

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No. S-125 of 2024

Appellant : Juned s/o Muhammad Yousuf Makrani Baloch
through Mr. Muhammad Imran Choudhry advocate

State : Through Mr. Dhani Bakhsh Mari,
Assistant Prosecutor General, Sindh

Date of hearing : 14.06.2024

Date of Judgment : 14.06.2024

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Criminal Appeal, the appellant has assailed the Judgment dated 10.06.2023 passed by learned First Additional Sessions Judge/MCTC/Special Judge CNS Act, Mirpurkhas vide Sessions Case No. 320 of 2023, being outcome of FIR No.41 of 2023, registered at P.S Mehmoodabad, for offence under Sections 4/8 of Sindh Prohibition of preparation, manufacturing, storage, sale and use of Gutka and Manpuri Act, 2019, whereby appellant was convicted as under:-

1. For offence punishable U/S 3 (Prohibition of preparation or manufacture of Gutka and Manpuri) he stands sentenced with R.I for three (03) years and to pay fine of RS.2,00,000/- (Two Hundred Thousand Rupees) and in case of default he will will also undergo S.I for six (06) months.
2. For offence punishable u/s 4 (Prohibition of possession, sale or delivery of Manpuri) he stands sentenced with R.I for three (03) years and to pay fine of RS.2,00,000/- (Two Hundred Thousand Rupees) and in case of default he will also undergo S.I for six (06) months).

3. For offence punishable U/S 6 (Prohibition on owning, operating premises or machinery or manufacture of manpuri, gutka or its derivatives) Gutka & Manpuri Act, 2019 he stands sentenced with R.I for three (03) years and to pay fine of RS.2,00,000/- (Two Hundred Thousand Rupees) and in case of default he will also undergo S.I for six (06) months.

However, benefit in terms of section 382-B Cr.P.C was extended to the appellant and sentences so awarded will run concurrently.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 04-5-2023 ASI Muhammad Yaqoob Chandio along with police officials including P.C/1078 Chen Singh and P.C/1677 Muhammad Ashraf, all duly armed in police uniform having investigation bag left P.S in police mobile vide departure entry No 12 at 1500 hours (3;00 pm) for patrolling and while patrolling he received spy information and consequent thereto they rushed towards the pointed place viz house of accused Junaid Makrani Balouch located at Harchand Rai colony Mirpurkhas and reached there at about 1600 hours (4;00 pm) where saw accused Junaid Balouch was preparing health injurious Gutkas, so they apprehended him and took items viz as yellow coloured plastic baskets containing prepared Mava Gutka and separated as well as sealed 100 grams out of each Mava Gutka lying in baskets, 02 Gutka packing machines, 16 empty basket of Azizi Zaffran patti, 04 yellow coloured plastic empty baskets, a basket was filled with wrappers and a small empty plastic tub. After preparation such memo, they brought arrested accused and recovered property at P.S where instant FIR was lodged.

3. After registration of FIR investigation was conducted. On completion of investigation, challan was submitted before learned Magistrate concerned. Since the offence is exclusively triable by the Court

of Sessions, therefore, learned Magistrate sent the R&Ps to learned Sessions Judge, Mirpurkhas, wherefrom same was transferred to the trial Court for disposal in accordance with law, where formal Charge was framed against the accused at Ex.02, to which he pleaded not guilty and claimed trial vide his plea at Ex.02-A. In order to prove its Charge, the prosecution examined in all five (05) witnesses at Ex.03 to 07, who produced and recognized certain documents, then prosecution closed its' side at Ex.08. Statement of accused, as required under Section 342 Cr. P.C was recorded at Ex.09 wherein he admitted the allegations leveled by prosecution against him; however, neither he examined himself on Oath nor produced any witness in his defense. Finally learned trial Court after hearing the arguments of learned counsel for the parties, convicted and sentenced the present appellant, as mentioned supra.

4. Mr. Muhammad Imran Choudhry, learned counsel for the appellant submits that charge against appellant was framed u/s 4 and 6 of the Sindh Prohibition of preparation, manufacturing, storage, sale, and use of Gutka and Manpuri Act, 2019 whereas conviction has awarded to him in terms of sections 3, 4 and 6 of the said Act. He further submits that per FIR as well as deposition of complainant (Ex.3 page No.06 of the paper book) 100 grams of Mava Gutka, from the recovered Gutka, each was sealed in two plastic shopping bags, whereas per chemical report (page 22 of the paper book) a single cloth bag parcel was sent to the laboratory for analysis. He further submits that though recovery was effected on 04-05-2023 but sample was received by the laboratory on 08-05-2023; the laboratory had issued report on 09-06-2023 i.e with a delay of about 01 month for which no plausible explanation has been furnished. He further submits that

