IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Special Cr. Acq. Appeal No. D-20 of 2023

Present:
Yousuf Ali Sayeed, J
Zulfiqar Ali Sangi, J

Appellant	:	The State, through, Syed Sardar Ali Shah Addl.P.G
Respondent	:	Nemo.
Date of hearing	:	26.10.2023

JUDGMENT

YOUSUF ALI SAYEED, J. – This Appeal under Section 417(i) Cr.P.C has been preferred by the State so as to impugn the Judgment dated 19.12.2022 entered by the learned 1st Additional Sessions/Special Judge for CNS, Naushehro Feroze in Special Case No. 103 of 2022 emanating from Crime No.131 of 2022 registered at Police Station Tharu Shah in respect of an offence under Section 9(c) of the Control of Narcotic Substances Act, 1997 (the "**CNSA**"), whereby the Respondent, Zameer, also said to be known by the alias Zamoo, son of Wazeer, similarly said to be known by the alias, Mirchoo Solangi, was acquitted of the charge of possession of 1100 grams of charas.

2. Succinctly stated, at trial, it was alleged by the prosecution that a police party headed by ASI Abdul Rasheed Solangi apprehended the Respondent on 23.10.2022 at 1800 hours on the link road from Tharushah to Mithiani, near the bridge of Sakhi Dad Wahi Shakh, Taluka Bhiria City, District Naushehro Feroze, and recovered the aforementioned narcotics from his possession along with a cash amount of Rs. 100/-.

3. Following the investigation, an interim charge sheet was submitted against the Respondent/accused and the case was sent up for further proceedings, with the Charge being framed on 14.11.2022, in response to which the Respondent pleaded not guilty and claimed trial, during the course of which the prosecution called its witnesses who produced the documents specified as under:-

(i) PW-1, ASI Abdul Rasheed Solangi, the complainant of the case, who brought on record the memo for arrest and recovery as, the abstract copy of departure entry No.19 and arrival entry No.26 (on one leaf), and the FIR;

(ii) PW-2 HC, Mumtaz Ali Ujjan, one of the mushirs of the alleged occurrence, who brought on record the memo of inspection of the place of arrest and recovery;

(iii) PW-3 SIP Muhammad Hayat Lakhair, the IO of the case, who brought on record a copy of entry No.69 of register No.19 at, an abstract copy of the departure and arrival entries No.37 and 05 respectively (on one leaf), the letter addressed to SDPO Bhiria City for seeking permission to send the case property to the chemical examiner, as well as the acknowledgement receipt;

(iv) PW-4, WHC Mazan Samo, who is said to have deposited the case property in the Malkhana; and

(v) PW-5 Muhammad Ali Almani, who is said to have deposited the case property at the chemical laboratory.

4. A perusal of the impugned Judgment reflects that from a cumulative assessment of the evidence, the learned trial Court determined that the prosecution had failed to prove the guilt of the Respondent, hence duly extended him the benefit of doubt, resulting in his acquittal

5. Having examined the matter, we have observed *inter alia* that:

(a) A member of the police party, namely PC Nawaz Ali Babbar, who was said to be one of the witnesses to the memo of arrest and seizure as well as the memo been prepared by the IO upon his visit to the place of arrest was not called by the prosecution as a witness;

(b) There is discrepancy *inter se* the statements of PW-1 ASI Abdul Rasheed Solangi and P.W-2 HC Mumtaz Ali regarding the manner of arrest of the respondent/accused in as much as it was stated by the former that he had himself caught hold of the respondent whereas the later stated that it was he and PC Nawaz Ali Babbar who caught hold of him;

(c) Albeit the arrest and seizure having apparently been made on 23.10.2022, the case property was purportedly sent for analysis to the Chemical Examiner on 02.11.2022;

(d) More crucially and fundamentally, neither the case property nor the report, if any, of the Chemical Examiner was produced/exhibited in Court, nor was the report put to the respondent at the time of recording of his statement under Section 342 Cr.PC.

6. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, the learned APG was found wanting and could not point out any such error or omission and remained at a loss to show how a conviction was possible under the circumstances, particularly in view of the points noted herein above.

7. Needless to say, it is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice. If any authority is required in that regard, one need turn no further than the judgment of the Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

> "From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities."

8. However, in the matter at hand the learned trial Judge has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed. Indeed, the chemical examiners report is of critical importance in matters under the CNSA, as observed by the Supreme Court in the case reported as Mst. Sakina Ramzan v. The State 2021 SCMR 451, as in its absence it cannot even be said that anything incriminating was recovered from the Respondent for purpose of constituting the offence with which he was charged.

9. As such, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

JUDGE