

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Appeal No. S- 391 of 2019

Appellant : Ghulam Muhammad son of Muhammad Umer
Through Mr. Zeeshan Ali Memon, Advocate who is
called absent today.

The State : Through Mr. Shewak Rathore, D.P.G.

Date of hearing : 29.05.2020

Date of decision : 29.05.2020.

J U D G M E N T

IRSHAD ALI SHAH-J; The appellant by way of instant appeal has impugned judgment dated 27.11.2019, passed by learned 1st Additional Sessions Judge, Tando Muhammad Khan, whereby she has convicted and sentenced the appellant as under;

“Accused Ghulam Muhammad S/o Muhammad Umer is hereby convicted under Section 265-H(ii) Cr.P.C. He is given conviction in sections 269, 270, 337-J PPC. He is convicted for two years and fine of Rs.10,000/-, in case of failure of payment of fine, he shall further suffer simple imprisonment for six months more.”

2. The conviction awarded to the appellant is jumble which is contrary to the mandate contained by subsection 2 to Section 367 Cr.P.C. which lays down that judgment shall specify individually the offence and penal sections for which the accused is convicted.
3. The case of the prosecution against the appellant is that he was found in possession of contraband substance alleged to be

poisonous and was intending to spread infection/disease likely to cause hurt to person or to be dangerous/poisonous to human lives, for that he was booked and reported upon by the police.

4. The appellant did not plead guilty to the charge and prosecution to prove it examined, P.W-1 complainant / I.O ASI Qaimduddin, PW-2 P.C Waqar Ahmed and then closed the side.

5. The appellant in his statement recorded u/s. 342 Cr.P.C denied the prosecution allegation by pleading innocence. He did not examine anyone in his defence or himself on oath to disprove the charge against him.

6. On evaluation of evidence, so produced by the prosecution, the appellant has been convicted and sentenced accordingly by learned trial Court by way of impugned judgment.

7. None has come forward to argue the appeal on behalf of appellant, however, learned DPG for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

8. I have considered the above arguments and perused the record.

9. Admittedly, there is no independent witness to the incident. As per report of chemical examiner, the substance analyzed by him was not found to be recommended for human consumption within meaning of Section (5) of the Pure Food Ordinance, 1960 and

it also contravenes the provision of Rule (11) of Sindh Pure Food Rules, 1965. Surprisingly, neither of such section was applied by the police against the appellant while submitting the final charge sheet against him. No hurt is caused to any one by means of alleged substance by the appellant. No question is put to the appellant during course of his examination under Section 342 Cr.P.C. to have his explanation on report of Chemical Examiner, which appears to be surprising therefore legally the report of Chemical Examiner could not be used against the appellant. Neither, the incharge of "Malkhana" nor the person who has taken the alleged substance to the chemical examiner has been examined by the prosecution to prove its safe custody and transmission.

10. In case of ***Ikramullah and others vs. The State (2015 SCMR-1003)***, it has been held by the Honourable Apex Court that;

"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. The discussion involves the conclusion that the prosecution has not been able to prove its case against the appellant beyond the shadow of doubt and to such benefit he is found entitled.

12. In case of ***Faheem Ahmed Farooqui vs. The State (2008 SCMR-1572)***, it is held that;

“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

13. For what has been discussed above, the conviction and sentence recorded against the appellant together with the impugned judgment are set-aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant is on bail, his bail bond is cancelled and surety is discharged.

14. The instant appeal is allowed accordingly.

J U D G E