

IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. D-62 of 2018

Present:

Justice Zafar Ahmed Rajput

Justice Adnan-ul-Karim Memon

Appellant : Sadullah s/o. Muhammad Ramzan
Pathan, through M/s. Abdul Baki Jan Kakar
& Muhammad Afzal Jagirani, advocates

Respondent : The State, through Mr. Ali Anwar Kandhro
Addl. Prosecutor General, Sindh.

Date of Hearing : 07.07.2021
Date of Order : 07.07.2021

JUDGMENT

ZAFAR AHMED RAJPUT, J- Appellant Sadullah s/o. Muhammad Ramzan Pathan was booked in Crime No.04/2017, registered on 20.10.2017 at Excise Police Station, Jacobabad under section 9(c) of the Control of Narcotic Substances Act, 1997 and after a regular trial, under C.N.S. Case No.61 of 2017, he was convicted by the Special Judge (CNS), Jacobabad for the said offence, vide judgment dated 02.10.2018, and sentenced to suffer R.I for twelve years and to pay fine of Rs.60,000/-or, in default thereof, he should further undergo S.I. for nine months. Benefit of Section 382-B, Cr. P.C was, however, extended to him. Against that judgment, the instant criminal appeal has been preferred by the appellant.

2. Learned counsel for the appellant has contended that the impugned judgment is a result of misreading and non reading of the evidence on record; that the learned trial Court has failed to evaluate and assess the evidence and thus miserably failed to give due weight to it; that the evidence of investigating officer could not be relied on as he is discredited in cross examination and found guilty of dishonest

investigation; that there are material contradictions in depositions of the prosecution witnesses which discredit their testimony and benefit thereof should have been given to appellant; that bare perusal of the impugned judgment reveals that the trial Court has taken into consideration only the examination-in-chief of the prosecution witnesses and failed to dilate upon their cross-examination; that the learned trial Court has failed to appreciate that the prosecution has failed to produce in evidence the scribe of the memo of arrest & recovery, memo of place of incident and statements of P.Ws recorded under section 161 Cr. P.C., which fact has rendered the entire recovery of charas from the possession of the appellant doubtful; that the prosecution has failed to prove safe custody of the recovered substance at the Excise police station and its safe transmission to Chemical Analyst which fact alone is sufficient to create doubt in prosecution case and thus prosecution has failed to prove its case against the appellant beyond reasonable doubt; hence, the conviction and sentence recorded by the trial Court is liable to be set-aside.

3. On the other hand, learned A.P.G has fully supported the impugned judgment by maintaining that huge quantity of narcotic substance has been recovered from the appellant by the Excise police against whom he has not pleaded any malice or enmity for his false implication in the case; that the contradictions in depositions of P.Ws and irregularity in investigation being minor in nature are liable to be ignored.

4. We have heard the learned counsel for the appellant and A.P.G. and scanned the material available on record with their assistance.

5. The case of the prosecution as per F.I.R. (Ex:4/C) is that, on 20.10.2017, complainant Excise Inspector Gul Muhammad Bhutto proceeded from Excise P.S., Jacobabad in a Government vehicle along with E.I Muhammad Iqbal Arbani, EJ Jeal Khan, ED Rafiq Ahmed and ED

Mazhar Ali, under Entry No.01 at 09:00 a.m. (4/B) for the checking of suspected vehicles and reached near Qureshi Petrol Pump, Quetta Road at 04:30 p.m., where they got a wagon bearing registration No. BMA-717 (Quetta-Baluchistan) stopped and saw the appellant sitting on the roof of the wagon having one black colored bag. He was alighted from the wagon and on checking Excise police found the bag containing 20 slabs of charas. On being weighed, each of the slabs came to 500 grams, total ten Kgs. Out of which 250 grams charas from each slab (total five Kgs.) was separately sealed for chemical analysis and such memo of arrest and recovery (Ex:4/A) was prepared at the spot in presence of mashir EJ Jeal Khan and ED Rafiq Ahmed.

