

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

Cr. Appeal No.D-07 of 2008

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Muhammad Karim Khan Agha.

Date of Hearing: 25.05.2017

Date of Judgment: 25.05.2017

Appellant/accused: *Mst. Manzooran w/o Muhammad Shafique.
Through Syed Tariq Ahmed Shah,
Advocate*

The State: *Through Syed Meeral Shah Bukhari,
Addl. P.G. Sindh.*

J U D G M E N T

NAIMATULLAH PHULPOTO, J:- Appellant Mst. Manzooran was tried by Special Judge CNS, Sanghar, in Special Case No.26 of 2003, for the offence under Section 9 (b) Control of Narcotic Substances Act, 1997. By judgment dated 23.02.2008, the appellant was convicted under Section 9 (b) Control of Narcotic Substances Act, 1997 and sentenced to suffer R.I for 04 years and to pay a fine of Rs.10,000/-, in default thereof appellant was ordered to suffer R.I for 02 months more. Benefit of Section 382(b) Cr.P.C was extended to the appellant/accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 21.07.2003 SIP / S.H.O. Muhammad Islam of Police Station Shahdadpur, left Police Station along with his subordinate staff vide roznamcha entry No.23 at 1710 hours for patrolling. While patrolling at various places when the police party reached at Hala

Chowk SHO received spy information that a woman was selling charas at old market. On such information, police party proceeded to the old market and reached there at 1830 hours where saw that appellant was sitting she tried to run away but she was surrounded and caught hold. She was carrying a black coloured polythene bag. It was secured from her. Bag contained 01 big piece and 02 small pieces of charas. The name of the accused was enquired by the S.H.O. to which she disclosed her name as Mst. Manzooran w/o Muhammad Shafique by caste Rajput. S.H.O. made police constables as mashirs of the arrest and recovery. Thereafter, charas was weighed it became 265 grams out of it is alleged that 10 grams were separated for sending to the Chemical Examiner. Thereafter, the accused and case property were brought to the Police Station, where it is alleged that S.H.O. lodged F.I.R. against the accused on behalf of the State. It was recorded vide crime No.177 of 2003, for offence under section 9(b) Control of Narcotic Substance Act 1997.

3. During the investigation, 161 Cr.P.C statements of P.Ws were recorded and sample was sent to the Chemical Examiner on 24.07.2003. Positive chemical report was received. On completion of the investigation, challan was submitted against the accused under Section 9(b) Control of Narcotic Substances Act, 1997.

4. Trial Court framed the charge against the accused under Section 9(b) of CNS Act, 1997 at Ex-2. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined P.W-1 mashir P.C. Muhammad Hanif at Ex.4, who produced mashirnama of arrest and recovery at Ex.4-A. P.W.2 Complainant SIP Syed Muhammad Islam at Ex.07 who produced F.I.R. at Ex.7-A, positive chemical report at Ex.7-B,

departure entry at Ex.7-C. Thereafter, the prosecution side was closed vide statement at Ex-08.

6. Statement of the accused under Section under Section 342 Cr.P.C. was recorded at Ex-09, in which the accused claimed his false implication in this case and denied the prosecution allegations. Regarding the positive chemical report it is stated that it has been managed. Accused has raised plea that P.Ws. are police officials and interested. Accused did not lead any evidence in defence and declined to examine himself on oath in disproof of prosecution allegations and pleaded innocence.

7. Learned Trial Court after hearing the learned Counsel for the accused, D.P.P. for State and on the assessment of the evidence, convicted and sentenced the accused as stated above. Hence, this appeal.

8. We have carefully heard learned Counsel for the parties and scanned the entire evidence minutely.

9. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 23.02.2008, therefore, the same may not be reproduced here, so as to avoid duplication and unnecessary repetition.