throughout evidence the appellant was unrepresented, therefore, PWs who were examined were not subjected to cross examination; even Presiding Officer of the trial court had not bothered to conduct cross in order to ascertain truth. He further submits that appellant being an ignorant of law could not conduct cross from PWs and trial court has blindly passed impugned judgment, which in view of the defective evidence is not maintainable, hence is liable to be set aside. Learned counsel while referring evidence of I.O at page 14 of paper book submits he had deposed in his chief that the report was collected by him on 07-06-2023 though it was issued on 09-06-2023 such discrepancy on the part of star witness of prosecution shows that prosecution had not conducted investigation according to its rules which show all formalities were prepared at PS and the offence had not occurred in a manner as has been reported. Thus by doing so, miscarriage of justice has been caused. He further submits that incharge Malkhana P/C Khadim Hussain (Ex.6 page No.22 of the paper book) deposed that SIP Abid Hussain Noon, SHO P.S Mahmudabad had handed over two sealed parcels containing sample property of Mava Gutka to him, whereas his evidence has been belied by the chemical report which reveals single cloth bag parcel was delivered to them. He, therefore, submits that accused was deprived of his defence. He further submits that if such defective evidence may be presumed to be true even then prosecution has failed to establish its charge against the appellant, hence appellant deserves his acquittal on account of benefit of doubt. He further submits that statement of accused at page No.27 of paper book was answered by the Presiding Officer himself whereby he had answered in affirmative to all questions, which too is impossible and illegal. As far as recovery is concerned, learned counsel submits that

nothing was secured from the possession of appellant and police in order to get shield from their superiors had foisted upon him.. He further submits that appellant had also moved an application regarding tempering with the evidence, for which Presiding Officer Mr. Ghulam Qadir Tunio is very much known. He, therefore, submits that in the light of above discrepancies impugned judgment may be set aside and appellant may be acquitted from the charges.

5. Learned A.P.G appearing for the State opposes appeal on the ground that huge quantity of Mava Gutka alongwith manufacturing articles were secured by police at the time of raid, for which there is no denial; hence impugned judgment does not suffer from any illegality or irregularity and does not require interference of this court. He, however, could not controvert fact that appellant remained unrepresented before the trial court and even trial court though was competent and has been bestowed powers under Evidence Act yet did not bother to conduct cross or put a single question from PWs only to ascertain the veracity of evidence.

6. Since appellant has remained unrepresented before the trial court and presiding officer though was competent yet did not bother to conduct cross from the PWs regarding truth or otherwise of the allegations, hence appellant has been deprived of his right of defence which is against provisions of esteemed Constitution of Islamic Republic of Pakistan, 1973, such deficiency on the part of prosecution shows that prosecution has miserably failed to prove its charge against the appellant beyond reasonable shadow of doubt. The alleged recovery was affected on 04-05-2023 whereas it was delivered to the laboratory on 08-05-2023 with a

delay of three days, for which no plausible explanation has been furnished by the prosecution. Though sample was delivered to the laboratory on 08-05-2023 even then report was issued by the concerned on 09-06-2023 with delay of about one month. Such inefficiency shows police after registration of case had managed the articles aims to strengthen rope of their case against the appellant. Such conduct on the part of prosecution cast serious doubt upon veracity of its evidence, which entitles the appellant with benefit of doubt. It is settled law that for extending benefit of doubt there is no necessity to have many discrepancies but even a single doubt is sufficient to discard prosecution evidence. In the instant case in view of above, evidence adduced by the prosecution lot of discrepancies/ doubts have been created, which are sufficient to make the case of prosecution to be doubtful. Though appellant was deprived from right of his defence even then prosecution has miserably failed to prove its charge against him beyond reasonable shadow of doubt. In the case reported as Tariq Pervaiz vs. The State (1995 SCMR 1345), the Honourable Supreme Court held as under :-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

Further, jail roll of the appellant reveals that he served sentence without remission upto 27-05-2024 as 11 months and 17 days and earned remission as 02 years, 01 month and 20 days and the unexpired portion of his sentence with fine is 01 year, 04 months and 23 days. This shows that appellant has already severed major portion of his sentence.

Accordingly and in view of above instant appeal is hereby allowed. Resultantly, impugned judgment dated 10-06-2023 penned down by 1st Additional Sessions Judge/ MCTC/ Special Judge Control of Narcotics Substance Act, Mirpurkhas, being outcome of Crime No. 41/ 2023 of PS Mahmudabad u/s 4/8 of Sindh Prohibition of preparation, manufacturing, storage, sale and use of Gutka and Manpuri Act, 2019 vide Sessions Case No. 320/ 2023 Re; S/V Juned Baloch is hereby set aside. The appellant is in custody, therefore, he shall be released forthwith if his custody is no longer required by the jail authorities.

JUDGE

Saleem