

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.D- 64 of 2017**

**Before;**

Mr. Justice Irshad Ali Shah  
Mr. Justice Amjad Ali Sahito

**Appellants:** Muhammad Imran son of Muhammad Usman Malik and Saeed Ahmed son of Shafiq Ahmed Qureshi,  
Through Mr. Saeed Shams, advocate holds brief for Mr. Rashid Raees, advocate.

**State:** Ms. Rameshan Oad, A.P.G

**Date of hearing:** 16.12.2019

**Date of decision:** 16.12.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** It is alleged that the appellants were found to be in possession of 150 and 175 grams of charas by police party of PS Piniyari Hyderabad led by complainant SIP Ayaz Ali Baladi, for that they were booked and reported upon.

2. At trial, appellants did not plead guilty to the charge and prosecution to prove it, examined Complainant SIP Ayaz Baladi and his witnesses, then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence. They did not examine anyone in their defence or themselves on oath to disprove the prosecution allegation against them.

4. On conclusion of the trial, learned Illrd Additonal Sessions Judge/Special Judge Control of Narcotics Substances, Hyderabad found the appellants to be guilty for offence punishable u/s 9(b)of CNS Act, and then convicted and sentenced the appellants to undergo Rigorous

Imprisonment for three years and to pay fine of Rs.30,000/= each and in case of their failure, to make payment of fine to undergo Simple Imprisonment for one month with benefit of section 382-B Cr.P.C vide his judgment dated 19.06.2017, which is impugned by the appellants before this Court by way of instant appeal.

5. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police; there is no independent witness to the incident; the samples of charas have been subjected to chemical examination with un-plausible delay of about six days to its recovery; the prosecution has not been able to prove the safe custody of charas and transmission of its samples to chemical examiner and the evidence produced by the prosecution being inconsistent and unreliable has been believed by learned trial Court without lawful justification. By contending so, she sought for acquittal of the appellants.

6. Learned A.P.G for the State has recorded no objection to the acquittal of the appellants by conceding to the infirmities which are pointed out by learned counsel for the appellants.

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

8. There is no independent witness to the incident. The samples of the chars have been subjected to chemical examination with delay of about six days. None has been examined by the prosecution to prove the safe custody of the charas and transmission of the sample whereof to the chemical examiner.

9. 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”.*

10. The discussion involved a conclusion that the case of the prosecution is not free from doubt and appellants are appearing to be entitled to such benefit.

11. 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), Ghulam Qadir 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).”***

12. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants together with the impugned

judgment are set-aside, consequently, the appellants are acquitted of the offence, for which they have been charged, tried and convicted by the learned trial court, they are present in Court on bail, their bail bond is cancelled and surety is discharged.

13. The instant appeal is disposed of accordingly.

**J U D G E**

**J U D G E**

Ahmed/Pa