

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Spl. Cr. Appeal No.D-156 of 2005

PRESENT

Mr. Justice Naimatullah Phulpoto
Mr. Justice Rasheed Ahmed Soomro

Date of Hearing: 24.03.2017

Date of Judgment: 24.03.2017

Appellant/accused: Through Mr. Aijaz Shaikh, Advocate

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

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Mumtaz Ali S/o Laik Mallah was tried by learned Special Judge (NARCOTICS) Dadu in Special Case No.189/2005 under Section 9(b) Control of Narcotic Substances Act, 1997. Trial Court vide judgment dated 14.11.2005 convicted the appellant under Section 9(b) of Control of Narcotic Substances Act, 1997 and sentenced to suffer 2 years 6 months 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. 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 18.06.2005 complainant SIP Salahuddin Memon, Incharge CIC Center Dadu left CIC Cell vide roznamcha entry No.12 for patrolling duty. CIC officials while patrolling reached at

Moundar Octroi Post, where they received spy information that one person was selling charas at Shahbaz Colony Chowk. On such information, CIC officials proceeded to the pointed place, where present accused was found standing in a suspicious manner, he was surrounded and caught-hold. On inquiry he disclosed his name as Mumtaz Mallah. SIP Salahuddin conducted personal search of the accused in presence of the mashirs namely ASI Ghulam Shabir and Head Constable Muhammad Alam. From the fold of shalwar of the accused a plastic shopper was recovered, it contained 20 small pieces of charas. Cash of Rs.50/- was also recovered. SIP weighed the charas, it was 250 grams and the same was sealed at the spot in presence of the mashirs for sending to the chemical examiner for analysis. Mashirnama of arrest and recovery was prepared. Thereafter, the accused and case property were brought to the police station, where roznamcha entry No.12 was incorporated in 154 Cr.P.C book of Police Station, Dadu.

3. During the investigation, charas was sent to the chemical examiner and positive report was received. On the completion of usual investigation, challan was submitted against the accused under Section 9(b) Control of Narcotic Substances 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. At the trial, the prosecution examined P.W-1 complainant SIP Salahuddin at Ex-4, who produced memo of arrest and recovery at Ex-4/A, attested copy of roznamcha entries at Ex-4/B and 4/C, FIR at Ex-4/D and chemical examiner's report at Ex-4/E. P.W-2 ASI Ghulam Shabir was examined at Ex-5. Thereafter, prosecution side was closed vide statement at Ex-6.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-7. Accused claimed false implication in this case and denied prosecution allegation. Accused did not examine himself on oath. No evidence was led in defence by accused. Trial Court after hearing the learned Counsel for the parties and on assessment of the evidence convicted and sentenced the appellant as stated above. Hence, present appeal is filed against his conviction and sentence.

7. Mr. Aijaz Shaikh, learned Advocate for appellant contended that it was the case of spy information and the accused was arrested at Shahbaz Colony Chowk but SIP Salahuddin failed to associate any independent and respectable person of the locality to make him mashir of recovery proceedings. It is further contended that charas was recovered from the possession of the accused on 18.06.2005 but the same was sent to the chemical examiner on 27.07.2005 without any explanation. It is further contended that case property was also not sealed at the spot, as such positive report of chemical examiner was highly doubtful.

8. Syed Meeral Shah Bukhari, learned D.P.G conceded to the contentions raised by learned Advocate for appellant and did not support the judgment of Trial Court.

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 14.11.2005, therefore, the same may not be reproduced here, so as to avoid duplication and unnecessary repetition.

10. After hearing the learned Counsel for the parties, we have scanned the entire evidence. It is matter of the record that SIP Salahuddin Memon, Incharge CIC Cell Dadu left CIC Center on 18.06.2005 for patrolling alongwith his subordinate staff. He received spy information that present accused was standing at Shahbaz Chowk and he was in possession of the charas. In spite of spy information, SIP Salahuddin Memon did not bother to associate private persons to make as mashir of arrest and recovery, though they were present at the spot. Learned Advocate for the appellant has pointed out the material contradictions in the evidence of the prosecution witnesses with regard to the places patrolled by the excise officials and other material particulars of the case. After recovery of the charas from the possession of the accused, it was not sealed at the spot for the reasons best known to I.O. Moreover, charas was sent to the chemical examiner after one month of the recovery for which no plausible explanation has been furnished. Prosecution has failed to satisfy us that charas

was in safe custody for such long period. Accused in his statement recorded under Section 342 Cr.P.C has raised plea that he has been falsely implicated in this case and the police officials are interested and the report of the chemical examiner has been managed. In these circumstances, we are unable to rely upon the evidence of the police officials without independent corroboration, which is lacking in this case. No doubt, the evidence of the police officials is as good as of other private persons but in view of the defects in the prosecution case, it would be unsafe to rely upon such type of evidence without independent corroboration. It has been held by the Honourable Supreme Court in the case of *Muhammad Hashim V/s. The State (PLD 2004 SC 856)* that under the Control of Narcotic Substances Act, 1997 stringent sentences have been provided if offence charged 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, the accused has raised a specific plea that he has been falsely involved by the police. In the view of above defects/infirmities, false implication of accused cannot be ruled out.

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 what has been discussed above, we have come to the conclusion that prosecution case is highly doubtful and thus prosecution has failed to prove its case against the appellant beyond shadow of doubt. This appeal is, therefore, allowed. Conviction and sentence recorded by the Trial Court vide judgment dated 14.11.2005 are set aside. Appellant is acquitted of the charge by extending benefit of doubt to him. He is present on bail, his bail bond stands cancelled and surety is hereby discharged. These are the reasons for our short order dated 24.03.2017 announced in open Court.

JUDGE

JUDGE