

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Criminal Acq. Appeal No. D-40 2019

Criminal Rev. Application No. D-18 of 2019

Date	Order with signature of Judge
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21-07-2020

Mr. Ali Anwar Kandhro, Additional Prosecutor General, for the State.

Mr. Irfan Badar Abbasi, advocate for the respondent in Cr. Acq. Appeal No. D-40/2019 and for the applicant in Cr. Rev. Appln. No. D-18/2019 a/w respondent/applicant.

Learned Additional Prosecutor General submits that sufficient material was adduced before the trial court which was strong enough to maintain the conviction against the respondent/accused, however, without appreciation of evidence, the trial court has considered the minor discrepancies as well requirements of protocol and has wrongly acquitted the respondent. He, therefore, prays for grant of criminal acquittal appeal and setting aside of the impugned judgment. In support of his contentions, he has placed his reliance upon the cases of *Shazia Bibi Versus The STATE (2020 SCMR 460)* and *MUSHTAQ AHMED Versus The STATE and another (2020 SCMR 474)*.

On the other hand, Mr. Irfan Badar Abbasi, learned advocate for the respondent/accused in criminal acquittal appeal and for the applicant in criminal revision application, submits that prosecution was full of faults and trial court has rightly acquitted the respondent. He next submits that alleged contraband was not kept in safe custody, therefore, its further transmission from Police Station to laboratory was un-explained, besides there are major contradictions which would vitiate the evidence adduced by the prosecution. In support of his contentions, he has placed his reliance on the cases of *IKRAMULLAH and others V/s The STATE (2015 SCMR 1002)*, *The STATE*



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Through Regional Director ANF v/s IMAM BAKSH (2018 SCMR 2039), STATE OIL COMPANY LIMITED versus BAKHT SIDDIQUE (2010 SCMR 1181) and ABDUL GHANI and others V/s The STATE and others (2019 SCMR 608). In support of his contentions regarding criminal revision application, Mr. Irfan Badar Abbasi by focusing the Section 32 of the Act has placed his reliance upon the case reported as STATE OIL COMPANY LIMITED versus BAKHT SIDDIQUE (2010 SCMR 1181) (supra) and submits that impugned order is liable to be set-aside, hence by maintaining the impugned judgment, he prays for grant of criminal revision application.

For the detailed reasons to be recorded later-on, instant Cr. Acq. Appeal No. D-40/2019 is hereby dismissed, while Cr. Rev. Appln. No. D-18/2019 is hereby allowed.


Judge


Judge

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Acq Appeal No. D-40 of 2019 &
Cr. Rev. Appln. No. D-18 of 2019

Present

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Khadim Hussain Tunio,

Mr. Ali Anwar Kandhro, Additional Prosecutor General Sindh for State

Mr. Irfan Badar Abbasi, advocate for respondent in Cr. Acq. Appeal No. D-40/2019 and for the applicant in Cr. Rev. Appln. No. D-18 of 2019 a/w respondent/applicant.

Date of hearing : 21-07-2020

Date of order : 21-07-2020

J U D G M E N T

KHADIM HUSSAIN TUNIO, J. By this common judgment, we intend to dispose of above captioned Cr. Acquittal Appeal No. D-40/2019, filed by the State through Prosecutor General Sindh, impugning the judgment dated 31.05.2019, passed by Special Judge Narcotics/Sessions Judge, Shikarpur in Special Case No. 98/2019, offence U/S 9 (c) CNS Act, 1997, culminated from Crime No. 01/2019 of P.S Excise Police Circle Shikarpur, whereby respondent/accused Abdul Rehman was acquitted of the charge and Criminal Revision Application. No. D-18/2019, impugning the order dated 12.09.2019, whereby application filed by applicant/accused was disposed of with directions to approach the competent forum.

2. It is alleged that respondent/accused was apprehended by the Excise Police of Shikarpur on 10.01.2019 at 1615 hours near Sui Gas Station situated on Shikarpur-Jacobabad road, from whom charas weighing six K.Gs in shape of packets inside a Suzuki car bearing Registration No ANR-452/Sindh was secured in contravention of Sections 6 and 8 of CNS Act, 1997. They also secured two notes of Rs. 100/- and 09 notes of



Rs 1000/-, copy of NIC in the name of accused, old driving license, pistol No. 31012166, loaded with magazine and 07 live bullets, two other magazines loaded with 04 and 06 live bullets so also such Arm License, registration book of car in the name of Ali Gohar Noohani in presence of mashirs E.Cs Abdul Khaliq and Muhammad Punhal. Such memo of arrest and recovery was prepared. The accused and recovered case property were brought at police station and FIR was lodged against the accused for committing offence under Section 9(c) of CNS Act, 1997.

3. After providing necessary documents, formal charge was framed against the respondent/accused, in which he denied the prosecution allegations and claimed to be tried.

