

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

Cr. Appeal No.D-44 of 2017

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Zulfiqar Ahmad Khan.

Date of Hearing: 22.05.2017

Date of Judgment: 22.05.2017

*Appellant/accused: Nasir Rajput
Through Mr. Manzoor Ahmed
Panhwar, Advocate*

*The State: Through Syed Meeral Shah
Bukhari, Addl.P.G. Sindh.*

J U D G M E N T

NAIMATULLAH PHULPOTO, J:- Appellant Nasir Rajput was tried by Special Judge C.N.S. Tando Mohammad Khan, in Special Case No.51 of 2016, for the offence under Section 9 (b) Control of Narcotic Substances Act, 1997. By judgment dated 26.04.2017, the appellant was convicted under Section 9 (b) Control of Narcotic Substances Act, 1997 and sentenced to suffer R.I for one year and to pay a fine of Rs.9000/-, in default thereof appellant was ordered to suffer S.I for 03 months and fifteen days more. Benefit of Section 382 Cr.P.C. was extended to the appellant/accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 12.08.2016 SIP Rabdino left Police Station

Shaikh Bhirkio along with his subordinate staff namely P.Cs. Ali Raza and Abdul Majeed vide roznamcha entry No.14 at about 1715 hours for patrolling duty in Government vehicle. While patrolling at various places when the police party reached at Jalal Mori curve they received spy information that one person namely Nasir Rajput was available at Watercourse Jalal Mori and was selling charas. Police party proceeded to the pointed place where saw present Appellant / accused who on seeing the police mobile tried to run away but he was surrounded and caught hold. On inquiry, the accused disclosed his name as Nasir Rajput s/o Riasat Ali, by caste Rajput resident of Tando Mohammad Khan. Police found him in a suspicious manner, his personal search was conducted in presence of Mashirs P.Cs Ali Raza and Abdul Majeed. From his personal search police recovered one black coloured plastic theli from the fold of his shalwar and cash of Rs.80/-. It contained 08 pieces of Charas. The same was weighed and became 250 grams. On account of non-availability of private mashirs P.Cs Ali Raza and Abdul Majeed were made as mashirs. Mashirnama of arrest and recovery was prepared. Thereafter, the accused and case property were brought to the Police Station, where it is alleged that SIP Rabdino lodged F.I.R. against the accused on behalf of the State. It was recorded vide crime No.54 of 2016, under section 9(b) Control of Narcotic Substance Act 1997.

3. During the investigation, 161 Cr.P.C. statements of P.Ws. were recorded. The Charas was deposited in the

Malkhana and it was sent to the Chemical Examiner on 18.8.2016. Positive chemical report was received. On completion of the investigation challan was submitted against accused under section 9(b) Control of Narcotic Substance Act 1997.

4. Trial Court framed the charge against the accused Nasir Rajput under Section 9(b) of CNS Act, 1997 at Ex-2. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined P.W-1 SIP / Complainant Rabdino Sario at Ex.06, who produced arrival and departure entries No.14 and 17 at Ex.6-A and A-1, Mashirnama of arrest and recovery at Ex.6-B, F.I.R. at Ex.6-C and Chemical Examiner's report at Ex.06-D. P.W.2 Mashir P.C. Ali Raza at Ex.07. Thereafter, A.D.P.P. closed the side of prosecution vide statement at Ex-08.

6. Statement of the accused under Section under Section 342 Cr.P.C. was recorded at Ex-09, in which the accused claimed his false implication in this case and denied the prosecution allegations. Regarding the positive chemical report it is stated that it has been managed. Accused has raised plea that P.Ws. are highly interested. Accused did not lead any evidence in defence and declined to examine himself on oath in disproof of prosecution allegations and pleaded innocence.

7. Learned trial court, on the conclusion of the trial after hearing the advocate for the appellant and learned

Prosecutor and on the assessment of the evidence available on record, convicted and sentenced the accused as stated above.

Hence, this appeal.

8. We have carefully heard learned Counsel for the parties and scanned the entire evidence minutely.

9. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 26.04.2017, therefore, the same may not be reproduced here, so as to avoid duplication and un-necessary repetition.

10. Mr. Manzoor Ahmed Panhwar, learned Advocate for the appellant has mainly contended that safe custody of the charas in the Malkhana has not been established by the prosecution at the trial. He has submitted that according to the prosecution case the charas was recovered from the possession of the appellant / accused on 12.08.2016 and it was kept in Malkhana of the Police Station and entry of the Malkhana has not been produced. It is also submitted that P.C. Imtiaz who had taken the charas to the Chemical Examiner has not been examined by the prosecution. Counsel for the appellant further argued that according to the Investigation Officer he had affixed two seals upon the case property but according to the report of the Chemical Examiner there were three seals affixed upon the parcel which was received by the Chemical Examiner. Lastly, it is contended that prosecution

case was highly doubtful and trial court failed to appreciate the evidence in accordance with law. In support of his contentions, he has relied upon the case reported as *IKRAMULLAH & OTHERS v. THE STATE [2015 SCMR 1002]*.

11. Syed Meeral Shah Bukhari, learned Additional P.G. rightly conceded to the contentions raised by learned Advocate for the appellant and argued that there was no evidence that charas was kept in safe custody in Malkhana before sending to the Chemical Examiner. He has further submitted that safe transit through P.C. Imtiaz has also not been established by the prosecution. He has also conceded that there are material contradictions in the evidence of the prosecution witnesses. In these circumstances learned Additional P.G. did not support the judgment of the trial court.

12. From the close scrutiny of the evidence we have come to the conclusion that prosecution case was highly doubtful for the reasons that it was the case of spy information. According to the SIP Rabdino accused was arrested at Jalal Mori Road on the spy information on 12.08.2016 at 1800 hours, no effort was made by the SIP Rabdino to call independent persons of the locality to witness the recovery proceedings. Moreover, after recovery according to the case of the prosecution charas was kept in the Malkhana from 12.8.2016 to 17.08.2016, safe custody of the charas during that period has not been established. Apart from that according to the case of prosecution charas was dispatched to the Chemical Examiner

through P.C. Imtiaz but safe transit has not been established through P.C. Imtiaz but he has not been examined for the reasons best known to the prosecution. There are other material contradictions in the evidence of prosecution witnesses with regard to the route adopted by the police officials for the purpose of patrolling so also affixation of the seals upon the parcel. In these, circumstances no reliance can be placed upon the evidence of the police officials without independent corroboration which is lacking in this case. Moreover, there was no evidence that charas was in the safe custody at Malkhana and it was safely transmitted to the Chemical Examiner.

14. In the above stated circumstances, positive report of Chemical Examiner would not improve the case of prosecution. On the point of safe custody of recovered substance as well as safe transmission of sample to Chemical Examiner, rightly reliance has been placed upon the case of **IKRAMULLAH & OTHERS V. THE STATE** reported in 2015 SCMR 1002.

Relevant portion is reproduced as under:-

“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 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.”

15. For giving benefit of doubt, it is not necessary that there should be 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 as held by Honourable Supreme Court in the case of **TARIQ PERVEZ v. THE STATE** [1995 SCMR 1345].

16. For the above reasons, while relying upon the above cited authorities, we have no hesitation to hold that prosecution has failed to establish its case against the appellant and the trial court has failed to appreciate the evidence of police officials according to the settled principle of law. There are number of infirmities in the prosecution evidence. Thus prosecution case is doubtful. While extending benefit of doubt appeal is allowed, impugned judgment dated 26.04.2016 is set-

aside and the appellant is acquitted of the charge. The appellant is in custody. He shall be released forthwith if not required in any other case.

JUDGE

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