

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.D-08 of 2017.

PRESENT:

Mr. Justice Khadim Hussain M. Shaikh,
Mr. Justice Amjad Ali Sahito.

Appellant The State through Mr. Khadim Hussain
Khooharo, Additional Prosecutor General.

Respondent Amir Bux alias Ameero.

Date of hearing: 30.05.2018.
Date of Decision: 30.05.2018.

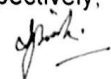
J U D G M E N T

Khadim Hussain M. Shaikh –J. This criminal acquittal appeal is directed against the judgment dated 06.10.2016, passed by the learned Special Judge (CNSA), Jacobabad, in CNS Case No.13 of 2015, re-State v/s Amir Bux alias Ameero Brohi, emanating from Crime No.25 of 2015 registered at Police Station Civil Line, Jacobabad, for offence under Section 9(c) Control of Narcotic Substances Act, 1997, whereby respondent Amir Bux alias Ameero son of Dhani Bux Bangulzai Brohi has been acquitted.

2. Briefly the facts of the case are that respondent Amir Bux alias Ameero son of Dhani Bux Bangulzai Brohi was sent up with the challan to face his trial for offence under Section 9(c) Control of Narcotic Substances Act, 1997 in the subject FIR.

3. After completing the formalities, a formal charge was framed against the above-named respondent/accused at Ex.3, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.3-A.

4. At the trial, the prosecution examined complainant ASI Khalil Ahmed as PW-1 at Ex.4, who has produced memo arrest/recovery, FIR, letter regarding registration of FIR and DD entry at Ex.4-A to 4-D respectively;



Ex.5-A and DD entry at Ex.5-B; SHO Wasim Ahmed as PW-3 at Ex.6; and mashir PC Umardin as PW-4 at Ex.7. After closure of prosecution side, statement of accused was recorded under Section 342 Cr.P.C at Ex.9, wherein he denied the allegations and pleaded his innocence. He, however, neither examined himself on oath under Section 340(2) Cr.P.C nor did he examine any witness in his defence. The learned trial Court after hearing the parties acquitted the respondent/accused of the charge vide impugned judgment dated 06.10.2016.

5. Having felt aggrieved by the said judgment of acquittal, the State through learned Additional Prosecutor General has preferred the present appeal.

6. The learned Addl. Prosecutor General has opposed the impugned acquittal judgment, stating that the prosecution has proved its case by examining four P.Ws, who, per him, have supported the prosecution version; however, when confronted with the reasoning recorded by the learned trial Court while acquitting the respondent/accused, learned Addl. Prosecutor General could not be able to controvert the same.

7. None is present for the respondent to address the Court.

8. We have considered the submissions of learned Addl. Prosecutor General and have gone through the record, having also perused the impugned judgment dated 06.10.2016.

9. From a perusal of the record, it would be seen that while patrolling a police party headed by complainant ASI Khalil Ahmed, on a tip-off, went to the pointed place, namely, Veterinary Hospital, Jacobabad and arrested the respondent on charge of keeping in possession 1100 grams Charas, but no independent person was cited as witness or mashir, nor any sincere effort is shown to have been made by the police to associate any independent person as witness or mashir to the alleged recovery proceedings; the alleged recovery of charas was made on 25.3.2015 and whereas the sample was delivered in the



office of chemical expert for its exploration on 27.3.2015 through HC Shadi Khan, but the said police official has not been examined by the prosecution to establish safe custody and safe transmission of the sample in the office of Chemical Examiner; complainant ASI Khalil Ahmed has stated that *"when we reached at the Palace Hotel, Jacobabad at 2200 hours, I received spy information. We proceeded towards the pointed place and reached there at 2110 hours. First of all, we came at Faizan-e-Madina Masjid, then we came at Afzal Khan Khoso road and then came at KG School road. Thereafter, we came at Manjhipur Ado and crossed D.C Chowk and came at palace hotel. I had not taken private persons after receiving spy information"*; mashir PC Umardin has stated that *"when we reached at the Palace Hotel, ASI received spy information. First of all we came at Haq Bahoo Chowk, then we came at Quaid-e-Azam road near palace hotel chowk. We were on road where showrooms are situated. We proceeded towards the pointed place and reached there at 2110 hours"* and whereas the memo of arrest and recovery and FIR show that the appellant was arrested at 2210 hours. I.O Inspector Javed Hussain Shaikh has stated that *"I have not visited the place of incident nor I had enquired from any of the local person about recovery. FIR was written by WHC under my dictation"*; there are also many other discrepancies in the prosecution case. The aforesaid aspects, which rendered the prosecution case highly doubtful, were considered by the learned trial Court while arriving at the conclusion that the prosecution has failed to prove its case against the respondent/accused beyond a reasonable doubt. The impugned judgment based on appreciation of the evidence, suffering from no illegality or infirmity or even any perversity or jurisdictional defect cannot be interfered with in the appeal involving acquittal judgment. Accordingly, this appeal being devoid of merit is dismissed.


JUDGE
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