

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.D-89 of 2015.

Muhammad Uris alias Mullan. . . . .Appellant

Versus

The State. . . . .Respondent

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Cr. Appeal No.D-90 of 2015.

Allah Bachayo. . . . .Appellant

Versus

The State. . . . .Respondent

Appellant : Muhammad Uris alias Mullan (present on bail) in Cr. Appeal No.D-89/2015	Through Mr. Hameedullah Dahri, Advocate
Appellant : Allah Bachayo in Cr. Appeal No.D-90/2015	Through Mr. Ghulamullah Chang, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing	23.05.2017.
Date of judgment	23.05.2017.

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** By this judgment, we dispose of the aforementioned two criminal appeals, as the same have arisen out of one and the same impugned judgment dated 01.09.2015 passed by learned Special Judge for CNS, Sanghar, in Special Case



No.13 of 2014, arising out of Crime No.31/2014, registered at Police Station Sanghar, under section 9(c) of Control of Narcotic Substances Act, 1997 (CNSA), whereby appellant Muhammad Uris alias Mullan has been convicted u/s 9(c) of CNSA and sentenced to suffer RI for 05 years and 06 months and to pay the fine of Rs.25,000/-; in case of default in payment of fine he was ordered to suffer simple imprisonment for 05 months more; whereas appellant Allah Bachayo has also been convicted under same section and sentenced to suffer R.I. for 07 years and 06 months and to pay fine of Rs.35,000/-; in case of default in payment of fine he was also ordered to suffer simple imprisonment for 06 months more (the impugned judgment). Benefit of Section 382-B Cr.P.C. was also extended to the accused / appellants.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 05.03.2014, complainant SIP Muhammad Javed Kamali alongwith his subordinate police personnel namely, ASI Abdul Hameed Kundhani and others left police station for patrolling in an official vehicle under entry No.31. While patrolling at different places, the police party reached at Sanghar-Nawabshah road where they saw one white color Alto car was coming from Nawabshah side, which was indicated to stop; driver of the car stopped it; however, the persons sitting in the said car on seeing police party alighted from the said car and tried to run away, but were encircled and apprehended. Police inquired their names and other particulars. One of them disclosed his name as Allah Bachayo S/o Saeed Khan; one cloth bag was secured from his right hand, same was found containing 12 small and big pieces of contraband items. 12 currency notes of Rs.100/- were also secured from his front pocket of the shirt. The contraband item was weighed, it became 05 kilograms. 50 grams of contraband item was taken as sample for chemical analysis. Another accused disclosed his name as Muhammad Uris alias Mullan Nizamani and from his possession one white cloth bag containing eight big and small pieces of contraband item was secured; ten currency notes of Rs.100/- were also recovered from the front pocket of his shirt. Out of recovered contraband items 50 grams were taken as sample for chemical analysis. Thereafter, the contraband items and samples were sealed



separately. On inquiry, accused persons could not produce the registration / ownership documents of the Alto car, as such it was seized under section 550 Cr.P.C. Mashirnama of arrest and recovery was prepared in presence of mashirs ASI Abdul Hameed and PC Ghulam Farooque. Then, accused and case property were brought at police station where F.I.R. was lodged by complainant SIP Muhammad Javed on behalf of the State under section 9(c) CNSA.

3. During investigation, Investigating Officer recorded 161 Cr.P.C. statements of the PWs. Samples of the substance / charas were sent to the chemical examiner on 10.03.2014 through PC Tahir Mahmood and positive chemical report was received. On the conclusion of investigation challan was submitted against the accused for offence u/s 9(c) of CNSA.

4. Trial court framed charge against accused at Ex.4 u/s 9(c) of CNSA, to which, both accused pleaded not guilty and claimed to be tried vide their pleas at Ex.4/A and 4/B. At the trial prosecution examined PW-1 complainant SIP Muhammad Javed at Ex.5, who produced roznamcha entry at Ex.5/A, mashirnama of arrest and recovery at Ex.5/B, FIR at Ex.7/C; PW-2 ASI Abdul Hameed was examined at Ex.6, who produced mashirnama of site inspection at Ex.6/A; PW-3 SHO Muhammad Jumman (Investigating Officer) was examined at Ex.7, who produced Chemical report at Ex.7/A and thereafter, prosecution side was closed at Ex.8.

5. Statements of accused were recorded u/s 342 Cr.P.C. at Exs.09 and 10. Accused Allah Bachayo and Muhammad Uris both denied the prosecution allegations against them and claimed their false implication in this case due to political enmity and tribal enmity with Bughti tribe, respectively. The accused did not examine themselves on oath in disproof of the prosecution allegations although with the consent of the parties and as ordered by the court DW Samoon Khan placed on record the relevant roznamcha entries relating to this case.

6. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and



sentenced the appellants as stated above through the impugned judgment. Hence this appeal.

7. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

8. M/s. Hameedullah Dahri and Ghulamullah Chang, learned advocates for the appellants have contended that the prosecution case is highly doubtful; the place of incident was located at busy spot but no one from the public was joined to attest the arrest and the recovery of the narcotics from the appellants; that there are material contradictions in the prosecution evidence, hence it cannot be safely relied upon; that the cloth bags in which the narcotics were allegedly found in the hands of the appellants were never produced before the court; that there was delay in sending the case property to the chemical examiner and tampering with the case property during such period could not be ruled out. It is argued that alleged recovery was made on 05.03.2014, whereas the samples were sent to the chemical analyzer on 10.03.2014 with a delay of 05 days and no evidence has been brought on the record that charas was in the safe custody during that period. They further argued that PC Tahir Mahmood through whom the samples of charas were sent to chemical examiner has also not been examined. Lastly they argued that the accused have been involved in this false case due to political / tribal enmity to teach them a lesson. In support of their contentions, learned counsel for the appellants relied upon the cases of **Ikramullah & others v. the State** (2015 SCMR 1002) and **Munawar Ali Jatui V The State** (2012 MLD 1763).

9. Syed Meeral Shah, learned Additional Prosecutor General Sindh fully supported the impugned judgment and contended that the prosecution had fully proved its case against both the appellants and that the narcotics were kept in safe custody from the time of their recovery until trial and it would be difficult if not impossible to foist such large amounts of charas on the appellants.



10. We have carefully considered the arguments of the learned counsel for the parties, scanned the entire evidence and reviewed the relevant case law.

11. We have come to the conclusion that prosecution has failed to establish its case against the appellants for the following reasons; that the cloth bags in which the contraband was being carried in was never produced before the court and was in our view an important piece of evidence; that no description of the charas was given in the memo of recovery e.g. slabs or rods etc; that there have been 2 material overwritings in the memo of arrest and recovery which have not been explained in terms of the amount of the pieces of charas recovered and the date of recovery; that the alleged Alto car in which the appellants were allegedly traveling despite not being registered in any one's name does not form a part of the case property or property order in the impugned judgment which seems very suspicious; that there has been an unexplained delay of 5 days in sending the samples of the narcotics to the chemical examiner which again is also very suspicious conduct on the part of the police bearing in mind their directory obligation to send such recovered chemicals to the chemical examiner within 3 days of the date of recovery.

12. More significantly, although the learned APG has contended that the recovered chemical was kept in safe custody we are unable to agree with such contention. The APG based his contention on the fact that PW Jumman who had received the recovered samples had stated in his evidence that the case properties and samples were kept in the Malkhana of the PS vide some entry in its register No.19 however there is no corroboration for such contention which could easily have been made. In fact with the consent of the parties and the permission of the Court DW Samoon Khan was called to provide all original entries relating to the incident. Despite going through such entries we have not been able to find a single entry relating to the safe custody of the sample at the malkhana and nor has the learned APG being able to point to one. Furthermore, the prosecution did not call the in charge of the malkhana to give evidence to prove this point nor was PC Tahir Mahmood who took the sample to the chemical examiner



called to give evidence to prove the safe custody and transit of the narcotic substance. Under these circumstances in our view despite the chemical report proving positive it is of no assistance to the prosecution as the prosecution has not been able to prove the safe custody of the narcotic from the time of its recovery until the time it was sent to the chemical examiner for testing and as such it may have been tampered/interfered with. Since heavy sentences can be handed down in narcotics cases we consider that we need to consider the evidence in a stringent manner and in so doing do not find that the prosecution has proved safe custody of the narcotic beyond a reasonable doubt. In this regard reliance is placed on the case of **IKRAMULLAH & OTHERS V/S. THE STATE** (2015 SCMR 1002), the relevant portion is reproduced hereunder:-

“5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit.”

13. In view of the above, coupled with the over writing in the memo of arrest and recovery and the other above mentioned reasons we have no hesitation to hold that in this case the prosecution has failed to prove its case against the appellants beyond a reasonable doubt and that the appellants are entitled to the benefit of the doubt as of right as opposed to concession as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345)

14. For the above stated reasons, we hold that the prosecution has failed to prove its case against either of the appellants, therefore,

while extending the benefit of doubt, by short order instant appeals were allowed; the conviction and sentence recorded by the trial court were set aside and the appellants were acquitted of the charge. Appellant Muhammad Uris alias Mullan is present on bail his bail bond stands canceled and his surety is hereby discharged. Appellant Allah Bachayo is in custody and shall be released forthwith if not required in some other custody case.

15. Above are the reasons for our short order of even date.