10. Syed Tariq Ahmed Shah, learned Advocate for the appellant has mainly contended that there are material contradictions in the evidence of complainant and prosecution witnesses. He has referred to the evidence of the complainant in which he has stated that he had recovered charas from the possession of appellant on 21.10.2002, on the same point he referred to the evidence of the mashir P.C. Mohammad Haneef who has deposed that charas was recovered from the possession of

accused on 21.07.2003. Counsel for the appellant has also referred to the evidence of the complainant and stated that complainant failed to mention the names of the mashirs and stated that complainant has replied that he does not remember the names of the mashirs. Counsel for the appellant further argued that according to the case of prosecution charas was recovered from the possession of the accused on 21.07.2003 but it was sent to the Chemical Examiner on 24.07.2003, delay in sending the charas to the Chemical Examiner has not been explained by the prosecution. He further contended that H.C. Attaullah who had taken the charas to the Chemical Examiner has not been examined. Counsel for the appellant vigorously argued that safe custody of the charas at Malkhana and its transit to the Chemical Examiner has not been established by cogent evidence. Counsel for the appellant further argued that it was the case of spy information and prosecution witnesses have admitted that place of arrest of accused was surrounded by houses but no private person was called by the Investigation Officer to make them mashir in this case. It is also argued that fair opportunity of the trial was not provided to the appellant. Trial court also failed to cross examine P.Ws on material points to ascertain the truth. Learned advocate for the appellant has also pointed out that there was discrepancy in the sample and description of property as mentioned in chemical report. Lastly, counsel for the appellant submitted that prosecution case was highly doubtful and trial court failed to appreciate the evidence in accordance with law. In support of his contentions, he has relied upon the cases of he has relied upon the cases reported as *IKRAMULLAH & OTHERS v. THE STATE [2015 SCMR 1002]*.

11. Syed Meeral Shah Bukhari, learned Additional P.G. conceded to the contentions raised by learned Advocate for the appellant and stated that no P.Ws. has deposed that charas was in the safe custody at Malkhana and it was safely transmitted to the Chemical Examiner. In these circumstances learned A.P.G. did not support the judgment of the trial court.

12. We have carefully heard learned Counsel for the parties and perused the evidence minutely.

13. We have come to the conclusion that prosecution has failed to prove its case against the appellant beyond any reasonable doubt for the reasons that it was the case of spy information, inspite of that SHO has failed to associate with him lady police constable for the purpose of search of the appellant who was the lady and her personal search was conducted by the SHO himself. Moreover, it has come on record that appellant was arrested in front of her house and her house was surrounded by other houses but no effort whatsoever made by Sub-Inspector to call neighbours to witness the recovery. We have noticed that there are material contradictions in the evidence of prosecution witnesses. Complainant has stated that Mst. Manzooran was arrested on 21.10.2002, on the same point mashir has deposed that she was arrested on 21.07.2003. There are also material contradictions in the evidence of the prosecution witnesses with regard to the pieces of the charas recovered from the possession of the accused. Prosecution evidence was materially contradicted on many material particulars of the case. There was no evidence that charas was kept in safe custody at Malkhana for the period of more than 07 months. It was also not established through H.C. Attaullah that charas was safely transmitted to the Chemical

Examiner for analysis. We have also noticed that appellant, who was the lady was unrepresented. Fair trial was her right as provided under Article 10-A of the Constitution but it was not provided to her. Trial court had failed to put up some question from all the witnesses in order to ascertain the truth it was also not done. In this case there are several circumstances which have created doubt in the prosecution case. On the point of the safe custody of the charas at Malkhana and its safe transit counsel for the appellant has rightly relied upon the case of **IKRAMULLAH & OTHERS V. THE STATE** reported in 2015 SCMR 1002 in which the Honourable Supreme Court has held as under:-

“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 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.”

15. For giving benefit of doubt, it is not necessary that there should be 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 as held by Honourable Supreme Court in the case of **TARIQ PERVEZ v. THE STATE** [1995 SCMR 1345].

16. For the above reasons, while relying upon the above cited authorities, we have no hesitation to hold that prosecution has failed to establish its case against the appellant and the trial court has failed to appreciate the evidence of police officials according to the settled principle of law. There are number of infirmities in the prosecution evidence. Thus prosecution case is doubtful. While extending benefit of doubt appeal is allowed, impugned judgment dated 23.02.2008 is set-aside and the appellant is acquitted of the charge. Learned Advocate for appellant submits that appellant couldn't appear today on account of her illness and requests that his absence may be excused. His bail bond stands cancelled and surety is hereby discharged.

JUDGE

JUDGE