

THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No.517 of 2017

Before: **Mr. Naimatullah Phulphoto and
Mr. Shamsuddin Abbasi, JJ.**

Appellant: Muhammad Aamir alias Pappa,
through Mr. Liaquat Ali Hamid,
Advocate

Respondent: The State, through Mr.
Muhammad Iqbal Awan,
Addl. P.G.

Date of hearings: _____ 23.02.2018.

JUDGMENT

Shamsuddin Abbasi-J,--- Appellant Muhammad Aamir alias Pappa son of Muhammad Ameen, has filed the instant appeal against the judgment dated 25.10.2017, passed by learned Special Court-1 (Control of Narcotics Substance) Karachi in Special Case No.627 of 2016 arising out of FIR No.242/16, of Police Station Orangi Town Karachi, under Section 9(c) Control of Narcotic Substances Act, 1997. The appellant was convicted under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced for 2 years and 2 months R.I and to pay fine of Rs.20,000/- in case of default of payment of fine to further undergo simple imprisonment for ten days. Appellant was extended benefit of Section 382-B, Cr.P.C.

2. The brief facts of the prosecution case are that on 03.12.2016 at 1230 hours, SIP Muhammad Bashir, Police Station Orangi Town, Karachi lodged report on behalf of the State stating therein that he alongwith his subordinate staff was on patrolling duty when police party reached at Katcha track near M.P.R Colony Graveyard, Orangi Town Karachi, found a person standing in suspicious condition, holding a plastic shopper in his hand, police apprehended him on inquiry, he disclosed his name as Muhammad Aamir alias papa son of Muhammad Ameen. Due to non-presence of private persons, SI Muhammad Bashir made P.Cs Ali Ahmed and Asghar as mashirs and conducted personal search in presence of mashirs and recovered one 32 bore revolver, containing 4 bullets from left side of trouser, which was taken into police possession. Accused had no licence, police conducted further personal search and recovered a blue colour plastic shopper, from his right hand which it contained one ball cracker bomb upon which red coloured tape was wrapped. Police conducted further search and recovered two pieces of charas it was 2200 grams. Case property viz revolver was sealed at spot. Accused and case property were brought at police station. Cases/FIRs bearing Crime No.240/2016 under Section 4/5 of explosive Act, Crime No.241/2016 under Section 23(1)(a) SAA, 2013 and Crime of present case being No.242/2016 under Section 6/9 (c) CNS

Act, were registered against the appellant on behalf of the State.

3. After registration of the FIRs complainant handed over the investigation to SIP Noor Ahmed who received FIR of this Case, Mashirnama of arrest and recovery, roznamcha entry No.36 and started investigation. He visited place of incident, on the pointation of complainant and prepared such mashirnama of place of incident in presence of mashirs and recorded statements of PWs under Section 161 Cr.P.C. On 5.12.2016 he deposited the sealed parcel of charas in the office of Chemical Examiner for examination for report. He collected positive report of Chemical Examiner and submitted challan against the accused before the competent Court of law. Joint trial was held in terms of Section 21 M of ATC 1997.

4. Trial Court framed the charge against the accused at Ex.3 for which accused did not plead guilty and claimed to be tried.

5. The prosecution in order to prove its case. examined SIP Muhammad Bashir, at Ex.4, he has produced attested photo copy of roznamcha entry No.5 at Ex.4/A, mashirnama of arrest and recovery at Ex.4/B, FIR at Ex.4/C, attested photo copy of original roznamcha entry No.14 at Ex.4/D. P.W. 2 who is mashirs examined at Ex.5, who produced mashirnama of place of incident at Ex.5/A and finally prosecution has examined SIP Noor Ahmed, Investigation

officer, who produced photo copy of roznamcha entry No.36, at Ex.6/A, positive chemical report at Ex.6/C, photo copy of FIR No.57 of 1997 of Police Station Orangi Town, at Ex.6/F, photo copy of FIR No.266/98, under Section 23(1)(a) Sindh Arms Act 2013, in which proceeding were stopped at Ex.6/G. Thereafter, prosecution closed their side vide statement at Ex.7.

6. Statement of accused was recorded under Section 342 Cr.P.C, at Ex.8. Accused has denied the prosecution allegations. Accused has further taken the plea that he was affiliated with MQM Pakistan, therefore, due to political rivalry, he has been implicated in this case falsely. The accused neither examined himself on oath nor examined defence witness and prayed for justice. Trial court after hearing the learned counsel for the parties and examination of evidence convicted appellant as stated above.

