

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

Cr.Appeal.No.D- 25 of 2017

Present:-

Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Zulfiqar Ahmed Khan.

Date of hearing: 19.04.2017.  
Date of judgment: 19.04.2017.

Appellant Murad @ Murad Ali  
By caste Talani.

Through Mr. Parvez Ahmed Pirzada,  
Advocate.

The State:

Through Syed Meeral Shah, D.P.G.

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

***NAIMATULLAH PHULPOTO, J:*** Appellant Murad @ Murad Ali Talani was tried by learned Special Judge for CNS Shaheed Benazirabad. By judgment dated 14.03.2017, the appellant was convicted u/s 9(c) of CNS Act, 1997 and sentenced to suffer RI for 04 years and 06 months and to pay the fine of Rs.20,000/- In case of default in payment of fine he was ordered to suffer SI for 05 month more. 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 19.07.2016 SIP Gul Muhammad of PS Taluka Nawabshah left PS alongwith his subordinate staff for patrolling vide roznamcha entry No.19. While patrolling at various places when the police party reached at Sahib Khan

Behrani stop, it was 0700 hours where the present accused was standing on the road and he was carrying a plastic bag in his hand. Police surrendered and caught him hold. Plastic bag was secured from the possession of accused. SIP Gul Muhammad made ASI Sikandar Ali and HC Ahmed Ali Shah as mashirs and opened the plastic bag in presence of the mashirs, it contained two big and one small pieces of charas. Same were weighed in presence of the mashirs and became 1200 grams. Charas was sealed at the spot. Mashirnama of arrest and recovery was prepared in presence of the mashirs. Thereafter, accused and case property were brought at Police Station. FIR bearing crime No.56/2016 was lodged against the accused by SIP Gul Muhammad on behalf of State for offence u/s 9(c) of CNS Act, 1997.

3. During investigation, Investigation Officer recorded 161 Cr.P.C. statements of the PWs. Whole substance / charas was sent to the chemical examiner on 22.07.2016. Positive chemical report was received. On the conclusion of investigation challan was submitted against the accused Murad @ Murad Ali Talani.

4. Trial Court framed charge against accused at Ex.2 u/s 9(c) of CNS Act, 1997. To which, accused pleaded not guilty and claimed to be tried. At the trial prosecution examined PW-1 Complainant / SIP Gul Muhammad Dahri at Ex.3. He produced mashirnama of arrest and recovery at Ex.3/A, FIR at Ex.3/B, simple attested copy of roznamcha entry of departure and arrival at Ex.3/C, chemical report at Ex.3/D, FIRs at Ex.3/E1 to 11, PW-2 ASI Sikandar Ali at Ex.4. Thereafter, prosecution side was closed at Ex.5.

5. Statement of accused was recorded u/s 342 Cr.P.C.at Ex.6. Accused claimed false implication in this case and denied the prosecution allegations. Accused raised plea that PWs are police officials, they are interested. Police has managed the report of chemical examiner. Accused did not examine

himself on Oath in disproof of prosecution allegations. However, accused produced the certified true copies of the judgments and orders in which he has been acquitted at Ex.6/A.

6. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above.

7. We have carefully heard Mr. Parvez Ahmed Pirzada, learned advocate for appellant, Syed Meeral Shah, learned D.P.G. for the State and scanned the entire evidence.

8. Learned advocate for appellant has mainly contended that it was day time incident, place of arrest and recovery was thickly populated area and busy road but SIP failed to associate any independent person of the locality to make him mashir of recovery. Learned counsel argued that according to prosecution case charas was recovered from the possession of accused on 19.07.2016, it was sent to the chemical examiner for examination on 22.07.2016 through PC Dilber who has not been examined by the prosecution. Learned advocate for appellant argued that there is no evidence that the charas was in safe custody in between 19.07.2016 to 22.07.2016. Learned counsel argued that there are material contradictions in the evidence of prosecution on material particulars of the case. He further argued that the complainant SIP Gul Muhammad has deposed that he had conducted the personal search of accused by using two seals, on this point ASI Sikandar Ali had deposed that he sealed the property by using three seals. Counsel has further pointed that complainant deposed that he conducted the search of accused but ASI Sikandar deposed that he caught hold the accused and then complainant conducted his personal search. Learned advocate for appellant further argued that the appellant and his brother namely Azizullah were

brought at Police Station Nawabshah on 10<sup>th</sup> July 2016 by police and such news was published in two newspapers "Sindh Express and daily Kawish" dated 10.07.2016. Learned advocate for the appellant argued that brother of the appellant namely Azizullah was challaned by police in narcotic case at Taluka Nawabshah on 10.03.2017. Learned counsel argued that it was false case and his brother Azizullah has been acquitted by the learned Sessions Judge / Special Court for CNS, Tando Muhammad Khan by judgment dated 20<sup>th</sup> December 2016. Learned counsel for appellant lastly contended that the prosecution case was highly doubtful. In support of his contentions, learned counsel has placed reliance on the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*.

9. Syed Meeral Shah, learned D.P.G. argued that police officials have deposed that 1200 grams charas was recovered from the possession of accused and evidence of police officials is supported by positive chemical examiner report. Learned D.P.G. argued that there was no major contradiction in prosecution evidence. He has supported the impugned judgment of trial Court.

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

11. From the perusal of evidence it transpires that according to the case of prosecution present appellant was arrested by SIP Gul Muhammad on 19.07.2016 in presence of mashirs ASI Sikandar Ali and HC Ahmed Ali on the road near Sahib Khan Behrani stop and from the possession of accused 1200 grams charas were recovered, charas was sent to the chemical examiner on 22.07.2016 and positive chemical report was received. We are unable to believe the evidence of SIP Gul Muhammad and ASI Sikandar Ali for the reasons that the accused was arrested from the road near Sahib Khan bus

stop and it has been admitted by the Sub-Inspector that there are villages near the place of incident and it was busy road but no private person was called to act as mashir. It is matter of record that according to prosecution case charas was sent to the chemical examiner through PC Dilber but he has not been examined by the prosecution. There is also no evidence on record that the charas was in safe custody in police Malkhana in between 19.07.2016 to 22.07.2016. Rightly reliance has been placed upon 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. Another aspect of the case has also been brought on record. Accused has raised defence plea that he alongwith his brother namely Azizullah was brought by the police of B-Section Nawabshah at Police Station and regarding the highhandedness of police news were published in daily “Sindh Express” and “Kawish” on 10.07.2016 which had caused annoyance to the Sub-Inspector Gul Muhammad. In reaction FIR against the brother of appellant u/s 9(c) of CNS Act was lodged at Police Station Tando Muhammad Khan and this case was registered against the appellant u/s 9(c) Control of Narcotics

Substance Act, 1997. Learned advocate for appellant has placed on record the certified true copy of judgment passed by learned Sessions Judge/Special Court for CNS Tando Muhammad Khan dated 20<sup>th</sup> December 2016 which reflects that the brother of the appellant namely Azizullah has been acquitted in that case. Accused in his statement recorded u/s 342 Cr.P.C. has also placed on record the certified true copy of judgment in which appellant has been acquitted in the narcotic case. It is contended that the police has registered a number of cases against the appellant and he is victim of the police enmity. In these circumstances, we have come to the conclusion that there are several circumstances in this case which have created doubt in the prosecution case. It is settled law that even a single doubt created in the prosecution case will must go in favour of the accused. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a 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 as held by Honourable Supreme Court in the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*.

13. Consequently appeal is allowed. The conviction and sentence recorded by the trial court are set aside. Appellant is in custody. He shall be released forthwith if he is not required in some other case.

JUDGE

JUDGE