

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Appeal No.D-96 of 2014

PRESENT

Mr. Justice Naimatullah Phulpoto
Mr. Justice Rasheed Ahmed Soomro

Date of Hearing: 21.03.2017
Date of Judgment: 21.03.2017
Appellant/accused: Through Mr. Abdul Hameed Bajwa,
Advocate
The State: Through Syed Meeral Shah Bukhari,
Deputy Prosecutor General, Sindh.

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Alam S/o Morio Kerio was tried by learned Special Judge (CNS), Sanghar for the offence under Section 9(b) of Control of Narcotic Substances Act, 1997. By judgment dated 24.09.2014, the appellant was convicted under Section 9(b) of Control of Narcotic Substances Act, 1997 and sentenced to suffer 02 years R.I with a fine of Rs.10,000/-, in case of default in payment of fine to suffer S.I for 90 days more.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 30.01.2012 at 1600 hours, complainant SHO/SIP Khuda Bux Arbab, of P.S Sinjhoru left the Police Station vide roznamcha entry No.08 alongwith subordinate staff for patrolling and while patrolling at different places, the police party reached at

curve of Raotiyani. SIP received spy information that two persons were selling charas near Basic Health Unit Raotiyani. Having received such information, the police party proceeded to the pointed place and reached there at about 1800 hours and saw both the persons sitting near the boundary wall of Basic Health Unit Raotiyani. It is alleged that accused seeing the police mobile, tried to run away but one of them was apprehended by the Police, while other accused succeeded to run away. On inquiry, apprehended accused disclosed his name as Alam S/o Morio Kerio and he disclosed name of co-accused as Allahyar S/o Ramzan Khorkhani. Personal search of accused was conducted in presence of mashirs, During the search a black polythene shopper was secured from his possession, it contained 08 pieces of charas weighing 310 grams, out of which it is alleged that the complainant took small quantity from each piece and total 10 grams were separated for sending to the chemical examiner for analysis as well as notes of Rs.500/-. At some distance police party secured a white polythene shopper lying on the ground, it was opened, it contained 10 pieces of charas, weighing about 290 grams, out of which, a small quantity from each piece of charas viz. 10 grams were separated for sending it to the chemical examiner for its analysis. The present accused admitted that said polythene bag belonged to absconding accused Allahyar. Mashirnama of arrest and recovery was prepared in presence of the Mashirs ASI Imtiaz Ali Zardari and P.C Nabi Bux. Thereafter, the accused and case property were brought to the Police Station, where SIP Khuda Bux Arbab lodged the FIR

against the accused on behalf of the State, it was recorded vide Crime No.08//2012 for the offence under Section 9(b) of CNS Act, 1997.

3. During the investigation, 161 Cr.P.C statement of P.Ws were recorded. Samples of charas were sent to the chemical examiner and positive report was received. On the completion of the investigation, challan was submitted against the accused under Section 9(b) of CNS Act, 1997.

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

5. The prosecution to prove its case examined P.W-1 Mashir ASI Imtiaz Ali Zardari at Ex-7, who produced memo of arrest and recovery as Ex-7/A and attested copy of roznamcha entry No.8 at Ex-7/B, P.W-02 complainant SIP Khuda Bux Arbab, who is also I.O of the case was examined at Ex-8, who produced FIR at Ex-8/A and chemical examiner's report at Ex-8/B. Thereafter, the prosecution closed the side vide statement dated 15.01.2014 at Ex-9.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-10, wherein the accused denied the recovery of charas from his possession and claimed his innocence. Accused neither examined himself on oath nor led any evidence in his defence. Trial Court after hearing the learned Counsel for the

parties and on assessment of the evidence, convicted and sentenced the appellant/accused as stated above.