7. Learned counsel for the appellant contended that the appellant was arrested by police on 03.12.2016 at 1030 hours and joint mashirnama of recovery was prepared at the time of arrest. It is further argued that police recovered one 32 bore Revolver containing four live bullets , one ball cracker bomb and so also two pieces of charas weighing 2200 grams from the possession of the appellant and for that the police had registered three FIRs against the appellant bearing FIR No.240/2016 under Section 5/6 of explosive Substances Act,

read with Section 7 ATC, 1997, FIR No.241/16, under Section 23(1) A of Sindh Arms Act, 2013, and FIR No.242 of 2016, under Section 6/9 (C) of Control of Narcotic Substances Act, 1997. The learned counsel for the appellant further contended that the appellant has been acquitted in two FIRs/cases for the recovery of bomb and pistol and he has placed the copy of judgment passed by learned Assistant Sessions Judge, XII Karachi West in Sessions Case No.587/17, Re. The State Vs. Muhammad Aamir @ Papa son of Muhammad Ameen, arising out of FIR No.241/16 of police station Orangi Town, Karachi under Section 23(1)(a) Sindh Arms Act, 2013. The learned counsel for the appellant further submits that FIR No.240/16, under Section 4/5 Explosive Substance Act, and was recommended for disposal by the police under cancelled "C" Class and said summary was accepted by the learned Judge of ATC No. IX Karachi vide order dated 28.02.2017 on the ground that no bomb/explosive substance was recovered from the possession of the accused. He further contended that there are material contradictions in between the deposition of PWs. He further contended that mashirnama of place of incident did not show the name of place of arrest and recovery story was doubt full and no independent evidence is available on record.

8. On the other hand learned state counsel submits that the prosecution had examined in all three witness who have fully supported the case of prosecution and prosecution has

succeeded to prove the guilt of appellant beyond any doubt of shadow.

9. Heard the learned counsel for the appellant as well as Additional Prosecutor General and perused the record. It is the case of prosecution that police had recovered one bomb, one 32 bore revolver containing four bullets and 2200 grams charas from the possession of the appellant and for that police registered three FIRs against the appellant bearing FIR Nos.240 to 242/16. The first FIR No. 240/16 was cancelled under "C" class and such summary has been approved by concerned Magistrate on the ground that bomb disposal officer has furnished report that no bomb/explosive substance was found, on the basis of such report the case was recommended for under "C" class and such summary has been approved by the concerned court vide order dated 28.02.2017 and as for the second FIR No.241/16, under Section 23(1)(a) of Sindh Arms Act, 2013 is concerned, the case was challaned and the learned trial court after full dressed trial has acquitted the appellant from the charge of recovery of revolver alongwith four live bullets on the basis of material contradictions in the evidence of prosecution witnesses. The benefit of doubt was extended to the appellant and he was acquitted of the charge of recovery of revolver as well as recovery of bullets. It appears that the police has managed these cases against the appellant. Prosecution has

failed to bring guilt of accused with reasonable shadow of doubt.

10. It is matter of record that the police had recovered Charas on 03.12.2016 at 1230 hours but it was sent to the chemical examiner on 05.12.2016. The prosecution has failed to establish safe custody of charas at police station as prosecution neither produced any record which shows that property was deposited in Malkana nor prosecution have examined Mahaurer or a person who deposited the case property to office of chemical examiner. Rightly, reliance is placed upon the case reported in 2015 SCMR 1002, Ikramullah and others Vs. The state. The honourable apex Court has held as under:-

“In the case in hand not only the report submitted by the chemical examiner was legally laconic but safe custody of the recovered substances as well as safe transmission of the separated samples to the office of Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial Court had failed to even to mention the name of the police officer who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance

had safely been transmitted to the office of the chemical examiner without the same being tampered with or replaced while in transit”.

11. It is well settled law that it is not necessary that there should be many circumstance creating doubts, if there is a single substance, which creates reasonable doubt in mind about the guilt of the accused, then accused will be entitled to the benefit not for the matter of place and concession but the matter of right the case of Tariq Pervez Vs. The State, reported in 1995 SCMR 1345, in which the Honourable Supreme Court has observed as follows:-

“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 circumstances 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”.

12. For the above stated reasons we hold that the prosecution has failed to prove its case against the appellant, therefore, we extending the benefit of doubt, appeal is allowed and conviction and sentence recorded by the trial Court are set aside and the appellant is acquitted of the charge. These are the reasons of our short order recorded by us on 23.02.2018.

JUDGE

JUDGE

Karachi.

Dated _____