

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.388 of 2024

Present:
Naimatullah Phulpoto, J.
Irshad Ali Shah, J.

Appellant: Rizwan through Mr. Dur Muhammad Mallah, advocate

Respondent: The State through Mr. Abrar Ali Khichi, Addl. PG for the State

Date of hearing: 07.08.2024

Date of announcement: 07.08.2024

JUDGMENT

IRSHAD ALI SHAH, J. It is the case of the prosecution that the police party of PS New Karachi Industrial Area led by SIP Muhammad Ramzan on patrol within the jurisdiction of PS New Karachi Industrial Area when reached in a street at Khamiso Goth, noticed the presence of the appellant and two more persons who later were named to be Azhar and Shahrukh; the appellant was apprehended and on search from his was secured shopper containing heroine power weighing to be 108 grams while Azhar and Shahrukh made their escape from the place of the incident leaving behind their shopper containing little quantity of heroine power, for which the present case was registered. At trial, the appellant denied the charge and the prosecution to prove the same, examined four witnesses and then closed its side. The appellant, in his statement recorded under Section 342 Cr.PC denied the prosecution allegation by pleading innocence; he did not examine anyone in defence or himself on oath. After the trial, the appellant was convicted under Section 9 (1)(3)(b) CNS Amendment Act, 2022 and sentenced to undergo Rigorous Imprisonment for 07 years and to pay a fine of Rs.25,000/- and in default in payment whereof, to undergo Simple Imprisonment for 01 month with the benefit of section 382-B Cr.PC by learned 1st Additional

Sessions Judge/MCTC-1 Karachi Central, vide judgment dated 21.05.2024, which he has impugned before this Court by preferring the instant Criminal Appeal.

2. It is contended by learned counsel for the appellant that the appellant is innocent and has been involved in this case falsely by the police by foisting upon him heroin powder on account of his making an application against the police officials and evidence of PWs being doubtful has been believed by learned trial Court without assigning cogent reasons, therefore, he is entitled to be acquitted by extending him the benefit of the doubt, which is opposed by learned Addl. P.G for the State by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. It was stated by complainant SIP Muhammad Ramzan and PW/Mashir HC Danish Kamal that on the date of the incident they with the rest of the police personnel were conducting patrol within the jurisdiction of PS New Karachi Industrial Area when reached in a street at Khamiso Goth, they found the appellant and two more persons standing, the appellant was apprehended while rest of the two persons made their escape leaving behind a shopper containing a little quantity of heroin powder. On search from the appellant was secured shopper it was found containing heroin powder; it weighed 108 grams; a memo of arrest and recovery was prepared at the spot and the appellant was brought to PS New Karachi Industrial Area where he was booked in the present case formally and further investigation of the case was conducted by I.O/SIP Muhammad Arif. The place of the incident admittedly was a populated area yet no independent person was associated by the complainant to witness the arrest of the appellant and recovery of heroin powder from him; such omission on his part could not be overlooked. The heroine powder allegedly secured from the appellant as per the report of the Chemical Examiner was weighed to be 105 grams. How did this happen? No explanation for such inconsistency is offered, therefore, the same could not be overlooked. It suggests manipulation or tempering. Evidence of PW ASI Tariq Hussain is only

to the extent that the heroine powder secured from the appellant was deposited with him by the complainant which he kept in *Malkhana* after recording an entry in the relevant register; his evidence hardly needs discussion. It was stated by I.O/SIP Muhammad Arif that on investigation he visited the place of the incident and prepared the memo; it was not prepared in the presence of any independent person. Why? Perhaps knowingly, to keep the entire episode limited to the police officials to deprive the appellant to have a benefit of evidence of independent person. It was further stated by him that he deposited the heroine powder with the Chemical Examiner for its examination and after usual investigation furnished the challan of the case before the Court having jurisdiction. It was admitted by him that there is no criminal record of the appellant. The complainant and his witnesses have shown their ignorance about making of an application by the appellant against the police officials, which infact was moved by him with SSP New Karachi at-least two days back to his actual involvement in the present case by the police, copy whereof he has appended with the instant appeal. Obviously the evidence brought on the record by the prosecution is not appearing to be transpiring confidence to be believed to maintain conviction. The appellant in his statement recorded u/s. 342 Cr.PC instead of recovery of heroin powder was asked to answer about the recovery of Charas from him. In that way, he was misled in his defence. However, he denied the prosecution allegation by pleading innocence; his plea could not be lost sight of in the circumstances of the case.

5. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond the shadow of reasonable doubt and to such benefit he is found entitled.

6. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex Court that;

“4....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".

7. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside; he is acquitted of the charged offence and to be released forthwith, if not required to be detained in any other custody case.

8. Above are the reasons for our short order of even date, whereby the instant Criminal Appeal was allowed.

JUDGE

JUDGE