

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

Before:

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

Cr. Appeal No.D-21 of 2016.

Abdul Sattar

Vs.

The State.

Appellant : Abdul Sattar (present on bail)	Through Mr. Muhammad Ali Rind, Advocate
Respondent : The State	Through Syed Meeral Shah Bukhari, Additional Prosecutor General.
Date of hearing	18.05.2017.
Date of judgment	01.06.2017.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This appeal is directed against the judgment dated 23.02.2016 passed by learned Special Judge for CNS / Sessions Judge, Badin, in Special Case No.15 of 2015, arising out of Crime No.22/2015, registered at Police Station(PS) Khoski, under section 9(c) of Control of Narcotic Substances Act, 1997 (CNSA), whereby the appellant Abdul Sattar has been convicted u/s 9(c) of CNSA and sentenced to suffer RI for 08 years and to pay the fine of Rs.100,000/-. In case of default in payment of fine he was 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.

2. Brief facts of the prosecution case as disclosed in the FIR are that present accused was arrested on 13.03.2015 at 1900 hours at house of Hanif Bhatti in Devi Jungle by a police party headed by SIP Ghulam Hussain Khoso alongwith his subordinate staff which amongst others included PC Muhammad Anwar. Accused Abdul Sattar was said to be found possessing 1200 grams of contraband item. Thereafter, the contraband item, as stated above, was sealed and memo of arrest and recovery was prepared on the spot in presence of mashirs PC Anwar Ali and PC Muhammad Ilyas. Thereafter, accused and case property were brought at police station where F.I.R. was lodged by the complainant on behalf of the State under section 9(c) CNSA.

3. During investigation, Investigating Officer recorded 161 Cr.P.C. statements of the PWs. The contraband item was sent to the chemical examiner on 14.03.2015 through PC Zaheer Ali and positive chemical report was received. On the conclusion of investigation challan was submitted against the accused for offence u/s 9(c) CNSA.

4. Trial court framed charge against accused at Ex.2 u/s 9(c) of CNSA, to which, accused pleaded not guilty and claimed to be tried vide his plea at Ex.3. At the trial prosecution examined PW-1 complainant SIP Ghulam Hussain Khoso at Ex.4, who produced the entry of departure at Ex.4-A, mashirnama of arrest and recovery at Ex.4-B, F.I.R. at Ex.4-C, chemical examiner's report at Ex.4-D; PW-2;

Mashir PC Muhammad Anwar at Ex.5 and thereafter, prosecution side was closed at Ex.6.

5. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.7. The accused while denying the prosecution allegations claimed his innocence. The accused neither examined himself on oath nor led any evidence in defence.

6. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant 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. Mr. Muhammad Ali Rind, learned advocate for the appellant has contended that prosecution case is highly doubtful; this is a case of spy information and the place of incident was located at busy spot, yet, none from public was joined to attest the arrest and recovery and all the PW's are interested parties and subordinate to the head of the raid team; there are material contradictions in prosecution evidence, hence it cannot be relied upon; 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. He further argued that PC Zaheer Ali through whom the sample was sent to the chemical examiner has also not been examined. Lastly he argued that the accused has been involved in this false case due to enmity to teach him a lesson. In support of his contentions, learned counsel for

the appellant relied upon the case of **Ikramullah & others v. the State** (2015 SCMR 1002).

9. Syed Meeral Shah, learned Additional Prosecutor General Sindh very fairly conceded to the contentions of learned counsel for the appellant and did not support the impugned judgment.

10. We have considered the contentions of Mr. Muhammad Ali Rind, learned advocate for appellant, Syed Meeral Shah, learned Additional Prosecutor General Sind for the State, scanned the entire evidence and considered the relevant law.

11. We have come to the conclusion that the prosecution has failed to establish its case for the reasons that it was case of spy information and the police had plenty of time to call independent mushirs in this thickly populated area which they completely failed to do despite having plenty of time to do so which would have given much greater credibility to their case; furthermore there was no body around so it does not appear that the appellant was selling narcotics to anyone and in this respect the police even failed to send a fake purchaser to test this aspect of the case; that there are major contradictions in the evidence of the PW's (for example PW Ghulam Hussain Khoso states that he kept the charas in his possession for 3 days whereas PW Muhammed Anwar states that the charas was taken to the police station; the chemical report states that the narcotics were received for chemical examination by letter dated 14-03-2015 however the appellant was arrested and the narcotics recovered on 13-03-15 and it is admitted by PW Ghulam Hussain Khoso that he kept the charas in

his possession for 3 days and thus the date of the letter cannot be correct which is also suspicious.

12. Most significantly however in our view PW Ghulam Hussain Khoso who recovered the chemical admits in his evidence that he kept it in his possession for 3 days. There is no evidence where the recovered narcotics were kept during this 3 day period and thus the narcotics were not in safe custody and could have been interfered with. Even when the narcotics were handed into the police station there is no evidence that they were ever placed in the Malkhana or other safe place. Furthermore, PC Zaheer Ali who dispatched the recovered narcotic to the chemical examiner did not give evidence about either its safe custody or safe transit to the chemical examiner. Under these circumstances in our view the chemical report although stated to be positive cannot be safely relied upon. In this respect reliance is placed on the case of **IKRAMULLAH & OTHERS V/S. THE STATE** (2015 SCMR 1002), the relevant portion of which 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, we have no hesitation in holding that in this case based on the reasons mentioned above the prosecution has failed to prove its case against the appellant beyond a reasonable doubt. There are several circumstances which create doubt in the prosecution case. In the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), the Honourable Supreme Court has observed as follows:-

“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

14. Thus, for the above stated reasons, we hold that the prosecution has failed to prove its case against the appellant, therefore, while extending the benefit of doubt, appeal is allowed. The impugned judgment is set aside and the appellant is acquitted of the charge. The appellant is on bail. His bail bond stands cancelled and surety is hereby discharged.