

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Criminal Appeal No.D- 43 of 2015

Before;

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Irshad Ali Shah

Appellant: Naveed son of Nawaz Ali Samoo,
Through Mr. Yaseen Laghari Advocate.

State: Ms. Sana Memon,A.P.G.

Date of hearing: 17.11.2020

Date of decision: 17.11.2020

JUDGMENT

IRSHAD ALI SHAH, J. It is alleged that on arrest from appellant was secured 1140 grams of Chars by police party of P.S ADRC and ACLC, Tando Allahyar led by SIP Muhammad Anwar, for that he was booked and reported upon.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it, examined Complainant SIP Muhammad Anwar, PW Mashir ASI Dilshad Ali and SIO/SIP Zulfiqar Ali and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, however he did not examine himself on oath but examined DWs Muhammad Rizwan and Muhammad Rashid in his defence and then closed the side.

4. It was stated by DWs Muhammad Rizwan and Muhammad Rashid that the appellant is their neighbor, he was taken by the police and was involved in this case falsely by foisting the Chars upon him.

5. On conclusion of the trial, learned Sessions Judge/Special Judge For CNS, Tando Allahyar found the appellant guilty for an offence punishable u/s 9(c) of CNS Act and then convicted and sentenced him to undergo

Rigorous Imprisonment for four years and to pay fine of Rs.10,000/= and in case of his failure, to make payment of fine to undergo Rigorous Imprisonment for three months with benefit of section 382-B Cr.P.C vide his judgment dated 29.04.2015, which is impugned by the appellant before this Court by way of instant appeal.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; there is no independent witness to the incident and prosecution has failed to prove safe custody and transmission of sample of chars to chemical examiner. By contending so, he sought for acquittal of the appellant.

7. Learned A.P.G for the State has prayed for dismissal of the instant appeal by supporting the impugned judgment.

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

9. The complainant admittedly was having advanced information of the incident yet he has failed to associate with him any independent person to witness the possible arrest of the appellant and recovery of chars from him, such omission on his part could not be overlooked. The sample of charas has been subjected to chemical examiner with delay of two days in its recovery, which is significant. The Incharge of the Malkhana and the person who has taken the Chars to the chemical examiner have not been examined by the prosecution to prove the safe custody of the chars and transmission of the sample of the charas to the chemical examiner. Such omission on the part of prosecution could not be ignored.

10. In case of **Ikramullah & ors vs. the State (2015 SCMR-1002)**, it has been observed by Hon'ble apex court that;

"In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the 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 official who had taken the samples to the office of Chemical Examiner and admittedly no such police official had been produced before the learned 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. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt to such benefit the appellant is found to be entitled.

12. In case of **Muhammad Masha vs The State (2018 SCMR 772)**, it was observed by the Hon'ble Supreme Court of Pakistan that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), GhulamQadir and 2 others

v.The State (2008 SCMR 1221), Muhammad Akram v.The State (2009 SCMR 230) and Muhammad Zaman v.The State (2014 SCMR 749)."

13. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, consequently, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The appellant is in custody, he shall be released forthwith in the present case.

14. The instant appeal is disposed of accordingly.

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