

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Cr. Appeal No.D-68 of 2016**

**PRESENT**

*Mr. Justice Naimatullah Phulpoto*

*Mr. Justice Rasheed Ahmed Soomro*

*Date of Hearing:* 25.01.2017

*Date of Judgment:* 25.01.2011

*Appellant/accused:* *Through Mr. Ashique Hussain D. Solangi, Advocate*

*The State:* *Through Syed Meeral Shah Bukhari, Deputy Prosecutor General, Sindh.*

**JUDGMENT**

**NAIMATULLAH PHULPOTO, J:-** Appellant / accused Wajid alias Wajee S/o Saifal Machhi was tried by the learned Special Judge, CNS, Jamshoro at Kotri for the offence under Section 9(c) Control of Narcotics Substance Act, 1997. After full dressed trial, the appellant/accused was found guilty, he was convicted under Section 9(c) of Control of Narcotics Substance Act, 1997 by judgment dated 07.06.2016 and sentenced to 05 years R.I and to pay a fine of Rs.100,000/- (Rupees One Lac), in case of default in payment of fine, appellant/accused was ordered to suffer 06 months R.I more. However, benefit of Section 382(B) Cr.P.C was extended to him.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 16.02.2015, complainant SIP Ghulam Qadir Panhwar SHO of P.S Budhapur left the police station alongwith his

subordinate staff namely, PCs Mazhar, Ahmed Nawaz and Ghulam Rasool in a private car vide Entry No.10 at 1545 hours for patrolling duty. It was alleged that during patrolling, SHO/complainant received a spy information that one person had Chars in his hand and he was standing at Unarpur Railway Crossing. On such information, the Police party proceeded to the pointed place and reached there at 1630 hours. The present accused was standing there. He was carrying a shopper in his hand, Police surrounded and caught him hold, alongwith shopper. SIP/complainant took shopper in his possession. On the enquiry, the accused disclosed his name as Wajid alias Wajee S/o Saifal Machhi. In presence of the Mashirs, the personal search of the accused was conducted and shopper was opened, it contained Chars. It was further alleged that four notes of Rs.50/- were also recovered from the possession of the accused. Thereafter, Chars was weighed in presence of the Mashirs and it's weight was 1500 Grams. Mashirnama of arrest was prepared in presence of the Mashirs and Chars was sealed at spot. The accused and Chars were brought to the Police Station, where SIP Ghulam Qadir Panhwar, SHO P.S Budhapur lodged FIR against the accused on behalf of the State vide Crime No.01/2015 for the offence under Section 9(c) of Control of Narcotic Substance Act, 1997. After registration of the FIR, during investigation Chars was sent to the Chemical Examiner on 18.02.2015. After finalization of usual investigation, the challan was submitted against the accused for offences under Section 9(c) of Control of Narcotic Substance, 1997.

3. Charge was framed against the accused under Section 9(c) of CNSA, 1997 at Ex-02. The accused pleaded not guilty and claimed to be tried. In order to substantiate the charge, prosecution examined P.W-1 SIP Ghulam Qadir at Ex-04 and P.W-02 P.C Ghulam Rasool at Ex-5. Thereafter, prosecution closed its side.

4. The statement of accused was also recorded under Section 342 Cr.P.C at Ex-07 in which the accused denied the recovery of Chars of 1500 Grams from his possession and stated that Chemical Examiner's report has been managed by the Police and raised plea that the police officials are interested in the case. The accused did not examine himself on oath. No witness has been examined by the accused in his defence.

5. Trial Court after hearing the learned Counsel for the parties and assessment of the evidence, convicted the accused and sentenced as stated above. Hence the accused has filed the present appeal.

6. The facts of the case and evidence adduced by the prosecution have already been mentioned by the learned Trial Court in detail. Therefore, there is no need to repeat the same.

7. Mr. Ashique Hussain D. Solangi, Advocate for appellant/accused contended that though it was the case of spy information but SHO failed to associate independent and respectable persons of locality to witness the recovery proceedings, which reflected malafide on the part of the Police. He

has further contended that there are many material contradictions in the prosecution evidence, which go to the root of the prosecution case. He has referred to the cross-examination of the SHO, wherein the SHO has replied that the Police party had gone to the place of recovery in Taxi and it was driven by a private person. On the same point, he referred to the evidence of the Mashir, who has stated that it was Private Car, which was being driven by Police Constable Mazhar. Learned Counsel for the appellant/accused further argued that complainant/SHO in his cross-examination has replied that it was blue colored car and on the same point the Mashir/P.C Ghulam Rasool in his cross-examination has replied that it was white coloured car. Learned Counsel for appellant/accused has further pointed out the contradiction that SHO has stated that he left the Police Station for patrolling and proceeded to Village Messa, then Budhapur and finally to Unarpur. On the same point, the Mashir has contradicted him and stated in his cross-examination that during patrolling police party proceeded to Gharibabad, thereafter to Unarpur. Learned Counsel for the appellant/accused has further argued that SHO in his cross-examination has replied that FIR was written by W.H.C of the Police Station. On the same point, the Mashir has replied that FIR was written by the SHO himself. Learned Counsel for the appellant/accused further submits that these material contradictions clearly show that the police officials have foisted the Chars upon the appellant/accused for malafide reasons. In support of his contentions, learned Counsel for appellant/accused has

relied upon the cases of *TARIQ PERVEZ V/S. THE STATE (1995 SCMR 1345)* & *MUHAMMAD AKRAM V/S. THE STATE (2009 SCMR 230)*.

8. Syed Meeral Shah Bukhari, D.P.G appearing for the State has contended that no specific enmity has been alleged by the appellant/accused with the police officials. However, he admits that there are material contradictions in the prosecution evidence, for which he has no explanation. He has supported the judgment passed by the Trial Court.

