

Narcotics : Acquitted.

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HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.50 of 2012.
Crl. Revision Application No.145 of 2012
converted into Criminal Appeal No.594 of 2018.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Appellant: Mohammad Saleem S/o. Mushtaq Ahmed through
Mr. Nisar Ahmed Farar, Advocate.

Respondent: The State through Mr. Habib Ahmed,
Special Prosecutor ANF.

Crl. Revision Application No.145 of 2012
converted into Criminal Appeal No.594 of 2018

Appellant: The State through Mr. Habib Ahmed,
Special Prosecutor ANF.

Respondents: Mohammad Saleem S/o. Mushtaq Ahmed through
Mr. Nisar Ahmed Farar, Advocate.

Date of hearing: 19.05.2020,
Date of Announcement: 29.05.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Mohammad Saleem S/o. Mushtaq Ahmed was tried by learned Judge Special Court, CNS-I, Karachi in Special Case No. 28 of 2006 arising out of Crime No 09/2006 u/s. 6/9(c) of Control of Narcotics Substance Act, 1997 registered at P.S. ANF, Clifton, Karachi. After trial vide judgment dated 21.01.2012 the appellant Mohammad Saleem S/o. Mushtaq Ahmed was convicted and sentenced to suffer the term of R.I. he has already undergone as UTP. The benefit of Section 382-B of Cr.P.C. was extended to the appellant.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge Special Court, CNS-I, Karachi, the aforesaid appeal has been preferred by the appellant, while the A.N.F. has filed the Criminal Revision Application

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No.145/2012 which was converted into Criminal Appeal No.594 of 2018 against the order of the Judge Special Court, CNS-I, Karachi dated 24.01.2012.

3. The brief facts of the prosecution case are that ASF officials deployed at Karachi Airport namely Inspector Bashir Ahmed, SI Zafar Mughal, SI Muhammad Ayub and PC Muhammad Malik Aslam etc. on 26.02.2006 at 09:00 hours when in order to check the travelling bag of the passenger namely Ashfaq Ahmed due to fly abroad through the then ready flight who had been under friendly protocol of their colleague i.e. ASF official namely Muhammad Saleem S/o. Mushtaq Ahmed asked him to open the lock of the same. He i.e. the passenger aforesaid asked for permission to go out of the hall to public lounge so as to get the key thereof from his family who were over there; the ASF officials permitted him to do so on the assurance of their said colleague that the passenger who had been known to him well already, would surely return back to get the needful done. The said passenger did not come back and later was found to have escaped. The ASF officials broke open the lock of the bag and as a result of a thorough search thereof they secured 36 packets full of heroin powder kept therein in a concealed state. They then apprehended their said colleague and called for the ANF to take necessary action in the matter. The ANF officials namely Sub-Inspector Muhammad Ayub and SI Zafar Mughal reached there and took the crime stuff and other secured items as well as the custody of the apprehended official in their custody under a formal writing being acknowledgement in receipt thereof and carried out the proceedings of search, weighing, sampling, parceling and sealing etc. and that of arrest of the culprit official. A memo was prepared to such effect there and then by Inspector Shabbir Ahmed and witnessed by S.I. Zafar Mughal and SI Muhammad Ayub accordingly. The ANF people left the Airport premises for their police station where they registered the FIR No.09/2006 u/s 9(c) against the culprits. The samples were dispatched to the expert and the PWs were examined by the seizing officer who served the matter as complainant and I.O. as well. He finally charge sheeted the present accused in custody and the aforesaid passenger culprit shown as absconder. The Court having declared the absconding one, P.O. framed the charge against the present accused for the offence under section 6/14/9(c), CNS Act, 1997 to which he pleaded not guilty and claimed trial.

4. To prove its case the prosecution examined 04 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused person was recorded u/s.

342 Cr.P.C in which he pleaded not guilty. He did not examine himself on oath or call any witness in support of his defence case.

5. Learned Special Court-I (C.N.S.) Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 24.01.2012 convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 24.01.2012 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant had no actual knowledge that there was narcotics in the suit case, that there were major contradictions in the prosecution evidence and as such for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the case of **Sajjan v. The State** (1998 P. Cr.L.J 1399) and **Fayyaz Ahmad v. The State** (2013 CLJ 599).

8. On the other hand special prosecutor ANF has contended that this was not a case under S.9 CNS Act 1997 but was an offense under S.14 CNS Act 1997 and provided for maximum imprisonment of up to life and that since the prosecution had proved its case beyond a reasonable doubt against the appellant the appeal should be dismissed and the sentence enhanced from time served which was only 4 months to some reasonable extent keeping in view the large amount of heroin recovered.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the learned counsel for the appellant, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. After our reassessment of the evidence we are of the view that the prosecution has NOT proved its case beyond a reasonable doubt against the appellant for the reason that there is no evidence on record that the appellant had any actual knowledge that narcotics were in the bags of the passenger who

escaped, that it is not uncommon in this country for people to ask "friends or relatives " in the ASF, PIA, FIA to help them clear the airport as expeditiously as possible for innocent reasons, that there appear to be some contradictions in the prosecution evidence whether or not the appellant requested that his friend's luggage not be checked and as such under these circumstances we find that the appellant is entitled to the benefit of the doubt and as such his appeal is allowed and the impugned judgment is set aside. Having allowed the appeal the criminal revision application/appeal filed by the ANF stands dismissed.

11. The appeal and criminal Revision application/appeal are disposed of in the above terms.