

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Cr.Jail.Appeal.No.D- 77 of 2017

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Appellant : Haneef s/o Muhammad Bux by caste Brohi
through Mr. Tilok Chand, Advocate.

Respondent : The State
through Syed Meeral Shah, A.P.G.

Date of hearing : 03.05.2018

Date of judgment : 14.05.2018

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant Haneef Brohi faced trial before the learned Special Judge (Narcotics) Shaheed Benazirabad in Special Case No. 600 of 2016. After full-dressed trial, vide judgment dated 04.05.2017, appellant was convicted u/s 9 (c) of CNS Act, 1997 and sentenced to suffer 10 years RI and to pay fine of Rs.300,000/-. In case of default in payment of fine, appellant was ordered to suffer S.I for 01 year more. Appellant was extended benefit of Section 382-B Cr.P.C.

2. The prosecution case as emerged from the recitals contained in first information report and the evidence adduced during the trial is as under:-

3. That on 27.10.2016 complainant SIP/SHO Muhammad Iqbal Wassan along with his subordinate staff left police station in the

Government mobile for patrolling duty vide roznamcha entry No.19 at 1730 hours. During patrolling when police party reached at Jam Sahib Road, where SHO received spy information that the appellant was present at Talpur Railway Crossing and he was carrying charas with him. On such information, police party proceeded to the pointed place and reached there at 1830 hours. Present accused was found in possession of one plastic bag. He tried to run away but he was surrounded and caught hold. On inquiry, he disclosed his name as Hanif s/o Muhammad Bux Brohi r/o Village Haji Imamuddin Brohi, Taluka Sakrand. Black plastic shopper was opened it contained 25 pieces of charas. Narcotic substance was weighed it became 10000 grams (Ten Kilogram). Cash of Rs.500/- were also recovered from the possession of accused. Case property was sealed at the spot. Accused was arrested. Mashirnama of arrest and recovery was prepared in presence of mashirs. Thereafter, accused and case property were brought at police station B-Section Nawabshah where FIR was lodged against the accused vide Crime No.127/2016 under section 9 (c) of CNS Act, 1997.

4. During investigation, charas was sent to the chemical examiner for analysis. Positive report was received. On the conclusion of investigation, challan was submitted against the appellant/accused u/s 9 (c) of CNS Act, 1997.

5. Trial Court framed charge against accused at Ex.2, to which he pleaded not guilty and claimed to be tried.

6. At the trial, prosecution examined PW-1 ASI Sanjar Khan Jamali and PW-2 SHO Muhammad Iqbal Wassan. Thereafter, prosecution side was closed.

7. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.6 in which accused claimed false implication in this case and denied the prosecution allegations. Accused did not lead evidence in defence and declined to give statement on Oath.

8. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record, by judgment dated 04.05.2017 convicted and sentenced the appellant as stated above. Hence, this appeal is filed.

9. Facts of this case and evidence find an elaborate mention in the judgement of the trial court hence there is no need to repeat it.

10. We have carefully heard Mr. Tilok Chand, advocate for appellant and Syed Meeral Shah, A.P.G. for the State. Contentions of the learned counsel for the parties shall be reflected in our judgement. We are not inclined to record such contentions separately.

11. Prosecution story appears to be unnatural and unbelievable, for the reasons that on spy information, accused was arrested at Railway Crossing. No private person at Railway Crossing was associated as a mashir in this case to witness recovery proceedings. Complainant SIP Muhammad Iqbal Wassan has deposed that he had prepared the mashirnama of arrest and recovery on torch light, said light was not produced before the trial court. It is further mentioned in the evidence that property was kept in Malkhana, till it was dispatched to the chemical laboratory. Neither the Head Mohrer of Malkhana has been examined nor such entry has been produced before the trial court to establish the safe custody of charas at Malkhana. It is very strange that PC Lutuf Ali who

had transmitted charas to the chemical examiner has also not been examined by the prosecution. Non-examination of such material witness will cause dent to the prosecution case. It is evident from the evidence of prosecution witnesses that charas was recovered from the possession of accused on 17.10.2016 but it was received by the office of chemical examiner Rohri on 02.11.2016. Inordinate delay in dispatch has created serious doubt regarding the genuineness of such report. We have also deeply examined the report of chemical examiner at Ex.4/C. It was deficient report as it did not contain any details whatsoever of any protocol adopted at the time of chemical analyses of the recovered substance as held in the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)* which has been endorsed by the Honourable Supreme Court in the recent judgment in the case of Nadeem v. The State through Prosecutor General, Sindh, Criminal Appeal No.06-K of 2008 in Criminal Petition No.105-K of 2016, dated 04.04.2018 which reads as follows:-

“According to the FIR the petitioner and his co-convict had tried to escape “with” the motorcycle when they were intercepted by the police party but before the trial court Muhammad Ayub, S.I.P (PW1) had stated that upon seeing the police party the petitioner and his co-convict had started running away while leaving the motorcycle on the road and the engine of that motorcycle had gone off. Muhammad Jaffar, PC (PW2) had also deposed about running away of the petitioner and his co-convict but had kept quiet regarding leaving of the motorcycle by the petitioner and his co-convict while running away. Both the above mentioned witnesses produced by the prosecution, however, unanimously stated that while running away upon seeing the police party the petitioner and his co-convict had kept the relevant bag containing narcotic substance in their hands and it was in that condition that the petitioner and his co-convict had been apprehended by the police party. It is quite obvious that the initial story contained in the FIR had been changed during the trial and the changed story was too unreasonable to be accepted at its face value. Muhammad Ayub, S.I.P. (PW1) had stated before the trial court that after recovering the narcotic substance he had brought the same to the Police Station and it was he who had kept the recovered substance in safe custody whereas he had never

claimed to be the Moharrir of the relevant Police Station. The record of the case shows that it was Ghulam Ali, P.C. who had taken the recovered substance to the office of the Chemical Examiner for analysis but it is not denied that the said Ghulam Ali, P.C. had not been produced before the trial court by the prosecution. It is, thus, evident that safe transmission of the recovered substance from the local Police Station to the office of the Chemical Examiner had not been established by the prosecution. The record further shows that the Chemical Examiner's report adduced in evidence was a deficient report as it did not contain any detail whatsoever of any protocol adopted at the time of chemical analysis of the recovered substance. This Court has already held in the case of Ikramullah and others v. The State (2015 SCMR 1002) that such a report of the Chemical Examiner cannot be used for recording conviction of an accused person in a case of this nature. For all these reasons we find that the prosecution had not been able to prove its case against Nadeem petitioner beyond reasonable doubt."

12. Above mentioned circumstances have created a reasonable doubt in the prosecution case. It is settled law that it is not necessary that there should be multiple circumstances creating doubt in the case of prosecution, if there is a single circumstance which creates a reasonable doubt in the prudent mind about the guilt of the accused then accused would be entitled to benefit of doubt and concession not as a matter of grace and concession but as a matter of right as held in the case of *Tariq Pervez V/s. The State* (1995 SCMR 1345).

13. In view of the above, we have no hesitation to hold that the prosecution has failed to prove its' case against the accused. Resultantly, instant appeal is allowed. Conviction and sentence recorded by the trial court vide judgment dated 04.05.2017 are set aside and appellant is acquitted of the charge. Appellant Haneef s/o Muhammad Bux by caste Brohi is in custody, he shall be released forthwith, if he is not required in some other case/crime.

JUDGE

JUDGE

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