

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No. D- 72 of 2005

PRESENT: **MR. JUSTICE AMIR HANI MUSLIM.**
MR. JUSTICE AHMED ALI SHAIKH

J U D G M E N T

Date of hearing 12.11.2009

Date of Judgment 16.11.2009

Mr. Khuwaja Azizullah Advocate for Appellants.
Mr. Muhammad Iqbal Kalhoro Additional Prosecutor General Sindh for
the State.

Ahmed Ali Shaikh J. This appeal is directed against the Judgment dated 09.04.2005 passed by learned Special Judge Narcotics/Sessions Judge Badin in Special Case No.37/2007 Cr.No.73/1997 of P.S. Talhar u/s 9(c) Control of Narcotics Substance Act, 1997 by which the appellants were convicted and sentenced for the offence u/s 9(c) of Control of Narcotics Substances Act, 1997 to suffer 14 years R.I. and to pay fine of Rs.50,000/- each. In case of default in payment of fine, they ha to further undergo R.I. for six months. However, benefit of section 382-b Cr.P.C was extended.

2. The facts of prosecution case as disclosed in the FIR are that on 21.07.1997, D.S.P Manzoor Ali Khatyan conducted raid at Quarter No.65 situated in Bawani Sugar Mills Colony Talhar and arrested accused Saleem, Yakoob, Mureed and Anwar Ali and recovered 40 K.G charas and 10 K.G opium from them. The accused let the same police party to a Jhugi of accused Laloo Jat situated in village Muhammad Jat, where police party conducted raid, on seeing the police party, four persons came out from Jhugi and tried to flee away. Out of them, police apprehended three persons, while fourth person made his escape good. The apprehended persons disclosed their names as Fazal S/o Sain Bux Jat, Ali Nawaz S/o Sultan Jat and Chutto S/o Misri Machhi. They disclosed the name of person, who ran away as Laloo @ Lal Bux Jat. From Jhugi, police party recovered 5 ½ K.G charas and 25 ½ opium. Such mashimama of arrest and recovery was prepared in presence of SIP Asghar Ali Jat and ASI Mumtaz Ali. The complainant took the arrested accused and recovered property to P.S. and lodged FIR.

3. To prove its case, the prosecution has examined P.W. HC Muhammad Uris at Ex.7, P.W.2 complainant Manzoor Ali Khatyan at Ex.9 and P.W ASI Luqman at Ex.13 and then closed its side.

4. The statements u/s 342 Cr.P.C of the appellants were recorded by the trial court wherein they denied the allegations and claimed their innocence. However, neither they examined themselves on oath nor led any defence in their favour.


5. After hearing the learned counsel for the parties, learned trial court passed impugned Judgment as stated above.

6. We have heard learned counsel for the appellants as well as learned State counsel and perused the record.

7. It is contended by the learned counsel for the appellants that appellants are innocent, they have been falsely implicated in this concocted case, the charas and opium have been foisted upon them by the complainant and that it was the complainant, who was in possession of contraband material. He further contended that the prosecution case is based on surmises and conjectures and there are material contradictions between the depositions of the P.Ws in respect of place of arrest of appellants Fazal and Chhutto, weight of samples, which were allegedly sent to the Chemical Examiner, author of the mashirnama. He submitted that the mashirs of so called arrest and recovery were not produced in the trial court to prove such arrest and recovery and the entire prosecution case is without foundation and the impugned Judgment passed by the learned trial court is based on misreading and non reading of the evidence and same is liable to be set aside.


8. On the other hand, learned State counsel supported the impugned Judgment while stating that the prosecution has successfully proved its case against the appellants and the impugned Judgment does not call for any interference by this court.

