

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

***Cr. Appeal No.D-339 of 2010***

**PRESENT**

*Mr. Justice Naimatullah Phulpoto*

*Mr. Justice Zulfiqar Ahmad Khan*

*Date of Hearing:* 17.04.2017  
*Date of Judgment:* 17.04.2017  
*Appellant/accused:* Abdul Hameed S/o Muhammad Khan Solangi, through Mr.Mian Taj Muhammad Keerio, Advocate.  
*The State* Through Syed Meeral Shah Bukhari, Deputy Prosecutor General, Sindh.

**JUDGMENT**

**NAIMATULLAH PHULPOTO, J:-** Appellant Abdul Hameed faced trial before learned 1<sup>st</sup> Additional Sessions Judge/Special Judge (CNS), Hyderabad in Special Case No.06 of 2009 for offence under Section 9(c) Control of Narcotic Substances Act, 1997. By judgment dated 25.09.2010, the appellant was convicted under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to 02 years R.I and to pay a fine of Rs.20,000/-, in case of default in payment of fine, the appellant was ordered to suffer R.I for 03 months more.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 31.12.2008 SIP Gulsher Sario of P.S Baldia, Hyderabad left Police Station alongwith his subordinate staff namely HC Arif Ali, PCs Ghazi Khan and Mashooque Ali in the Government vehicle vide roznamcha entry No.23 at 1345 hours for

patrolling. While patrolling at various places, when the police party reached at Central Jail, Hyderabad, they saw one person got down from a vehicle, who was carrying a plastic bag in his hand; police found him suspicious. He was surrounded and caught-hold. On inquiry, he disclosed his name as Abdul Hameed S/o Muhammad Khan Solangi. Abdul Hameed further disclosed that he was police constable in police line Dadu. SIP conducted personal search of the accused by making HC Arif Ali and PC Ghazi Khan as mashirs and secured plastic bag from his possession; it was 1430 hours. Plastic bag was opened in presence of mshirs; there were 04 pieces of the charas in sweat box; charas was weighed; it was 1 K.G and 30 grams, out of it, it is alleged that 10 grams were separated as a sample for sending to the Chemical Examiner for analysis. Rest of the charas was separately sealed. Mashirnama of arrest and recovery was prepared. Thereafter, accused and case property were brought to the Police Station, where FIR bearing Crime No.189 of 2008 was lodged against the accused at P.S Baldia, Hyderabad, under Section 9(c) Control of Narcotic Substances Act, 1997.

3. After registration of the FIR, its copy was supplied to SIO Mohammad Siddique Mangi for investigation. SIO Mohammad Siddique started investigation and recorded 161 Cr.P.C statements of the P.Ws and sent a sample of 10 grams of the charas to the Chemical Examiner for analysis. On the conclusion of the

investigation, final report was submitted against the accused under Section 9(c) Control of Narcotic Substances Act, 1997.

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

5. In order to substantiate the charge, prosecution examined P.W-1 complainant SIP Gulsher Sario at Ex-5, who produced arrival and departure entries at Ex-5/A & 5/B, mashirnama of arrest and recovery at Ex-5/C and FIR at Ex-5/D. P.W-2 HC Arif Ali was examined at Ex-6 and P.W-3 SIO Mohammad Siddique Mangi at Ex-7, who produced positive chemical examiner's report at Ex-7/A. Through Ex-8 prosecution closed its side.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-9. Accused claimed false implication in this case and denied the allegations of the prosecution. Plea was raised by the accused that he had submitted an application on 26.12.2008 against SIP Gulsher Sario before DIGP Hyderabad, in which it was stated that SIP Gulsher Sario and his brother ASI Muhammad Yaseen Sario had issued threats to the accused that accused was the Gunman of the DIG and he has got transferred his brother ASI Muhammad Yaseen Sario. Accused Abdul Hameed has further mentioned in the application that SIP Gulsher Sario will probably involve him in the false case. Accused did not lead evidence in defence and declined to give statement on oath.

7. Learned Trial Court after hearing the learned Counsel for the parties and examining the evidence available on record, by judgment dated 25.09.2010, convicted and sentenced the appellant/accused as stated above.

8. 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 25.09.2010, therefore, the same may not be reproduced here, so as to avoid duplication and un-necessary repetition.

