

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

Cr. Appeal No.D-58 of 2019

P r e s e n t:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Saleem Jessar

Date of hearing : 01.11.2022
Date of Judgment : 01.11.2022

Appellant Allahdino : Through Mr. Aziz Ahmed Laghari,
@ Allahano S/o Advocate.
Gullan Chandio

The State : Through Mr. Shahzado Saleem
Nahiyoon, Additional P.G Sindh.

J U D G M E N T

Muhammad Saleem Jessar, J. Through instant criminal appeal, appellant has assailed judgment dated 10.04.2019 passed by learned Ist Additional Sessions Judge / Model Criminal Trial Court / Judge, Special Court for Narcotics, Mirpurkhas vide Special Case No.42 of 2016, (Re: the State v. Allahdino alias Allahano and another), arising out of F.I.R No.70 of 2016 registered at P.S Jhudo, under Section 9(c) Control of Narcotics Substances Act, 1997, whereby he has been convicted and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.200,000/-; defaulting whereof, to suffer simple imprisonment of one year more; however, with benefit of Section 382-B Cr.P.C.

2. In nutshell, the prosecution case is that complainant Inspector Bulando Khan, Incharge CIA Centre, Mirpurkhas lodged FIR at P.S Jhudo, alleging that he alongwith his staff was on patrolling on the instruction of superiors to arrest some absconders / accused vide Roznamcha Entry No.10 at 1230 hours in a government vehicle. During patrolling when they reached at Khaki Pir Dargah at 1635 hours, a spy provided them information that in village Ramzan Rind four persons are available in the Otaque of

Allahdino Chandio (the present appellant) having narcotics for selling. On such information, complainant party arrived at the pointed place at 1645 hours where they saw said four persons, each with one pouch/Katta, going to said Otaq of Allahdino, who on seeing the police party tried to flee away; out of them, present appellant was apprehended while three other persons throwing their pouches/Kattas succeeded in making their escape good, who were identified by CIA party to be Akram alias Akku, Ishaque and Rabdino. During personal search of appellant Allahdino, one currency note of Rs.1000/- from his side pocket of shirt was also recovered. The pouch/Katta was also opened, from which 50 packets of chars, each containing one K.G, were found. The chars was wrapped in green paper and with wrapper it became 51 K.Gs and was sealed at the spot. The pouches/Kattas left by each accused, who fled away, was also opened, which became 27 packets (one K.G each), 38 packets (one K.G each) and 44 packets (one K.G each) respectively. The mashirnama of arrest and recovery was made at spot in presence of mashirs namely ASI Nasrullah and HC Muhammad Bux. Thereafter, accused and case property were brought at P.S Jhudo where instant case was registered against the accused on behalf of the State.

3. After conducting usual investigation, Investigating Officer submitted challan before Special Court for CNS Mirpurkhas, showing accused Allahdino and Rabdino in custody; whereas accused Akram and Ishaque as proclaimed offenders. After completing codal formalities as well compliance of Section 265-C Cr.P.C, charge against both the accused was framed at Ex-5, to which they pleaded not guilty and claimed to be tried vide their pleas at Ex-5/A & 5/B.

4. In order to prove the charge against the accused, the prosecution examined PW-1 Inspector Bulando Khan (complainant) at Ex-7, who produced attested copy of departure entry of Roznamcha CIA Centre at Ex-7/A, mashirnama of arrest and recovery at Ex-7/B, copy of FIR at Ex-7/C, attested copy of Roznamcha Entry / Register No.2 of P.S Jhudo at Ex-7/D and then case property were marked as Articles A/1, A/2, A/3, A/4 & B respectively. P.W-02 IO / SIP Muhammad Muqeem was examined at Ex-8, who produced attested copy of departure and arrival entries of Roznamcha of P.S Jhudo at Ex-8/A, mashirnama of place of incident at Ex-8/B, copy of letter written by SHO to DSP

Jhudo for permission to send the case property to chemical examiner at Ex-8/C, three copies of entries at Ex-8/D to Ex-8/F, mashirnama of arrest of accused Rabdino at Ex-8/G and report of chemical examiner at Ex-8/H respectively. PW-3 SIP Nasrullah (mashir) was examined at Ex-9 and thereafter learned DDPP closed the prosecution side vide statement at Ex-10.

