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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. D-45 of 2016

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Irshad Ali Shah

Appellants: Zulfiqar son of Ali Hassan Khoso, 2. Deedar son of Ali Hassan Khoso and 3. Ali Murad @ Ali Mardan son of Ali Hassan Khoso, through Mr. Ali Nawaz Ghanghro, Advocate

State : Through Mr. Khadim Hussain Khooharo, Addl. Prosecutor General.

Date of hearing: 08.03.2018.

Date of judgment: 08.03.2018.

J U D G M E N T

IRSHAD ALI SHAH, J.- It is alleged by the prosecution that on arrest from the appellant/accused Deedar was secured 1150 grams of Charas, from appellant/accused Zulfiqar Ali was secured 1200 grams of Charas and from appellant/accused Ali Murad @ Ali Mardan was secured 1250 grams of Charas, In all (3600) grams of Charas, by police party of P.S Mehar, led by ASI Sher Dil Khan, for that they were booked and challaned in the present case.

2. The present appellants/accused denied the charge and prosecution to prove it, examined complainant ASI Sher Dil Khan, produced through him roznamcha entry relating to his departure from said police station mashirnama of arrest and recovery and FIR of the present case. PW/Mashir HC Imdad Ali. The report of the chemical examiner was produced by the prosecution by way of statement and then prosecution closed its side.

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3. The present appellants/accused in their statements recorded u/s.342 Cr.PC denied the prosecution allegations by pleading innocence by stating that they were apprehended one day prior to their actual involvement in this case, such news was published in daily newspaper "Kawish" dated 14.08.2014 . They examined none in their defense or themselves on oath.

4. On conclusion of the trial, the present appellants/accused who happened to be brothers inter-se were convicted and sentenced undergo R.I for period of five years and to pay fine of Rs.20,000/-, in case of their failure to make payment of fine they were ordered to undergo S.I for period of two months with benefit of Section 382-B Cr.PC, for an offence punishable u/s. 9 (c) of C.N.S Act, by learned trial Court vide its judgment dated 04.08.2016, which the appellants/accused has impugned before this Court by way of instant appeal.

5. We have heard learned counsel for the parties and perused the record.

6. It was stated by the complainant that on 14.08.2014, when he with his police party was conducting patrol, when reached at Mehar Bypass, there he came to know through spy information that three persons are selling Charas adjacent to graveyard of Hasil Khoso. On such information, he proceeded to the pointed place. If for the sake of arguments, it is believed that the complainant with his police party proceeded to the pointed place, on information then he was under lawful obligation to have associated with him independent person to witness the possible arrest and recovery. It was not done by him, for no obvious reason. In that situation, it is rightly being

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contended by learned counsel for the present appellants/accused that very proceeding by the complainant and his witness to the place of incident on information is appearing to be doubtful one. Be that as it may be, it was further stated by the complainant that he with his police party reached at the place of incident, found the present appellants/accused available there, they attempted to escape their good but were apprehended, on enquiry one disclosed his name to be Zulfiqar Khoso, on search from him was secured plastic shopper containing seven big and small pieces of Charas and Rs.100/-, other disclosed his name to be Deedar, from him was secured plastic shopper containing ten big and small pieces of Charas and Rs.50/-, third disclosed his name to be Ali Murad, on search from him was secured plastic shopper containing nine big and small pieces of Charas and Rs.50/-. Charas secured from accused Zulfiqar was weighed to be 1200 grams. Charas secured from accused Deedar was weighed to be 1150 grams. Charas secured from accused Ali Murad was weighed to be 1250 grams. From each recovery, 10 grams of Charas was separated for chemical examination, those were sealed, while remaining Charas was also sealed. A mashirnama of arrest and recovery was then prepared at the spot in presence of mashirs. The present appellants/accused with the recovery so made from them were then taken to P.S Mehar. There they were booked in the present case formally and further investigation according to the complainant was conducted by SHO Aijaz Ali Massan. SHO Aijaz Ali Massan, the prosecution was not able to examine, for no obvious reason. In that situation, it is rightly being contended by learned counsel for the appellants/accused that the present appellants/accused have been deprived of their valuable right of defense. Be that as it may be,

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PW/Mashir HC Sher Ali has attempted to support the complainant but was not able to disclose the time when he and the complainant reached back at Police Station Mehar after the incident. In these premises, it is rightly being contended by learned counsel for the present appellants/accused that the evidence of the complainant and his witness being untrustworthy could hardly be relied upon to maintain conviction.

7. The report of chemical examiner as said above was produced by the prosecution before learned trial Court by way of statement. In that way, the present appellants/accused were deprived of their valuable right of cross examination on such report. The benefit of such omission it is rightly being contended by their learned counsel is to be extended to them.

8. Be that as it may be, the perusal of report of chemical examiner reveals that the samples of the Charas were delivered in his office on 23.09.2014 by ASI Abdul Sattar with delay of more than one month to its recovery, such delay the prosecution has not been able to examine. In that situation, it is rightly being contended by learned counsel of the present appellants/accused that the possibility of manipulation of samples of Charas could not be lost sight of.

9. Based upon above discussion, it could be concluded safely that the prosecution was not able to prove its case against the present appellants/accused beyond shadow of doubt. In that situation, the plea of innocence, which the present appellants/accused taken at trial and during course of their examination u/s.342 Cr.PC ought not to have been lost sight of by learned trial Court in the circumstances of the case.

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Result.

10. In view of the facts and reasons discussed above, the conviction and sentence which is recorded against the present appellants/accused by way of impugned judgment cannot be sustained, it is set-aside. Consequently, the present appellants/accused are acquitted of the offence, for which they were tried, charged and convicted by learned trial Court. They are present in Court on bail, their bail bonds are cancelled and sureties are discharged.

11. The instant appeal is disposed of in above terms.


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