

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

Cr.Appeal.No.D- 170 of 2010

Present:-  
Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 11.05.2017.  
Date of judgment: 11.05.2017.

Appellant Aftab Ahmed s/o  
Iqrar Hussain by caste Qureshi.  
(present on bail)

Through Mr. Ayatullah Khwaja,  
Advocate.

The State:

Through Syed Meeral D.P.G.

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

***NAIMATULLAH PHULPOTO, J:*** Appellant was tried by the learned 1st Additional Sessions Judge / Special Court for CNS Hyderabad in Special Case No.33 of 2009. By judgment dated 26.05.2010, appellant was convicted u/s 9(c) of CNS Act, 1997 and sentenced to suffer imprisonment for life and fine of Rs.10,000,00/- (Ten lac). In case of default in payment of fine, he was

ordered to suffer SI for five years more. However, benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 13.02.2009 SIP/SHO Sagheer Hussain Sangi left police station alongwith his subordinate staff namely HC Abdul Razak and PC Yar Muhammad in a private vehicle vide roznamcha entry No.42 at 0200 hours for patrolling. While patrolling at various places when the police party reached at Nana Baba graveyard where it is alleged that they saw the present accused standing there. Police found him in the suspicious manner, encircled and caught hold him. On inquiry, he disclosed his name as Aftab Ahmed s/o Iqrar Ahmed by caste Qureshi r/o Larkana. SHO finding him in suspicious manner conducted his personal search in presence of the mashirs HC Abdul Razak and PC Yar Muhammad and recovered a plastic bag from his possession. It contained four big and small pieces of charas. It was weighed. It became 1050 grams, out of which 10 grams were separated for sending the same to the chemical examiner. Remaining 1040 grams were sealed separately. Personal search of the accused was conducted and cash of Rs.2630/- were recovered from the possession of accused. Thereafter, accused and the case property were brought at police station where SHO Sagheer Hussain lodged the FIR on behalf of the State. It was recorded vide crime No.30 of 2009 PS Baldia Hyderabad u/s 9(c) of CNS Act, 1997.

3. After registration of the FIR, copy of FIR, mashirnama and the case property were handed over to SIO Muhammad Sadiq for the investigation purpose. Investigation Officer sent 10 grams to the chemical examiner on 17.02.2009. He recorded the statements of the PWs. In the meanwhile DPO Ghulam Nabi Memon conducted the departmental inquiry against the complainant SIP Sagheer Hussain and he recovered cash of Rs.85,000/- from

the complainant and handed over the same to the mother of accused Aftab and the complainant was also suspended. Report was submitted before the concerned court u/s 169 Cr.P.C. but the trial court did not agree with the opinion of the Investigation Officer and directed him to submit challan against the accused within four days. After submission of the challan charge was framed against the accused u/s 9 (c) of CNS Act at Ex.2. Accused pleaded innocence and claimed to be tried.

4. At the trial, prosecution examined PW-1 Complainant / SIP Sagheer Hussain Sangi at Ex.3, who produced the roznamcha entry No.42 at Ex.3/A, memo of arrest and recovery at Ex.3/B, arrival entry at Ex.3/C, FIR at Ex.3/D, Muhammad Siddique examined at Ex.4, who produced the report of the chemical examiner at Ex.4/A, report u/s 173 Cr.P.C. at Ex.4/B and also HC Abdul Razak at Ex.5. Thereafter, the prosecution was closed at Ex.6.

5. Statement of accused was recorded u/s 342 Cr.P.C.at Ex.7, in which accused claimed false implication and the denied the prosecution allegations. He has stated that the positive report of the chemical examiner is also false and the PWs have deposed against him falsely. Accused did not lead any evidence in his defence and declined to examine himself on Oath in disproof of prosecution allegations.

6. Learned trial court after hearing the learned advocate for the parties by judgment dated 26.05.2009 convicted and sentenced the appellant as stated above.