9. Mr. Mian Taj Muhammad Keerio, learned Advocate for the appellant mainly contended that it was day time incident; alleged recovery was before the main gate of the Central Prison, Hyderabad; the private persons were present but SIP Gulsher Sario avoided to associate any private person to act as mashir in this case. It is also contended that there is overwriting in the mashirnama of arrest with regard to the time. Learned Advocate for the appellant submitted that there was delay of 10 days in sending sample to the Chemical Examiner and there is no evidence that the charas was in safe custody for 10 days at *Malkhana* of Police Station. Lastly, it is contended that the charas has been foisted upon the accused by SIP Gulsher Sario as he had doubt that accused has got his brother transferred from DIGP, Dadu. In support of his contentions, learned Counsel for the appellant has relied upon the case of *FIDA*

*HUSSAIN V/S. THE STATE (2013 P.Cr.L.J 1237) and IKRAMULLAH V/S. THE STATE (2015 SCMR 1002).*

10. Syed Meeral Shah Bukhari, learned D.P.G did not support the impugned judgment on the grounds that the appellant had submitted an application against SIP Gulsher Sario before the date of arrest of accused. He has also pointed out that according to the case of the prosecution, the sample of the charas was sent to the Chemical Examiner through PC Muhammad Yousuf but as per Chemical Examiner's report, it was sent through PC Murad Hussain but both of them have not been examined by the prosecution. Learned D.P.G argued that Trial Court failed to appreciate evidence according to settled principles of law.

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

12. From the close scrutiny of the evidence, it transpired that the accused was arrested by SIP Gulsher Sario in presence of the mashirs on 31.12.2008 at 1430 hours in front of main gate, Central Prison, Hyderabad. SIP Gulsher Sario has deposed that private persons were not present at the time of arrest and recovery of charas but on the same point mashir Arif Ali in his evidence has deposed that private persons were present but they refused to act as mashir. Even otherwise, it was the day time and it was not difficult for SIP Gulsher Sario to call independent persons to make them as mashirs in this case. We have also observed that in the mashirnama of arrest and recovery, mark of identification of the

charas is not mentioned but the property which was produced before the Court had identification mark, there was no explanation with the prosecution about this ambiguity. It is also matter of the record that according to the case of prosecution charas was recovered from the possession of the accused on 31.12.2008 but its sample was sent to the Chemical Examiner after 10 days viz. 10.01.2009 and no evidence has been brought on the record that the charas was in safe custody for 10 days at Police Station/*Malkhana*. Appellant/accused in his statement recorded under Section 342 Cr.P.C has raised plea that SIP Gulsher Sario had issued him threat for involving in false case and he submitted application before DIGP Dadu on 26.12.2008 against SIP Gulsher Sario. It caused annoyance to SIP Gulsher Sario, he arrested appellant/accused after four days and foisted charas upon him. It is also doubtful that SIP Gulsher Sario has mentioned in his evidence that the present accused got down from the vehicle in a suspicious manner and he inquired his name but plea of the accused is that SIP Gulsher Sario knew him since long and he had submitted an application against him. This clearly shows *mala fide* on the part of complainant SIP Gulsher Sario, who in his deposition did not mention that the accused was a policeman, while this fact finds mention in the FIR. Learned D.P.G has also pointed out that according to the case of the prosecution, the charas was sent to the Chemical Examiner through P.C Muhammad Yousuf but in the Chemical Examiner's report, it is mentioned that it was sent through PC Murad Hussain. According to the case of the

prosecution that from the sweat packet 04 pieces of the charas were secured and 10 grams were separated as a sample for sending to the Chemical Examiner. It is not clear that how many grams were taken from each piece of the charas. The Chemical Examiner's report says that only one piece of 10 grams was received for Examination. There is also overwriting in the timings in the mashirnama of arrest and recovery dated 31.12.2008 Ex-5/C. It has also created doubt in the prosecution case. According to the report of the Chemical Examiner Ex-7/A, SIO P.S Baldia, Hyderabad sent sample of the charas to the Chemical Examiner vide letter No.189/2008 but date of dispatch was not mentioned. There are also several circumstances in this case, which create doubt in the prosecution case. Rightly reliance has been placed upon 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. We have come to conclusion that prosecution has failed to establish its case against the appellant beyond shadow of doubt for the reasons that there are major contradictions in the evidence of the prosecution witnesses. Safe custody of the charas at *Malkhana* has also not been established. In such circumstances, it would be unsafe to rely upon the evidence of the police officials without independent corroboration, which is lacking in this case. 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).

14. For the reasons stated above, appeal is allowed, conviction and sentence recorded vide judgment dated 25.09.2010 are *set-aside*. Appellant is acquitted of the charge. Appellant is present on bail, his bail bond stands cancelled and surety is hereby discharged.

15. Before parting with this judgment, we direct DIGP Hyderabad to take action against SIP Gulsher Sario for lodging false case against the appellant/accused and his un-necessary arrest within three months in accordance with law under intimation to this Court.

JUDGE

JUDGE



Shahid