
7. We have gone through the entire evidence, which has been read out by learned counsel for the appellant as well as the impugned judgment and heard the arguments of both learned counsel for the appellant and learned Addl. P.G. Sindh, who has fully supported the impugned judgment.

8. In a narcotic case, it is a crucial element of the offence that safe custody of the narcotics is proved from the time when it is recovered from the accused until the time it is sent for chemical examination. However, in this case, narcotic was recovered by the complainant PW-1 Mian Muhammad Hasnain on 30.12.2021 and thereafter, according to his evidence, the same was placed in the Malkhana. However, no Malkhana entry has been exhibited and the person Incharge of the Malkhana has not been examined. Although the narcotic was sent for chemical examination on the next day it is unclear whether the narcotic was sent by SHO Steel Town or the I.O./PW-3 keeping in view the fact that SHO PS Steel Town was not examined as a PW. When all these factors are taken together, we find that the prosecution has not been able to prove safe custody of the narcotic from the time it was recovered until the time it was sent for

chemical examination and might have been tampered with during this period. In such circumstances, a positive chemical report is of no assistance to the prosecution.

9. It is well settled principle of criminal law that the prosecution must prove its case against the appellant beyond a reasonable doubt and if any doubt arises in the prosecution case, the benefit must go to the accused. In this case, we find doubt as to the safe custody of narcotic substance and as such, by extending the benefit of doubt to the appellant, we hereby acquit him of the charge. Therefore, the impugned judgment dated 22.11.2021 is set aside and the appeal is allowed. The appellant shall be released forthwith unless he is wanted in any other custody case.

10. The instant appeal stands disposed of.


JUDGE 12/08/22


JUDGE