7. The facts of the prosecution case and evidence find an elaborate in the judgment of the trial court. There is no need to repeat the same to avoid duplication or repeatation.

8. Mr. Ayatullah Khwaja, learned advocate for appellant mainly contended that according to the case of the prosecution four big and small pieces of the charas were recovered from the possession of accused, it was not clear that 10 grams of charas from each piece were taken / drawn for sending to the chemical examiner recovered. It is further contended that there was delay in sending sample to the chemical examiner and such delay has not been explained. It is further contended that the investigation was dishonest in this case as complainant who had recovered charas from the possession of the accused was suspended in this case and the cash of Rs.85,000/- was recovered from his possession then handed over to the mother of accused. It is argued that there are material contradictions in the evidence of the prosecution witnesses. In this regard, learned advocate for appellant referred to the evidence of the prosecution witnesses and stated that according to prosecution evidence only one piece of charas was sent to the chemical examiner but it is mentioned in the report of the chemical examiner that the chemical examiner had received more than one piece of charas for analysis. Lastly argued that there was no evidence that charas was in safe custody after the recovery and prosecution case was doubtful. In support of his contentions, learned counsel has placed reliance on the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)* and *Ikramullah & others v/s. The State (2015 SCMR 1002)*

9. Syed Meeral Shah, learned D.P.G. appearing for the State conceded to the contentions raised by the learned counsel for the appellant that there are infirmities in the prosecution evidence. Learned D.P.G. further submitted that investigation officer had not conducted the investigation fairly. Accused was declared innocent and the report was submitted before the concerned court under 'B' class but the trial court did not agree and took cognizance of offence.

10. We have carefully heard the learned counsel for the parties and scanned the entire evidence minutely.

11. From the perusal of evidence, it transpired that the prosecution has failed to prove its' case against the accused for the reasons that according to the case of the prosecution four big and small pieces of charas were recovered from the possession of accused which he was carrying in a black coloured shopper. Out of it, 10 grams were separated for sending to the chemical examiner but it is clear in evidence that from which piece 10 grams were taken / drawn. Report of the chemical examiner reflected that he received more than one piece of charas for the chemical analysis. According to the case prosecution, charas was recovered from the possession of accused on 13.02.2009 but it was sent to the chemical examiner on 17.02.2009. Safe custody of the charas in Malkhana has not been proved by the cogent and confidence inspiring evidence. Even PC Muhammad Yousif, who had taken charas to the chemical examiner has not been examined by the prosecution to prove the safe transit to the chemical examiner. It has also come on record that complainant SIP Sagheer Hussain was suspended during the investigation of this case by the DPO on the allegation that he had snatched Rs.85,000/- from the possession of the appellant and said amount was recovered from him and it was then handed over to the mother of accused. Investigation Officer has clearly deposed that the accused was innocent and he has been falsely involved in this case. Apart from the above there are material contradictions in the evidence of the prosecution. According to the evidence of complainant when the accused was arrested at that time he was carrying charas in a black coloured plastic shopper but on the same point the mashir has deposed that it was white coloured shopper. We have also noticed that there is over writing in the roznamcha entry No.42 without

explanation. So far safe custody of the narcotic substances is concerned, learned counsel for the appellant has rightly placed reliance on the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)*, the relevant portion is reproduced hereunder:-

“5. 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 the 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.”

12. We, therefore, hold that the prosecution has failed to prove that the charas was in safe custody at Malkhana. Even positive report of the chemical examiner would not prove the prosecution case.

13. There are several circumstances in this case which created doubt in the prosecution case. Under the law if a single doubt is created in the prosecution case, it is sufficient for recording the acquittal. In the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*, the Honourable Supreme Court has observed as follows:-

***“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, 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.”***

14. For the above stated reasons we have no hesitation to hold that the prosecution has failed to prove its case against the accused beyond any reasonable doubt. Therefore, while extending benefit of doubt, appeal is allowed. The conviction and sentence recorded by the trial court are set aside. Appellant is acquitted of the charge. Appellant is on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

JUDGE

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