9. In their depositions, the P.Ws stated that on the day of occurrence, they went to the Jhugi of appellant Laloo @ Lal Bux and recovered 5 ½ charas and 25 ½ K.G of opium but we find glaring contradictions in the depositions of the P.Ws in respect of place of arrest of appellants Fazal and Chhutto, preparation of mashirnama of arrest and recovery as well as quantity of contraband material, which was sent to the Chemical Examiner. P.w Muhammad Uris in his deposition, stated that the appellant Fazal



alongwith Saleem Jat, Yakoob Jat and Anwar Jatoi was arrested from Bawani Sugar Mills Quarter, whereas P.W Manzoor Ali, who is complainant has stated that appellant Fazal, Ali Nawaz and Chhutto were arrested from hut (Jhugi). On this point, P.W Luqman stated that the appellant Fazal and Chhutto were arrested from Quarter No.65 of Bawani Sugar Mills. From the depositions of above P.Ws, the very arrest of appellants Fazal and Chhuto from Jhugi became doubtful and created a big dent in the prosecution case. The only evidence against the appellant Laloo @ Lal Bux is mere statement of co-accused, which is inadmissible piece of evidence.

10. On another important point viz. preparation of mashirnama of arrest and recovery, we find that there inconsistent versions of the complainant/P.W Manzoor Ali Khatyan and P.W. Luqman. In his deposition, P.W Manzoor Ali stated that he prepared mashirnama in presence of SIP Asghar Ali Jat and HC/ CM Ghulam Shabir while P.W Luqman stated that WHC Ghulam Shabir was with them on the day of incident and at both the places, mashirnama was prepared by him. Thus no reliance can be placed on very important document viz. mashirnama of arrest and recovery as the entire foundation of the prosecution case based upon such mashirnama. In mashirnama of arrest and recovery, names of SIP Asghar Ali Jat and ASI Mumtaz Ali have been mentioned as mashirs, therefore, no sanctity can be attached to the mashirnama of arrest and recovery and same cannot be relied upon. Likewise, in respect of quantity of contraband material, which was allegedly sealed separately for chemical examination, all the three P.Ws have given different weight and their versions do not match with each other. Per P.W Luqman, parcels of 1000 grams of opium and 1000 grams of charas were separately sealed while complainant Manzoor Ali disclosed such quantity as 100 grams of opium and 100 grams of charas. Very interestingly, P.W Muhammad Uris stated that 500 grams of charas and 500 grams of opium were sealed separately for chemical analysis. In view of above contradictory versions, the very preparation of parcels for sending to the Chemical Examiner seems to be an after thought and does not inspire confidence, therefore, cannot be relied upon. The report of Chemical Examiner reveals very strange aspect of the case in which net weight of charas has been shown as 500 grams and weight of the opium with sealed wrapper as 476 grams. The said report further reveals that the parcels of the sample were sent by SHO on 01.02.1997 by hand



through CM Hanif whereas the samples were received by him on 12.02.1997, after delay of 11 days. It is a mystery that for a such long period, where samples of contraband were lying and possibility of manipulation in the samples during this period cannot be ruled out. The prosecution has not examined said Muhammad Hanif to explain this fact that if the parcels were not dispatched to the Chemical Examiner just after receiving the same and whether during said period parcels were kept in safe custody or not and if not where they kept. Hence under these circumstances, the report of Chemical Examiner available on record cannot be relied upon as good piece of evidence against the appellants.

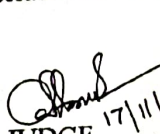
11. The prosecution did not produce/examine the mashirs of recovery. Mere production of mashinama is not proof of recovery of Narcotics substance. The genuiness or authenticity of the contents of a document needs to be proved by examining the witnesses named in such document, besides its author. Mere exhibition of a document through the I.O. without proving the contents by examining the witnesses and author has no evidentiary value.

12. In view of the above circumstances, we are of the considered view that the prosecution could not prove recovery of opium and chars from the custody of the appellants and the trial court has failed to notice the major contradictions as noted above besides the inconsistent versions of the P.Ws while passing the impugned Judgment. It appears that opium and charas was not recovered from the possession of appellants but same was foisted upon them by the complainant.

13. We, therefore, direct the D.I.G Hyderabad to initiate departmental inquiry against the complainant Manzoor Ali Khatyan for prima-facie foisting Narcotic material upon the appellants and till such time he is exonerated, he shall not be assigned field posting.

14. For the aforesaid reasons, we have allowed the appeal.

Copy of this order be faxed to the D.I.G Hyderabad for compliance and report.


JUDGE 17/11/09
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