

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

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Muhammad Faisal Kamal Alam

Cr. Appeal No.D-87 of 2020.

Rahib alias Rahu

Versus.

The State.

Appellant : Rahib alias Rahu	Through Mr. Syed Tarique Ahmed Shah, Advocate
Respondent : The State	Through Mr. Muhammad Ali Noonari, Deputy Prosecutor General.
Date of hearing	14.06.2022.
Date of judgment	14.06.2022.

**JUDGMENT**

**Mohammad Karim Khan Agha, J.-** The appellant Rahib alias Rahu was tried by learned Ist Additional Sessions Judge / Model Criminal Trial Court, Shaheed Benazirabad, in Special Narcotics Case No.376 of 2019, arising out of Crime No.159 of 2019, registered at Police Station Sakrand, under Section 9(c) of Control of Narcotic Substances Act, 1997 and vide judgment dated 07.10.2020 the appellant was convicted under Section 9(c) of CNSA and sentenced to undergo R.I for 12 years and 06 months and to pay a fine to the tune of Rs.60,000/-. In case of default in payment of fine, he was ordered to further undergo simple imprisonment for 09 months. However, the appellant was given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 10.06.2019 at 2130 hours, police party headed by SIP Niaz Hussain Kaleri upon receiving spy information reached at Rind Pumb and apprehended the present appellant and secured 10000 grams of chars from his possession. Thereafter, the contraband was sealed at the spot and memo of arrest and recovery was prepared in presence of mashirs, namely PC Khuda Bux and PC Azizullah and then accused and case property were brought at police station where instant F.I.R. was lodged by complainant SIP Niaz Hussain Kaleri on behalf of the State under Section 9 (c) CNS Act, 1997.

3. After usual investigation, the case was challaned and sent up for trial. Learned Trial Court framed charge against accused at Ex.2 under Section 9(c) CNSA, to which the accused pleaded not guilty and claimed to be tried vide his plea at Ex,2/A.

4. At the trial, prosecution examined 04(four) P.Ws and exhibited various items and other documents and thereafter, prosecution side was closed at Ex.6.

5. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.08. The accused denied the prosecution allegations and claimed his false implication in this case. He further stated that nothing was recovered from him and the narcotics allegedly recovered have been foisted on him by the Police on account of enmity with Abdul Hameed Chandio, who was a notable personality of the area. The accused neither examined himself on oath nor led any evidence in his defence in order to disprove the prosecution allegations.

6. The Learned trial Judge after hearing the learned Counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated in earlier paragraph of this judgment; hence, appellant has filed this appeal against his conviction.

7. Learned trial Court in the impugned judgment has already discussed the evidence in detail and there is no need to



repeat the same here, so as to avoid duplication and unnecessary repetition.

8. Learned Counsel for the appellant has vehemently contended that the appellant is completely innocent and the narcotics allegedly recovered has been foisted on him on account of enmity; that no independent witness has been cited as required by Section 103 Cr.P.C; that there was un-explained delay of 08(eight) days in sending the narcotics to the chemical examiner; that the safe custody of chars has also not been proved; that the recovered narcotics is different from the narcotics which was produced before the chemical examiner and at trial and on account of all these particular facts and circumstances the appellant be acquitted of the charge by extending him benefit of the doubt. In support of his contentions, learned counsel for the appellant has relied upon the cases of **Talmoor Khan and another v. The State and another** (2016 SCMR 621), **The State through Regional Director ANF v. IMAM BAKHSH and others** (2018 SCMR 2039), **Muhammad Aslam v. The State** (2011 SCMR 820).

9. On the other hand, learned Deputy Prosecutor General has fully supported the impugned judgment and in particular contended that the appellant has been arrested on the spot red handed and from his possession a huge quantity of chars was recovered, as such, there was no probability of foisting such huge quantity of chars on him; that the safe custody of the narcotics has been proved which led to a positive chemical report.

10. We have carefully considered the arguments of the learned Counsel for the parties and examined the evidence in detail which has been read out by the learned Counsel for the appellant.

11. After our re-assessment of the evidence, we find that the prosecution has not been able to prove its case beyond reasonable doubt against the appellant mainly on account of the following reasons:-

(a) When the appellant was arrested on the spot according to the complainant PW-1 Niaz Hussain, 10(ten) slabs of chars were recovered from the appellant, which were lying in a plastic bag and weighed on the spot. This fact is however contradicted by PW-02 Khuda Bux, who states that 08(eight) pieces of chars were recovered and two big pieces in addition. The chemical report also reveals that 08(eight) slabs of chars and two big pieces were received which is contradictory especially as none of the markings on the chars were disclosed in the memo of arrest and recovery.

(b) Although point (a) above is not sufficient to lead to an acquittal it is further strengthened by the fact that the recovery of the narcotics was made on 10.06.2019 by SIP Niaz Hussain and sample of narcotics was received by chemical examiner on 18.06.2019 after an unexplained delay of 08 days. Although the narcotic was placed in the Malkhana, learned Deputy Prosecutor General has not been able to point out the date on which the narcotics was placed in the Malkhana which makes the prosecution story doubtful to the extent that chars was recovered from the possession of the appellant on 10.06.2019 and sample of the same was received by the chemical examiner on 18.06.2019 with an unexplained delay of 08(eight) days but there was nothing on record as to whether the recovered chars was in safe custody during that intervening period or otherwise which raises the possibility of it being tampered with. According to the prosecution, the recovered chars was kept in Malkhana on the same date and if it was done so then why was it received by chemical examiner with delay of 08(eight) days which delay has gone completely un-explained

and as such the safe custody of narcotics from its recovery from the appellant until the time it was taken to the chemical examiner is in doubt especially as the Head of the Malkhana was not examined.

(c) It is well settled that in a criminal case the benefit of doubt if accrues in a case must go to the accused as of right rather than by way of concession and for the reasons mentioned above, we find that the prosecution case is not free from any doubt.

12. In view of the reasons mentioned above, we find that in this case the prosecution has failed to prove its case against the appellant beyond a reasonable doubt and while extending the benefit of doubt, appeal is allowed and the conviction and sentence recorded by the trial Court are set aside and the appellant is acquitted of the charge. The appellant shall be released forthwith by the concerned jail authorities unless he is wanted in any other custody case.

13. The appeal stands disposed of in the above terms.

Shahid

Sd/- MOHAMMAD KARIM KHAN AGHA  
J U D G E 14.06.2022  
Sd/- MUHAMMAD FAISAL KAMAL ALAM  
J U D G E