

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Cr. Appeal No.S-441 of 2019**  
[Abdul Rehman @ Kalo Lala versus The State]

DATE	ORDER WITH SIGNATURE OF JUDGE
Appellant	: Through Mr. Ashfaque A. Lanjar advocate
The State	: Through Ms. Safa Hisbani, Assistant P.G Sindh
Date of hearing	: 20.01.2023
Date of decision	: 27.01.2023

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

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**KAUSAR SULTANA HUSSAIN, J:** Captioned appeal has been directed against the Judgment dated 05.12.2019, penned down by learned Additional Sessions Judge-I, Tando Muhammad Khan in Sessions Case No.93 of 2019 [*Re: The State versus Abdul Rehman @ Kako Lala*] arising out of Crime No.135 of 2019 registered at P.S Tando Ghulam Hyder for offences punishable under Sections 269, 270 & 337-J PPC whereby he was convicted under Section 265-H(ii) Cr.P.C and sentenced to undergo for one year with fine of Rs.10,000/- and in case of failure to pay fine he was also directed further suffer simple imprisonment for three months, however, he was awarded benefit of Section 382-B Cr.P.C.

2. The facts in brief of the prosecution case, as per FIR, are that on 05.10.2019 Complainant ASI Muhammad Yaqoob left the police station for patrolling duty alongwith his subordinate staff and during patrolling when they reached at Nazer Pur Link Road near Rain Mori, they saw the present appellant/accuse standing there while holding one white colour kata in his hand, who on seeing the police party tried to escape away, however, was caught hold at the spot and during search 500 ghutka plastic pouches were recovered from the kata holding by him, as such he was brought at police station where aforesaid FIR was registered against him.

3. After registration of FIR Complainant himself investigated the matter and on completion of investigation challan was submitted before the concerned Court. Thereafter copies were supplied to accused (**Ex.01**) and charge was framed against him (**Ex.02**), to which he pleaded not guilty and claimed trial (**Ex.02/A**). In order to prove the charge prosecution had examined two witnesses (**Ex.03 & 04**). The Complainant/I.O had produced certain documents (**Ex.3/A to 3/L**), while the witness had seen the documents, containing his signatures. The prosecution had closed its side (**Ex.05**). Thereafter statement of appellant/accused was recorded under Section 342 Cr.P.C (**Ex.06**), wherein he denied the allegations, however, neither he produced any witness in his defence nor examined himself on Oath under Section 340(2) Cr.P.C. On completion of trial, learned trial Court passed the impugned

judgment (**Ex.07**), whereby appellant/accused was convicted and sentenced as mentioned above.

4. It is, inter-alia, contended by the learned counsel for the appellant that appellant/accused is innocent and has falsely been implicated in present crime; that after registration of FIR Complainant himself conducted investigation of the matter, which is sufficient to prove his malafide; that there are material contradictions in the statements of prosecution witnesses, which though have been mentioned by the trial Court in impugned judgment, yet the appellant/accused has been awarded sentence and though it is alleged that 500 ghutka plastic pouches were recovered from the possession of appellant, yet admittedly only five pouches were sent for chemical examination, but same material flaw has been completely ignored by the learned trial Court. He lastly prayed for acquittal of appellant.

5. On the other hand, learned APG supported the impugned judgment and prayed for dismissal of captioned appeal by arguing that appellant was arrested at the spot with 500 ghutka plastic pouches, which are injurious for human consumption, as such he is not entitled for any relief.

6. I have heard the learned counsel for the appellant as well as learned APG and have also gone through the material available on record including evidence of prosecution witnesses.

7. While going through the evidence of prosecution witnesses, it appears that there are material contradictions in the same. The Complainant/IO during cross-examination stated that during patrolling firstly they went to Ansari Sugar Mill, Almadina Chowk and then at the place of alleged incident; whereas the Mashir P.C Muhammad Aslam contradicted this version of Complainant/IO by stating that firstly they visited main road Soomra from Badin Road, Ansari Sugar Mill, Almanida Chowk, Matli Bypass and then went at alleged place of incident. Further the Complainant/IO stated that FIR was written by one WHC on his dictation, while above mashir again contradicted this claim of the Complainant/IO by stating that Complainant/ASI Muhammad Yaqoob himself registered the FIR.

8. The above minute scrutiny of the record and evidence clearly depicts that the prosecution case against the appellant is of highly doubtful nature and his conviction and sentence on the basis of such type of shaky, undependable and untrustworthy evidence cannot be maintained. It is well settled law that not many circumstances creating doubt in the prosecution story are required but only a single circumstance creating doubt in the prosecution story is enough to acquit the accused. In this regard I am fortified by the decision of Hon'ble Apex Court in the case of MUHAMMAD MANSHA versus THE STATE (**2018 SCMR 772**), whereby following principle has been enunciated:

*“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many*

*circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

9. Further though it is alleged that 500 ghutka plastic pouches were recovered from the possession of appellant/accused, however, it is admitted by the Investigation Officer that no small piece from each pouch was sent for chemical examination and only five pouches were separated and sent for chemical examination, as such on the basis of report, based on five pouches, it cannot be certainly held that entire alleged case property was containing injurious material. Reliance in this regard is placed on the decision of learned Division Bench of this Court tendered in the case of NAWAB KHAN versus The STATE (2020 YLR Note 126 Sindh).

10. In addition to above, though it is alleged that accused/appellant was holding alleged ghutka plastic pouches at the place of incident for selling purpose, however, nothing has been brought on record that accused/appellant is hardened criminal and/or previously convicted for like offence. Even otherwise, investigation is completely silent as to from whom the appellant had allegedly purchased the said material and to whom he was allegedly selling the same, as neither there is any documentary evidence nor people from locality have been examined in this regard. But all aforesaid aspects of the case have been overlooked by the learned trial Court, while passing the impugned judgment.

11. In view of the above observations considerable doubt had crept into the prosecution case, the benefit of which doubt should have been given to the appellant in accordance with well settled principles of law. Accordingly captioned appeal is allowed and in result whereof the conviction and sentence awarded to the appellant/accused through impugned judgment dated 05.12.2019 in Sessions Case No.93 of 2019 [*Re: The State versus Abdul Rehman @ Kako Lala*] arising out of Crime No.135 of 2019 registered at P.S Tando Ghulam Hyder for offences punishable under Sections 269, 270 & 337-J PPC is hereby set aside and appellant is acquitted of the charge. Appellant is present on bail, his bail bond stands cancelled and surety is discharged.

Captioned appeal stands disposed of accordingly.

JUDGE