

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO

MR. JUSTICE RASHEED AHMED SOOMRO

Criminal Appeal No.D-05 of 2015

Date of hearing: 15.03.2017.

Date of decision: 15.03.2017.

Appellant : Muhammad Qasim
Through Mr. Shamsuddin Khushik, Advocate.

Respondent : The State
Through Shahzado Salim Nahyoon, A.P.G.

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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 Court (CNS) Tando Muhammad Khan vide judgment dated 12.01.2015 in Special Case No.06 of 2013, whereby the appellant Muhammad Qasim has been convicted under section 9(b) of C.N.S Act, 1997, and sentenced to one year and three months R.I and to pay fine of Rs.9,000/-, and in case of default in payment of fine, he was ordered to suffer further three month 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 01.03.2013 complainant SIP/SHO Imtiaz Ali Nizamani alongwith his sub ordinate staff namely P.C Abdul Haque and P.C Abdul Razzaque left the said police station through official mobile with driver HC Wahid Bux under roznamcha entry No.14 at about 0730 hours for patrolling and apprehending the absconding accused; after visiting different places when they were going through the road leading to Seri by taking the Western side of Pinyari Wah and when they reached adjacent to Musafirkhana of link road leading towards village Ghulam Hussain Soomro, there saw that one person was standing alongwith motorcycle and 03/04 persons were also standing by his side; those persons after seeing the police mobile made their escape good and the person with motorcycle tried to start the motorcycle; they apprehended him at about 1230 hours alongwith motorcycle; on inquiry he disclosed his name to be Muhammad Qasim s/o Muhammad Iqbal, by caste Arain, r/o Chadi Rehmani street Shahi Bazar, Hyderabad city. The motorcycle was checked, it was bearing No.HAA-3082 CD-70 black colour chassis No.IG 469076 and engine No.2660734. Accused failed to produce the registration papers of the said motorcycle. He was arrested and his personal search was conducted, during course thereof secured one white colour plastic shopper from the right side pocket of his shirt, charas was found in it. Two currency notes of Rs.100/= total Rs.200/= were secured from the front side pocket of his shirt; on inquiry he disclosed that he was selling charas; the charas was weighed at the spot, it became 130 grams; out of it 10 grams of charas were separately sealed for chemical examination; the motorcycle was secured u/s 550 Cr.P.C and the

remaining chars was sealed in white colour cloth bag. Due to non availability of the private persons such mashirnama was prepared in presence of mashirs P.Cs Abdul Haque and Abdul Razzaque. Accused and case property were brought to P.S Mulla Katiyar, where complainant lodged F.I.R. against the accused on behalf of State vide Crime Cr.No.06 of 2013 for the offence under Section 9(b) of Control of Narcotics Substances Act, 1997.

3. After registration of F.I.R., complainant/S.H.O recorded the statements of the P.Ws under Section 161 Cr.P.C., sent the sample of chars to the Chemical Examiner for chemical examination, after completion of investigation he submitted challan against the accused under above referred offence.

4. Trial Court framed charge against the accused under section 9(b) of Control of Narcotic Substances Act, 1997 at Ex.2. The accused pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove its' case examined P.W-1 SIP Imtiaz Ali Nizamani at Ex.4, he produced roznamcha entries, memo of arrest and recovery, F.I.R. and chemical report at Ex.4/A to 4/E, P.W-2 PC Abdul Haq Dasti at Ex.5. Thereafter, A.D.P.P closed the side at Ex.6.

6. Statements of accused was recorded under Section 342 Cr.P.C by the trial court wherein he denied the prosecution allegations, and pleaded innocence. However, neither he 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. It may be mentioned here that trial court has mentioned the facts in detail so also the evidence in impugned Judgment. We do not think it necessary to repeat the same, to avoid repetition.

9. The learned counsel for the appellant has contended that there are material contradictions in the evidence of complainant/I.O and mashir; that complainant is also I.O of the case; the sample of chars was sent to the chemical examiner with a considerable delay which made the report of the Chemical Examiner doubtful; that the impugned judgment is not sustainable in the eyes of law and is liable to be set aside.

10. The learned A.P.G has argued that both the witnesses have given consistent account and their statements are supported by the positive report of the Chemical Examiner; the complainant is competent under law to investigate the case. However, he admitted that there is overwriting in the mashirnama of arrest and recovery. He has supported the judgment passed by learned trial court.

11. We have considered the above contentions of learned counsel for the parties and have gone through the entire evidence minutely. In order to prove its case, the prosecution examined two witnesses i.e P.W-1 Imtiaz Ali Nizamani and P.W-2 P.C Abdul Haq Dasti. From perusal of their evidence, following contradictions have been noticed, which are re-produced as under:-

1. P.W-1 Imtiaz Ali Nizamani deposed that mashirnama was

written by P.C Abdul Haq while P.W Abdul Haq, who is mashir, deposed that said mashirnama was written by P.C Abdul Razzak.

2. P.W-1 Imtiaz Ali Nizamani deposed that statements of P.Ws under Section 161 Cr.P.C were recorded by him, while mashir P.W Abdul Haq deposed that statements under Section 161 Cr.P.C were recorded by Munshi.

12. In the cases of narcotics Chemical Analyzer's report plays very important role. The complainant/I.O has deposed that he sent the sample to the Chemical Examiner on the next date through HC Imtiaz Ahmed. Perusal of report of the Chemical Examiner shows that the said Head Constable deposited the parcel of case property in the office of the Chemical Examiner on 04-03-2013 i.e. after 02 days of its handing over to him by the complainant/I.O. The prosecution has not examined HC Imtiaz Ahmed to explain whether the property for two days was kept in safe custody with Imtiaz Ahmed or not; this aspect of the case also made the whole prosecution case 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.

14. For what has been discussed above, we are of the opinion that the prosecution has failed 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 of the charge. The appellant is present on bail, his bail bonds stand cancelled and surety is hereby discharged.

These are the reasons of our short order dated 15.03.2017.

JUDGE

JUDGE