7. Mr. Abdul Hameed Bajwa, learned Advocate for the appellant contended that on same set of evidence co-accused Allahyar has been acquitted by the Trial Court and conviction of the appellant on same evidence was unwarranted in law. It is further contended that it was the case of spy information, appellant was arrested near Basic Health Center but the complainant/I.O failed to associate any private person of the locality to witness the recovery proceedings. It is contended that there are material contradictions in the evidence of the prosecution witnesses with regard to the route of patrolling and recovery proceedings. Lastly, it is contended that the appellant was arrested by the Police at the instance of one influential person of locality namely Wariyam Faqeer due to enmity. In support of his contentions, learned Counsel for appellant has relied upon the case of *Zulfiqar Ali V/s. The State (1994 SCMR 548)*.

8. On the other hand, Syed Meeral Shah Bukhari, learned Deputy Prosecutor General argued that 390 grams of charas was recovered from the possession of the accused and P.Ws have fully supported the case of the prosecution. However, he conceded that on the same set of evidence co-accused has been acquitted by the Trial Court. Learned D.P.G opposed the appeal.

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 24.09.2014, therefore, the same may not be reproduced here, so as to avoid duplication and unnecessary repetition.

10. We have carefully heard the learned Counsel for the parties and scanned the entire evidence. We have come to the conclusion that the prosecution has failed to substantiate the charge against the appellant/accused Alam for the reasons that it was the case of spy information and the accused was arrested near Basic Health Center but the Investigating Officer failed to associate any private person of the locality to witness the recovery proceedings, particularly, in the background when the accused has raised a specific plea that he has been involved in this case at the instance of one influential person namely Wariyam Faqeer. According to the case of the prosecution, acquitted accused Allahyar ran away from the police party from the scene of occurrence. According to prosecution case, SIP Khuda Bux Arbab had a large number of his subordinate staff having official arms and ammunitions, it is unbelievable that accused Allahyar succeeded in running away from the police party so easily. Learned Advocate for the appellant has pointed out the material contradictions in evidence of prosecution witnesses with regard to the route of patrolling and recovery of proceedings but the learned D.P.G could not explain such contradictions. In the criminal case a single

circumstance favourable to the accused is sufficient to extend him benefit of doubt but in this case there are several circumstances, which created doubt in the prosecution case. It is the matter of the record that the accused was arrested from thickly populated area. It is quite certain that the applicability of provisions of Section 103 Cr.P.C has been excluded under the Control of Narcotic Substances Act, 1997, yet, it does not debar or prohibit the officers making recoveries on such places, which are necessarily surrounded by people to take some steps/measures to associated private persons in the process so as to lend credence to the recovery and create confidence in general public, which is in the process of quick erosion so far as the role of police and other law enforcement agencies is concerned. It has been held by the Honourable Supreme Court in the case of *Muhammad Hashim v. The State (PLD 2004 SC 856)* that under the Control of Narcotic Substances Act, 1997 stringent punishments have been provided if a case under Section 9 of the Act is proved. Therefore, the provisions of the said Act have to be construed very strictly. It is high time for the Courts to ensure that the proceedings of recovery and seizure are made in the most transparent and confidence inspiring manner so as to protect the innocent citizens from the highhandedness of the law-enforcers, and to save them from the agony of uncalled for trials. In this case, appellant has raised a specific plea that he has been involved falsely by police at the instance of one Wariyam Faqeer, who is an influential person of the locality. In the view of defects in the prosecution case, we are

unable to rely upon evidence of police officials without independent corroboration which is lacking in this case. Conviction cannot be based on such type of evidence. Rightly reliance has been placed upon the case of *Khalil Ahmed V/s. The State (PLD 2008 Karachi 8)*,

11. 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 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/s. The State (1995 SCMR 1345)*.

12. For the above stated reasons, we have come to conclusion that prosecution case is highly doubtful. Hence, appeal is accepted, resultantly, conviction and sentence recorded by the Trial Court vide judgment dated 24.09.2014 are set aside. Appellant is present on bail, his bail bond stands cancelled and surety discharged. These are the reasons for our short order dated 21.03.2017 announced in open Court.

JUDGE

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