6. After going through the evidence brought on record of the case, we have observed that there are serious doubts on fair, transparent and credible investigation of the case. P.W-1 Excise Inspector Gul Muhammad Bhutto, the complainant/I.O, has only mentioned the registration number of the wagon and failed to obtain and produce the copies of the registration book and route permit of the wagon to establish that the alleged wagon was in fact plied on the Baluchistan-Sindh route. Admittedly, he has not recorded the statement of the driver of the wagon under section 161 Cr. P.C.; even he has not mentioned his name in the F.I.R. The driver of the vehicle was an important witness of the prosecution to establish that the appellant, who is admittedly resident of Killa Abdullah-Baluchistan, was in fact traveling through his wagon; hence, he should have been joined in investigation. The prosecution, therefore, could not be able to prove the existence and presence of alleged wagon, and also the fact of its stoppage on the scene of occurrence, as well as the presence of appellant in the wagon, if it existed at the date and time mentioned by the prosecution. Further, P.W-1 as well as P.W-2 (EJ Jeal Khan) have admitted in his cross-examination that vacant seats were

available in the wagon, but they did not furnish any explanation as to why the appellant was traveling on the roof of the wagon when vacant seats were available in the wagon and how he was allowed by the driver to sit on the roof of the wagon in violation of the traffic laws.

7. P.W-1 Excise Inspector Gul Muhammad Bhutto, the complainant/ I.O has deposed in his cross-examination that the memo of arrest & recovery, F.I.R., memo of place of incident and statements of P.Ws under section 161, Cr. P.C. were recorded by the Excise Inspector Muhammad Iqbal Arbani on his dictation; however, no such endorsement appears on the said documents. It may be observed that the memos of arrest & recovery and place of incident are important documents which establish credibility of alleged recovery and statements of P.Ws under section 161, Cr. P.C determines the reliability of the investigation. In case, the scribe of these material documents is not produced in evidence, it reflects against the credibility of the prosecution case at the threshold.

8. We have also observed that in case in hand the prosecution has failed to prove the safe custody of the recovered charas and its safe transmission to Chemical Examiner. The recovery of charas was allegedly affected on 20.10.2017 and the sealed samples were sent for chemical analysis on 23.10.2017; however, it is not known as to where and in whose possession the alleged samples were kept during intervening period. PW-1 Excise Inspector Gul Muhammad Bhutto, the complainant/ I.O has not furnished in his evidence any detail regarding safe custody of the alleged samples, therefore, no evidence is available in record to prove the safe custody of the recovered substance at the Excise police station and its safe transmission from said place to the office of Chemical Examiner. It has been held by the Apex Court in the cases of Abdul Ghani and others v. The State and others (2019 SCMR 608), Faizan Ali v. The State (2019 SCMR 1649), The State through Regional Director ANF v.

Imam Bukhsh and others (2018 SCMR 2039), Ikramullah and others v. The State (2015 SCMR 1002) and Amjad Ali v. The State (2012 SCMR 577) that in a case where safe custody of the recovered substance or safe transmission of sample of the recovered substance is not proved by the prosecution through any independent evidence, it cannot be said with any degree of confidence that the prosecution had succeeded in proving its case against an accused beyond reasonable doubt.

9. In view of above facts and reasons, we are of the considered view that the prosecution has in fact failed to prove its case against the appellant beyond reasonable doubt. It is settled principle of law that for basing conviction against the accused there should be strong evidence before the Court and if doubt even slightest arises in the prudent mind as to the guilt of the accused, benefit of the same has to be extended in favour of the accused. This appeal is, therefore, allowed. Consequently the conviction and sentence of the appellant Sadullah s/o. Muhammad Ramzan are set aside and he is acquitted of the charge by extending benefit of doubt to him. He shall be released from the jail forthwith, if not required to be detained in connection with any other case.

10. Above are the reasons of our short order dated 07.07.2021.

Judge

Judge