

IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. D-13 of 2017

Present:

Justice Zafar Ahmed Rajput

Justice Shamsuddin Abbasi

Appellant : Ramzan s/o Noor Khan Brohi, through
Mr. Sarfraz Khan Jatoi, Advocate

Respondent : The State, through
Mr. Aitbar Ali Bullo D.P.G.

Date of Hearing : 04.02.2020
Date of Order : 19.02.2020

J U D G M E N T

ZAFAR AHMED RAJPUT-J:- Impugned in this Criminal Jail Appeal under Section 410, Cr. P.C is the judgment, dated 28.02.2017, passed in Special Case No.23 of 2015, arising out of Crime No.29/2015, registered under section 9(c) of the Control of Narcotic Substances Act, 1997 (*hereinafter the "Act of 1997"*) at P.S Garhi Khero, District Jacobabad, whereby the learned Sessions Judge / Special Judge (CNS), Jacobabad convicted the appellant for the said offence and awarded him sentence to endure life imprisonment and to pay a fine of Rupees One Lac or, in default thereof, to undergo imprisonment for one year more. The benefit of Section 382-B, Cr. P.C has, however, been extended to the appellant.

2. Succinctly, the facts of the prosecution case as narrated in F.I.R., are that on 22.07.2015 at 1500 hours, the appellant was arrested on being found in possession of 20 kilograms of charas at Bangul Dero road, near water-supply, Deh and Taluka Garhi Khero by the police party headed by S.H.O. Wasim Mirza in presence of mashirs, namely, H.Cs Ali Bukhsh and Muhammad Manthar.



3. Having been investigated the case, police sent up the appellant for trial. Formal charge was framed by the trial Court against the appellant as Exh.3, to which he pleaded not guilty and claimed to be tried, vide plea recorded at Exh.3-A. At the trial, prosecution in order to substantiate the charge examined two witnesses, namely, PW-1- S.H.O/SIP Wasim Mirza, the complainant/I.O, at Exh.5 and PW-2 H.C. Muhammad Manthar, the mashir, at Exh.6. They produced relevant documents in their evidence. The statement of appellant under section 342, Cr. P.C was recorded at Exh.8 wherein he denied the allegation against him and pleaded innocence. He; however, neither opted for examination on oath under section 340 (2), Cr. P.C. nor even led evidence in his defense. Upon the assessment of the evidence on record, the learned trial Court convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant has contended that the impugned judgment is not sustainable in law being contrary to the facts on record; that no person from public was associated by the police to act as mashir of recovery despite the fact that the recovery was made from a busy road; that no evidence has been brought on record to prove that the case property before sending for chemical analysis remained in *MALKHANA* in safe custody and even the relevant entry regarding keeping the case property in *MALKHANA* in safe custody has not been produced by the prosecution witnesses; that there are material contradictions in statements of prosecution witnesses in respect of taking efforts to associate private mashir and scribe of F.I.R. etc. which were fatal to the prosecution case but the learned trial Court failed to give any weight to it and, consequently, committed error in passing impugned judgment.



5. On the other hand, learned D.P.G. has fully supported the impugned judgment. He has maintained that the contradictions pointed out by the learned counsel for the appellant are minor in nature otherwise alleged recovery of huge quantity of contraband article in terms of date, time and place is fully supported by the prosecution witnesses.


6. We have heard the learned counsel for the appellant as well as learned D.P.G for the State and have examined the material available on record with their assistance.

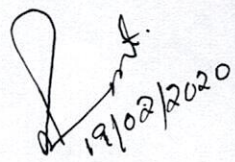
7. It reveals from the evidence of prosecution witnesses that on 22.07.2015, S.H.O Wasim Mirza, complainant/I.O, (Exh.5) proceeded from P.S. Garhi Khero along with H.Cs. Ali Bukhsh, Muhammad Manthar, P.C Faiq Ali and driver P.C. Muhammad Hayat in official vehicle for patrolling in the area vide Entry No. 11 at 1100 hrs. (Ex.5-C). During patrolling, they reached Begari Bridge at 1430 hrs., where they received spy information that at Bangul Dero road a person was waiting for transport having *bachka* (plastic bag) containing of charas. Police party reached the pointed place where they apprehended the appellant and seized the *bachka* containing twenty slabs of charas. H.C. Ali Bukhsh brought the scale and weights on the direction of S.H.O Wasim Mirza and thereafter charas was weighed. Each of twenty slabs of charas on weighing came to one kilogram (total twenty kilograms). Out of which, 500 grams from each slab (total ten kilograms) of charas, was sealed separately at the spot for chemical analysis and such mashirnama of arrest and recovery (Ex.5-A) was prepared in presence of mashirs, namely, H.Cs Ali Bukhsh and Muhammad Manthar and; thereafter, appellant along with case property



the contradictions in depositions of P.Ws. as pointed out by the learned counsel for the appellant, suffice it to say that in narcotic cases the Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in the statements of prosecution witnesses due to lapse of time or those having no impact on the material aspects of the case, have to be ignored. Once the prosecution *prima facie* establishes its case, then under Section 29 of the Act of 1997 burden shifts upon the accused to prove contrary to the case of the prosecution, and in the instant case, the appellant has failed to do so.

10. For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording sentence and conviction to appellant by the trial Court. Hence, instant criminal appeal is dismissed.


JUDGE


JUDGE