

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO

MR. JUSTICE RASHEED AHMED SOOMRO

Cr. Appeal No.D-128 of 2016.

Date of Hearing: 22.03.2017.

Date of Decision: 22.03.2017

Appellant : Asif
Through Mr. Ayaz Hussain Tunio, Advocate.

Respondent : The State
Through Syed Meeral Shah D.P.G.

J U D G M E N T

RASHEED AHMED SOOMRO-J:- This appeal has been preferred against the conviction and sentence recorded by the learned Sessions Judge/special Judge CNS Tando Allahyar, vide judgment dated 25.11.2016 in Special Case No.09 of 2016, whereby appellant Asif has been convicted under section 9(c) of C.N.S Act 1997, and sentenced to 5 years and 6 months R.I and to pay fine of Rs.25,000/-, in case of default in payment of fine, appellant has been ordered to suffer further 5 months and 15 days S.I. The appellant was, however, extended benefit of Section 382-B Cr.P.C.

2. The relevant facts of prosecution case are that on 19.06.2016 SIP Rehmatullah Sadar of CIA Centre, Tando Allahyar alongwith his subordinate staff left CIA Centre for patrolling in the area vide DD entry No.12 at 1800 hours. After patrolling different places when they reached

at Van stop Piyaro Lund Station chowk, they received spy Information that Asif s/o Murad Bux Makrani r/o Makrani Paro Tando Allahyar is selling Chars in street of Makrani Para adjacent to Dargah. On such information they proceeded to the pointed place there on the head light of police mobile and the light of bulb they identified the accused, he was having a black colour plastic shopper in his hand; he after seeing the police party made his escape good in the narrow streets of Makrani Paro after leaving the plastic shopper; they secured the said plastic shopper at about 1930 hours and found that three big pieces and 67 rods of chars were lying therein. The charas was weighed, it became 200 grams. Such mashirnama was prepared in presence of mashirs P.C Muhammad Usman and P.C Hammadullah. Thereafter, the complainant brought the accused and charas at P.S A-Section Tando Allahyar where F.I.R bearing Crime No.63 of 2016 was registered against the accused for offence under Section 9(c) of Control of Narcotics Substances Act, 1997.

3. Investigating Officer, during investigation of the case, recorded the statements of the P.Ws under Sections 161 Cr.P.C, sent the chars to the Chemical Examiner for chemical examination and after completion of investigation he submitted challan of the case against accused.

4. Trial Court framed charge (Ex.5) against accused under section 9(c) of Control of Narcotic Substances Act, 1997. Accused pleaded not guilty to the charge, and claimed to be tried.

5. At the trial, the prosecution examined P.W-1/complainant SIP Rehmatullah at Ex.6, he produced Roznamcha entries, mashirnama of

arrest and recovery, and FIR at Ex.7 to 10, P.W-2/mashir at Ex.11, and P.W-3/I.O SIP Muhammad Parwaiz at Ex.12. he produced report of the Chemical Examiner at Ex.13. Thereafter, prosecution closed its side by statement Ex.14

6. Statements of accused (Ex.15) was recorded under Section 342 Cr.P.C by the trial Court. The accused denied the prosecution allegations, and pleaded his innocence. However, he neither examined himself on oath nor led any evidence in his defence.

7. Learned trial Court after hearing the learned counsel for the parties and assessment of evidence convicted and sentenced the accused as stated above.

8. The trial court has already mentioned facts and evidence in the impugned Judgment, therefore, the same need not to be repeated to avoid repetition.

9. Learned Counsel for the appellant contended that there are material contradictions in the evidence of complainant and mashir. He further contended that the sample of chars was sent to the chemical examiner with a considerable delay which makes the report of the Chemical Examiner doubtful. Lastly, he argued impugned judgment is not sustainable in the eyes of law and liable to be set aside.

10. Learned D.P.G for the State argued that all the witnesses have given consistent account and their statements are supported by the report of the Chemical Examiner; and that there are no material contradictions in the evidence of the complainant and P.Ws. He supported the impugned judgment.

11 We have considered the above submissions of learned counsel for the parties and gone through the entire brought on record minutely. Perusal of evidence of complainant, mashir and I.O shows that there are material contradictions in their evidence which are re-produced as under:

1. Complainant and mashir deposed that 67 rods of chars were recovered from the possession of accused while I.O deposed that 03 pieces of charge and 66 rods of chars were handed over to him by the complainant.
2. Complainant deposed that they returned to P.S B-Section Tando Allahyar and got registered FIR of the instant case against accused, while mashir deposed that they returned to P.S A-Section Tando Allahyar there FIR was lodged.
3. Complainant in cross deposed that they reached at CIA Centre Tando Allahyar on the relevant date at 8.00 A.M and so also his staff came there while mashir in cross deposed that on the relevant date of incident he reached at CIA Centre Tando Allahyar for duty at 2100 hours night.
4. Complainant deposed that after leaving CIA Centre, they first went to Disco hotel Tando Allahyar, then chamber Naka, then reached at Station chowk Tando Allahyar while mashir deposed that after leaving CIA Centre, Tando Allahyar, they first came at Tando Adam Naka, then Tando Adam bye pass chowk, Nasarpur bye pass, Keeria Shakh, Disco hotel, main bus stop, Tando Allahyar and Piaro Lund Van stop, railway station Tando Allahyar.
5. Complainant denied the suggestion that present accused was not known to him prior to instant case,

while mashir deposed that “it is fact that present accused was not known to them previously excepting present case”

6. As per prosecution case 03 big pieces and 67 rods of chars were allegedly recovered from the accused, while as per report of the Chemical Examiner 03 slabs and 67 rods of chars were sent to him for chemical examination.

12. The above mentioned contradictions have destroyed the intrinsic value of the prosecution case and the arrest and recovery in the manner as alleged by the prosecution has become totally doubtful.

13. It is settled principle of law that for giving benefit of doubt to accused it is not necessary that there should be many circumstances creating doubt, if a simple circumstance creates reasonable doubt about the guilt of accused he will be entitled to such benefit not as a matter of grace and concession but as a matter of right. In this view I find support from case of Tarique Pervez vs. The State (1995 SCMR 1345). Relevant portion is reproduced as follows:-

“The aforesaid narration of the evidence on record will show that two separate parcels containing one gram heroin sold by the appellant to Muhammad Shafi and one gram heroin separated from heroin weighing 1099 grams were prepared by the police and only one parcel was sent to the Chemical Examiner for examination and report. As such it cannot be said with judicial certainty that the parcel containing sample heroin was sent to the Chemical examiner. The concept of benefit of doubt to an accused

person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance 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. For the above reasons and grounds, I allow this appeal and acquit the appellant of the charge. The appellant/accused shall be released, if not required in any other case.

15. For the reasons as discussed above, we hold that the prosecution has not been able to prove its case against the appellant beyond any reasonable shadow of doubt, therefore, we allow this appeal, set aside the impugned judgment and acquit the appellant Asif of the charge. Appellant is in custody. He shall be released forthwith if not required in some other case.

Above are the reasons of our short order passed on 22.03.2017.

JUDGE

JUDGE