5. Statements of accused under Section 342 Cr.P.C were recorded, in which the accused denied the allegations leveled against them by the prosecution and pleaded their innocence. The accused neither examined themselves on oath as required under Section 340(2) Cr.P.C nor led any evidence in their defense.

6. After hearing learned Counsel for the respective parties, learned Trial Court convicted appellant Allahdino @ Allahano as stated above; whereas co-accused Rabdino was acquitted of the charge; hence, the appellant / convict has filed this appeal.

7. Learned Counsel for appellant submitted that case against the appellant is false and frivolous as it is outcome of political rivalry. He next submitted that alleged recovery of contraband was allegedly effected on 23.07.2016; whereas, it was sent to Laboratory for its analysis on 27.07.2016 with delay of about four days for which no plausible explanation was furnished nor it has been brought on record that in whose custody such huge quantity of contraband was lying. He further added that neither the Incharge of Malkhana, nor WHC, in whose custody the contraband was kept under safe custody, has been examined to believe that it was recovered and kept under proper custody. He next submitted that complainant of this case is Inspector who was posted as Incharge CIA Center, Mirpurkhas and after having spy information he had not kept any entry with Police Station Jhudo and directly rushed towards place of incident where the appellant allegedly was found available; however, three remaining co-accused had made their escape good. Therefore, learned Counsel insisted that persons who allegedly made their escape good were not inhabitants of the village, rather the appellant being inhabitant of same village had not even attempted to decamp from the scene which shows that police had planted the case against the appellant only to degrade him. Learned Counsel further submitted that it was broadness of the day when the police had reached at the Otaq of appellant and within their sight three persons fled away while

throwing the contraband and the appellant who was inhabitant of same village was apprehended which raises many questions regarding authenticity of the allegations leveled by the prosecution against the appellant. He further submitted that the appellant is a Hari of one Mumtaz Khoso, who was affiliated with Pakistan Peoples' Party and that Mumtaz Khoso was not awarded party ticket to contest the local body election; therefore, he alongwith his supporters casted votes in favour of the MQM candidate which resulted PPP's defeat; therefore, the appellant as well his Zamindar / landlord Mumtaz Khoso were booked by the leadership of the PPP. In support of his contention, learned Counsel has drawn attention of the Court towards statement of appellant under Section 342 Cr.P.C available at Page-65 of the paper book and read over the answer to Question No.10. He; therefore, submitted that prosecution has failed to establish its charge against the appellant beyond reasonable shadow of doubt; hence, prayed for grant of appeal as well acquittal of the appellant. In support of his arguments, learned Counsel has placed reliance upon the cases of MUHAMMAD NAEEM and another v. The STATE and others (PLD 2019 Supreme Court 669), The STATE through Deputy Attorney General v. ABDUL AKU (2019 SCMR 1102), AMEER ZEB v. The STATE(PLD 2012 Supreme Court 380) and AKHTAR GUL v. The STATE (2022 SCMR 1627).

8. On the other hand, learned Additional P.G Sindh opposed the appeal on the ground that huge quantity of contraband was recovered from the appellant; therefore, the judgment passed by learned trial Court is well reasoned and the appeal merits no consideration and therefore, prayed for its dismissal. Learned A.P.G; however, could not controvert the fact as to why co-accused being empty handed were not followed by the Police, nor were captured and only the appellant was apprehended. Learned A.P.G also could not controvert the fact as to why the Book No.19 of Malkhana was not produced by the prosecution before the trial Court, even WHC / Incharge of Malkhana was not examined to substantiate the set of allegations against the appellant.