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

10. In order to determine the contradictions as highlighted by the learned Counsel for the appellant, cross-examinations of the SHO and the Mashir are reproduced here-in-below:-

*Cross-Examination to SHO Ghulam Qadir (P.W-1).*

*"I was posted at P.S Budhapur about six months prior to the incident. There was no other FIR of narcotics against accused at P.S Budhapur. We went during patrolling to village Messa, then village Budhapur and then Unarpur, Unarpur would be about 7-8 KMs away from P.S. Village Messa would be about 3 KMs away from P.S. We did not stop at above said places, but we were patrolling. We took about one hour from P.S to Unarpur. The private vehicle was Taxi. I don't remember its registration number. There was driver of the Taxi, but we did not ask name from him. The colour of car was blue and it was Alto car. There was no public*

*person present where we received spy information. The informer after giving information went away. Unarpur Phattak would be about 10 KMs away from P.S. There is no shop adjacent to Railway Phattak. We saw accused from the distance of about one furlong. Accused did not run, but we apprehended him. We did not send any fake purchaser to purchase narcotics from accused. First I apprehended the accused. I took search of accused. I was not having any arms ammunition but Police Constables were equipped with the same. I myself weighed the property. Computer scale was in our investigation box. It is correct to say that I have not disclosed about investigation box in FIR or memo. PC Ghulam Hussain was taking hold of accused during proceedings. I weighed the property within two minutes. I myself prepared the memo within about ten minutes. The memo was prepared in the last after proceedings. It is correct to say that time of our arrival at place of incident is 1630 hours as well as time of preparation of memo is same as 1630 hours. No public person gathered there during our proceedings. We arrived at P.S after the incident after about one hour. The property as kept in malkhana at P.S. The property was kept in malkhana and such entry was made in register No.19. Voluntarily says; I had made arrival entry. I have not produced the entry of register No.19. I myself lodged FIR. It is correct to say that there is difference in handwriting of memo and FIR. The FIR was written by WHC. It is incorrect to say that we brought this accused from Sehwan. It is incorrect to say that we prepared all the documents at P.S. It is incorrect to say that I have foisted the case property against accused in order to show my efficiency. It is correct to say that numbers of currency notes are not*

*mentioned in the memo. It is incorrect to say that I am deposing falsely.*

*Cross-Examination to Mashir Ghulam Rasool (P.W-2).*

*“We went to Gharibabad Morri, then Unarpur during patrolling. We were on patrolling for about one hour. The car was hired by us. I don’t remember its number. The colour of car was white. The driver of car was PC Mazhar. Spy information was received by SHO. No informer accompanied to us to the place of incident. No public person was available at Unarpur Phattak at the time of incident. There is Unarpur village at the distance of about 15-furlong away from Phattak. Unarpur Phattak would be about 4-KMs away from P.S. We stopped car beside the accused, hence we saw him from 2-3 paces. Accused tried to run away, but we apprehended him on spot. SHO first apprehended the accused. SHO was having pistol. Accused was apprehended within the seconds. SHO took search of accused. SHO secured the property from accused. After preparing mashirnama, SHO kept the property in shopper. SHO himself weighed the property with computer scale. During proceedings, accused was in custody of PC Mazhar. The property was weighed at the most within 3-4 minutes. The memo was prepared on spot by SHO. SHO himself written FIR. My statement was recorded on the same time. It is correct to say that numbers of currency notes are not mentioned in the memo. It is incorrect to say that size of pieces of chars in court are not different. Parcel bears signature. There is no time or date on the parcel. It is incorrect to say that accused was brought from Sehwan by the SHO. It is incorrect to say that I am deposing falsely at the instance of SHO. It is incorrect*

*to say that property was not recovered from him and same has been foisted upon him. It is incorrect to say that I am deposing falsely.*

11. From the perusal of the evidence, it transpires that there are material contradictions in the evidence of the SHO as well as Mashir. SHO has replied in his cross-examination that he left P.S alongwith Police party for patrolling on spy information in Taxi, it was being driven by a private person but on the same point, he has been contradicted by Mashir, who has stated that police party had left in a private car, which was being driven by P.C Mazhar. With regard to the colour of car, the SHO in his cross-examination has replied that it was blue coloured car but the Mashir has contradicted him again and stated that it was white coloured car. As regards, the pieces of Chars are concerned; there was also contradiction in the evidence of SHO and Mashir. Learned Counsel for appellant has also pointed out that SHO has replied in his cross-examination that FIR was written by W.H.C of the Police Station concerned and the Mashir in his cross-examination has stated that it was written by the SHO himself. Learned D.P.G has very rightly and frankly conceded that there are material contradictions in the prosecution evidence.

12. From the perusal of the record, we have come to the conclusion that there are several circumstances in the prosecution case, which create reasonable doubt in the prosecution case about the guilt of the accused and the benefit of which would go to the



accused. In the case of *Muhammad Akram V/s. The State (2009 SCMR 230)*, the Honourable Supreme Court has held as follows:-

*“13. The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. the State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.*

*14. In the above noted circumstances, we convert these petitions to appeals which are allowed. The judgments passed by the learned Courts below are set aside. The appellants are acquitted of all the charges and would be released forthwith if not required in any other criminal case”.*

13. The nutshell of the whole discussion is that the prosecution case is not free from doubt. Consequently, the impugned judgment dated 07.06.2016 is set aside and the appeal is allowed. The appellant/accused Wajid alias Wajee is acquitted of the charge. The appellant/accused shall be released forthwith, if he is not required in some other case.

14. These are the reasons for our short order dated 25.01.2017 announced in open Court.

JUDGE

JUDGE