4. In order to substantiate the charge against the respondent/accused, the prosecution examined in all two witnesses, namely, complainant Excise Inspector Rahim Bux as P.W-1 at Ex.6, who produced memo of arrest/recovery, FIR, extracts of departure and arrival entries, letter written to Chemical Examiner, receipt of Chemical Examiner, report of Chemical Examiner and affidavit on stamp paper with regard to sale of car at Ex.6-A to 6-G, respectively and P.W Excise Constable Abdul Khaliq, thereafter prosecution side was closed.

5. The statement of accused was recorded under Section 342 Cr.P.C, in which he denied the allegations of the prosecution leveled against him by the prosecution, however, he neither examined himself on oath nor adduced any evidence in his defence.

6. After hearing the learned counsel for the parties, the trial Court acquitted the respondent/accused by extending the benefit of doubt, hence this acquittal appeal has been preferred against the said acquittal.



7. Learned Additional Prosecutor General submits that sufficient material was adduced before the trial Court which was strong enough to maintain the conviction against the respondent/accused, however, without appreciation of evidence, the trial Court has considered the minor discrepancies as well requirements of protocol and has wrongly acquitted the respondent. He, therefore, prays for grant of criminal acquittal appeal and setting aside of the impugned judgment. In support of his contentions, he has placed his reliance upon the cases of *Shazia Bibi Versus The State (2020 SCMR 460)* and *Mushtaq Ahmed Versus The State and another (2020 SCMR 474)*.

8. On the other hand, Mr. Irfan Badar Abbasi, learned advocate for the respondent/accused in criminal acquittal appeal and for the applicant in criminal revision application, submits that prosecution was full of faults and trial Court has rightly acquitted the respondent. He next submits that alleged contraband was not kept in safe custody; therefore, its further transmission from Police Station to laboratory was un-explained, besides there are major contradictions which would vitiate the evidence adduced by the prosecution. In support of his contentions, he has placed his reliance on the cases of *Ikramullah and others V/s The State (2015 SCMR 1002)*, *The State Through Regional Director ANF v/s Imam Baksh (2018 SCMR 2039)*, *State Oil Company Limited versus Bakht Siddique (2010 SCMR 1181)* and *Abdul Ghani and others V/s The State and others (2019 SCMR 608)*. In support of his contentions regarding criminal revision application, Mr. Irfan Badar Abbasi by focusing Section 32 of the Act has placed his reliance upon the case reported as *State Oil Company Limited versus Bakht Siddique (2010 SCMR 1181)* (supra) and submits that impugned order is liable to be set-aside, hence by maintaining the impugned judgment, he prays for grant of criminal revision application.



9. We have heard the learned Additional Prosecutor General, Sindh and learned counsel for the respondent/accused/applicant and perused the record minutely with their assistance.

10. From the perusal of judgment, it reveals that the trial Court has recorded the acquittal in favour of the respondent with significant and sound reasoning. Complainant Excise Inspector and Excise Constable have testified in same line according to contents of memo of recovery and FIR by alleging that on 10.01.2020 they after leaving police station vide entry No.04 at 0300 hours came near Sui Gas Office situated on Shikarpur-Jacobabad road, where they saw Car No.ANR/452 pointed out by informer coming to them, which was being driven by accused, they signaled it to stop and he stopped, police searched the car and recovered six packets of charas in shape of two slabs in each packet from driver's back side in the light of vehicle. The four packets of brown colour in shape of two slabs each wrapped in golden theli having stamped in words "Gumnas 2019" in urdu while two packets were in multicolor in two slabs each wrapped in white theli on which words "Apple 2018" were written in Urdu. The total charas weighed 6 Kilo Grams. 500 Grams of charas in shape of slabs were separated as sample from each packet while remaining substance was sealed separately in white cloth bags. They further testified to have recovered licensed pistol of accused, papers of car and other property as disclosed under memo. Complainant also testified that Excise Inspector Shabir Ahmed Jakhau was also accompanied with the excise police party leading to alleged recovery but mashir E.C Abdul Khaliq did not depose about his presence, though memo of arrest and recovery also bears his signature, but neither the complainant nor the mashir deposed that his signature was also obtained, though said Inspector was competent to investigate the case but the complainant himself investigated the case. Signature of said Excise Inspector has also not been