9. We have heard learned Counsel for the appellant as well Additional P.G and have gone through the evidence as well impugned judgment. It is the case of prosecution that on a tip off the Police party headed by Inspector Buland Khan raided the Otaq of appellant where they saw four persons, each having pouch / katta on their shoulders and identified them to be present appellant as well co-accused Rabdino @ Rabbu, Akram @ Akku and Ishaque Chandio; however, the Police party could only be able to apprehend

appellant Allahdino @ Allahano alongwith a pouch / katta containing chars and remaining three accused while throwing their respective pouches/kattas succeeded in making their escape good. However, it has not been shown whether said co-accused alongwith appellant were having any offensive weapon or any material which restrained the police, even then the Police did not opt to chase them or fired to get them intercepted/arrested. The trial Court while discussing this aspect of the case has mentioned under the impugned judgment at typed Page-22 available at Page-268 of the paper book as under:-

“The complainant Inspector Bulando Khan has stated that he alongwith his staff left CIA Centre vide entry No.10 to arrest the absconders and they received spy information at 1635 hours at Khaki Pir Dargah about presence of accused with chars at the otaque of accused Allahdino Chandio, they reached at the pointed place at 1645 hours, where they saw four persons having pouch/Katta at their shoulders and identified them as accused Allahdino alias Allahano, Rabdino alias Rabbu, Akram alias Akku and Ishaque Chandio from whom the police party apprehended the accused Allahdino Chandio with pouch/Katta of charas and remaining 03 accused while throwing their pouches/Kattas succeeded to run-away. Here a question arises as to how the said 03 accused could escape from the police party particularly when the said 03 accused were without any weapon. The police party could have fired on the legs or in the air to get the said 03 accused stopped.”

10. As far as plea taken by the appellant regarding political enmity with sitting MNAs of the PPP of the area, he has answered to Question No.10 of his statement under Section 342 Cr.P.C available at Page-66 as under:-

“Sir I am retired railway employee. I am Hari of one Mumtaz Khoso who was the Ex-President of Jhudo City and his affiliation was with PPP. In the last local bodies elections PPP did not give ticket of chairmanship to Mumtaz Khoso therefore Mumtaz Khoso alongwith his supporter councilors caste votes to MQM candidate with the result PPP lost election while candidate of MQM became Chairman of Jhudo Town, therefore on account of changing of affiliation with PPP my Zamindar and many of his supporters so also Haries were got booked in various false criminal cases by PPP local leadership including cases of Anti-Terrorism Act which fact has been admitted in evidence by I.O of this case; the CIA Incharge Allan Abbasi on the instigation of local MNA and MPA falsely involved me and my son in this case by foisting case property. Sir actually said CIA Incharge Allan Abbasi alongwith his team raided at some other place i.e. Deh 362 village Kando Mirrani and arrested 08 persons on 23-07-2016 under same allegations but later on they were released by said Allan Abbasi after getting huge

bribe and foisted the case property on the instigation of political figure upon me. Such news was published in different newspapers including daily Ibrat dated 25-7-2016, daily Kawish dated 27-7-2016, and Sindh Express (in photo state) dated 25-7-2016. Sir actually I was arrested from village Ganwer Pitafi where I was collecting remuneration on behalf of my wife. Sir case property has been foisted upon me and never recovered from my possession; the police did not arrest me from the alleged place of incident. I produce original newspapers daily Kawish dated 25-7-2016, daily Ibrat dated 25-7-2016, news cutting daily Sindh Express dated 25-7-2016 (in photo stat) and original receipt of Benazir income support program dated 23-7-2016 at Ex.11-A to Ex.11-D. I am innocent and pray for justice.”

11. From perusal of above reply, it is crystal clear that appellants have been implicated in this case *mala fidely* and with ulterior motives as the appellant Allahdino alias Allahano has furnished specific and logical plea before the trial Court in which he has plausibly explained the truth by producing documents exhibited as Ex-11-A to 11-D. In spite of above specific plea, the trial Court did not keep it in juxtaposition with the prosecution evidence thereby had discarded his defence plea without assigning any cogent reason. The appellant as stated is a retired government servant and had no previous record of any criminal case including the case of like nature. When the specific plea taken by appellant in his statement under Section 342 Cr.P.C was not responded to by the trial Court, therefore, it seems that he has not been treated at par. It is also matter of record that co-accused namely Muhammad Akbar @ Akku and Muhammad Ishaque, who allegedly fled away at the time of offence by throwing alleged contraband, were subsequently tried by same trial Court and have been acquitted of the charge by way of judgment dated 30.07.2019 available at Page-122 of the paper book.