taken on case property's parcel which was sent to chemical examiner as it has not been examined as to in what capacity his signature was obtained on memo. Further he has not been shown as witness in the challan sheet in the list of witnesses, which creates doubt in the prosecution case and impression can be drawn that he was intentionally and deliberately not associated in investigation as otherwise he could not have supported the prosecution case as alleged by the prosecution. During cross examination they have made number of material contradictions, discrepancies, which create serious doubt in the prosecution case. It is pointed out that complainant has failed to associate any private person who alleged to have been present at the time of commission of alleged incident, despite the fact that alleged incident took place near Sui Gas Station situated at Shikarpur-Jacobabad road as per evidence of the prosecution witnesses. Complainant and mashir had deposed that charas was in shape of 6 packets, four were in brown colour and two were of multi colour. They also testified that brown colour packets contained two slabs each wrapped in golden colour sheet while multicolor packets contained in two slabs wrapped in white colour sheets, meaning thereby that same were total twelve slabs in six packets, but according to the report of chemical examiner, it is stated that he had received six black brown slabs, three of which were wrapped in yellow plastic pani and three slabs were wrapped in white plastic panni, hence number of samples does not tally with the number of slabs allegedly recovered from the respondent/accused. They have further deposed that four slabs wrapped in golden theli and two slabs wrapped in white theli were sent for chemical examination but report transpired that three slabs were wrapped in yellow theli and two in white theli, hence there is conflict regarding shape and quantity of property allegedly recovered from the possession of respondent/accused and one referred to chemical examiner for analysis. The property was sent for analysis through constable Bashir Ahmed but he has not been examined to testify regarding



safe transmission of case property to the office of chemical examiner, which is fatal to the prosecution case in view of the principle laid down by the Hon'ble Apex Court. The complainant also deposed that case property was kept in his office as there was no Malkhana whereas mashir has deposed that property was kept in Malkhana by the complainant himself through E.C Muhammad Punhal and the Malkhana is being guarded by E.C Zahoor Ahmed, though the police diary dated 10.01.2019 regarding arrival of complaint party shows that case property was kept in Malkhana. Further the P.Ws are excise officials and none from the public has been examined so as to confirm the authenticity of the alleged recovery. Learned Additional Prosecutor General during course of arguments has failed to point out any illegality and irregularity committed by the trial court while recording impugned judgment. Moreover, the alleged incident does not appear to have taken place in the manner as alleged by the complainant, therefore, prosecution case having so many dents and is full of doubts of weak confusions. In this view of the case, it cannot safely be said that the conclusion arrived at by the learned trial court was such that no reasonable person would conclusively reach the same.

11. It may be pointed out here that the accused is presumed to be innocent in law and if after regular trial he is acquitted of the charge, he earns double presumption of innocence and there is 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 doubts, therefore, this court is of the view that the prosecution failed to discharge the onus and the finding of acquittal recorded by the learned trial court is neither arbitrary nor capricious to warrant interference. More so, when an accused is acquitted from the charge by the court of competent jurisdiction, then it is well established principle of law that double presumption of innocence will attach with the judgment of the acquittal, therefore, such judgment cannot be



interfered with unless it is proved that same is arbitrary, shocking, capricious, fanciful and against the settled principles of criminal administration of justice. In this respect reliance may respectfully be placed on the cases reported as *Yar Muhammad and 3 others v/s The State (1992 SCMR 96)*, *State/Government of Sindh through Advocate General of Sindh, Karachi v/s Sobharo (1993 SCMR 585)*, *Muhammad Zafar and another v/s Rustam Ali and others (2017 SCMR 1639)*, *Zulifqar Ali v/s Imtiaz and others (2019 SCMR 1315)* and *Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 S.C 11)*.

12. It is well settled principle of law that whenever there arise some reasonable doubts about the guilt of an accused, the benefit of which is to be extended to the accused as a matter of right but not as a matter of grace or concession as law laid down by the Hon'ble Apex Court in numerous cases. No any fresh or cogent reason has been assigned to this court by the learned Additional Prosecutor General, whereby his appeal may be dealt with against the impugned judgment, which has rightly been delivered by the learned trial court, therefore, under these circumstances the appellant has failed to make out any case against the respondent/accused, who has rightly been acquitted by the trial court and such acquittal in absence of the evidence on the part of complainant cannot be interfered.

13. So far the criminal revision application is concerned, which has been filed by the applicant/accused after his acquittal by the court of competent jurisdiction after full dressed trial while extending benefit of doubt to him and ordering for return of case property to applicant/accused after expiry of appeal period. Accordingly, this criminal acquittal appeal was dismissed and impugned judgment was upheld. Revision application was allowed, impugned order dated 12.09.2019 was set-aside and property order passed



1. The Government of India
2. The Ministry of Health and Family Welfare
3. The State of Karnataka
4. The District of Bangalore

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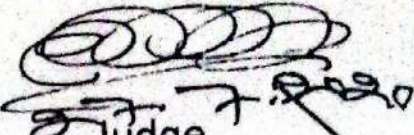
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Judge

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by the trial Court was maintained by our short order dated 21.07.2020. These
are the reasons for the said short order.


Judge 27.7.2020


Judge 27.7.2020

Abdul Salam/P.A