12. Since there is delay in sending contraband to laboratory; besides the Book No.19 of Malkhana was not produced and even Incharge of Malkhana / WHC in whose custody the contraband was kept in custody was not examined; therefore, the prosecution has failed to establish mode of crime against the appellant; besides the appellant has raised plea which has not been kept in juxtaposition with the prosecution evidence by the trial Court; thereby the trial Court has caused miscarriage of justice by ignoring such essential aspects of the case.

13. Moreover, learned Counsel for appellant has cited four case laws which are referred to above. One of these cases is the case of AKHTAR GUL v. The STATE (2022 SCMR 1627), wherein the Hon'ble Supreme Court of Pakistan has acquitted the accused, from whose possession 50 K.Gs of chars were recovered. The reasons for acquittal of accused as furnished by the Hon'ble Supreme Court were that; the safe custody and safe transmission of chars were not proved; WHC, in whose custody chars was kept, was not examined; recovery of chars was effected on 16.10.2011 whereas its parcels were received in Laboratory on 21.10.2011 with delay of five days. In the present case all such dents like in the above case have been created by the prosecution; besides the defence plea taken by appellant in his statement under Section 342 Cr.P.C is there, which should have been taken in juxtaposition with the prosecution evidence. We are fortified by the dictum laid down by the Hon'ble Supreme Court in case of RAZA and another v. The STATE and 2 others (PLD 2020 Supreme Court 523) wherein it has been held as under:

“15. In a criminal trial, it is now jurisprudentially settled that the proper course for the court is to first discuss and assess the prosecution evidence in order to arrive at the conclusion as to whether or not the prosecution has succeeded in proving the charge against the accused on the basis of the evidence. In case where the accused has taken a specific plea the court is to appreciate the prosecution evidence and the defence version in juxtaposition in order to arrive at a just conclusion.”

14. Even if defence plea is not substantiated, no benefit accrues to the prosecution on that account and its duty to prove the case beyond doubt would not be diminished even if defence plea is not proved or is found to be palpably false. In this respect, reliance is placed upon the case of ASHIQ HUSSAIN v. The STATE (1993 SCMR 417).

15. We while relying upon the cases as referred to above are of the view that the prosecution has miserably failed to prove its charge against the appellant beyond any reasonable shadow of doubt. It is well settled principle of law that if there creates a single doubt about the guilt of accused, the benefit whereof should go to accused as of his right but not grace or concession. In this respect, reliance can be placed upon the case titled as MUHAMMAD AKRAM v. The STATE (2009 SCMR 230), wherein at page-236, it has been held as under:-

“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

16. The crux of the above discussion is that the prosecution has not been able to bring home the charge against the appellant beyond any shadow of doubt; therefore, it would not be safe to maintain the conviction and sentences awarded to him on such evidence and that too for the offence carrying capital punishment; hence, by extending benefit of doubt, the instant appeal is allowed. Consequently, the impugned judgment of conviction rendered by the learned Judge Special Court is set aside and the appellant was acquitted of the charge vide a short order dated 01.11.2022 which reads as under:-

“For reasons to be recorded later on, this Criminal Appeal No.D-58/2019 is allowed, conviction and sentence awarded to the appellant vide judgment dated 10.04.2019, passed by learned Additional Sessions Judge-I/Model Criminal Trial Court/Judge Special Court for Narcotics, Mirpurkhas in Special Case No.42/2016, emanating from Crime No.70/2016 of P.S Jhundo under section 9(c) of Control of Narcotic Substances Act, 1997 are set aside and the appellant Allahdino alias Allahano s/o Gullan by caste Chandio is acquitted of the charge. The appellant shall be released forthwith if not required in any other custody case.”

17. Above are the reasons for said short order of even date.

JUDGE

JUDGE

