

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-67 of 2019

PRESENT:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Shamsuddin Abbasi,

Appellant : Ranjhan Junejo, through Mr. Mohammad Afzal Jagirani,
Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General.

Date of hearing: 04-02-2020.

Date of Judgment: 04.02.2020.

J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- This criminal appeal is directed against the judgment dated 27.09.2019, whereby the learned Sessions Judge/Special Judge CNS, Larkana, convicted the appellant in Special Narcotics Case No.22 of 2019 re-The State Vs. Ranjhan Junejo, arisen out of Crime No.03/2019, registered at Police Station Hatri Ghulam Shah, District Larkana, under Section 9(c) of Control of Narcotic Substances Act, 1997 and awarded sentence to suffer R.I. for one year and to pay fine of Rs.14000/-, in default thereof to suffer S.I. for 03 months more.

2. Briefly stated the facts of the prosecution case are that on 27.01.2019, at 1800 hours, a police party headed by ASIP Bahadur Ali Larik of Police Station Hatri Ghulam Shah, on a tip-off, arrested the appellant/accused from link road leading towards Cadet College near Sher Khan Jatoi Village and secured black colour shopper containing 02 patties of charas weighing 1400 grams.

3. After usual investigation, case was challaned against the appellant/accused.

4. The learned trial Court framed the charge against the appellant/accused at Ex.2, to which he pleaded 'not guilty' and claimed to be tried. The prosecution to prove the charge examined three witnesses viz., PW-1 complainant ASIP Bahadur Ali at Ex.4, who produced departure entry No.16, mashirnama of recovery & arrest and the FIR at Ex.4-A to 4-C respectively; PW-2 mashir PC Qadir Bux at Ex.5, who produced mashirnama of place of vardhat at Ex.5-A; and PW-3 IO/ASIP Ghulam Yaseen at Ex.6, who produced entry No.31, attested photocopy of R.C No.5 and positive report of Chemical Examiner at Ex.6-A to 6-C respectively.

5. In his statement u/s 342, Cr.P.C, the appellant/accused denied the prosecution allegations and stated that he had previous dispute with one Amanullah Dharejo of District Sukkur, on whose instance he was arrested by the Rohri Police from his house and after confinement of 03 days his custody was handed over to SHO Hatri Ghulam Shah, who registered this false case against him by foisting charas. According to the appellant, his mother had filed an application u/s 491, Cr.P.C before the learned Sessions Judge, Sukkur, which was dismissed vide order dated 31.01.2019. Lastly, he claimed to be innocent and victim of police. The appellant/accused neither examined himself on oath, nor led any evidence in his defence.

6. On the assessment of evidence available on record, the learned trial Court convicted and sentenced the appellant, as mentioned above.

7. The learned Counsel for the appellant has mainly contended that in fact the appellant was arrested by the police of Police Station Kandhra on 23.01.2019 and illegally confined him in the police lockup, on that the mother of the appellant, namely, Mst. Rajul wife of Allah Bux Junejo had filed an application under Section 491 Cr.P.C on 24.1.2019 being Cr. Misc. Application

No.226/2019 before the learned Sessions Judge, Sukkur, which was disposed of by the learned III-Additional Sessions Judge, Sukkur vide order dated 31.01.2019, as the arrest of the appellant was shown by the police of Police Station Hatri Ghulam Shah in the instant crime. He has further contended that such defence plea was specifically taken by the appellant in his statement under Section 342, Cr.P.C and certified copies of said documents were produced by him at Ex.8-A & 8-B, but the same were discarded by the learned trial Court, observing that no cogent evidence has been produced on record.

8. The learned Deputy Prosecutor General, after consulting the record, concedes to the fact that record in the form of certified true copies of application and order passed by the learned III-Additional Sessions Judge, Sukkur on the application of the mother of the appellant, which were produced by the appellant in his statement under Section 342, Cr.P.C, should have been considered by the learned trial Court.

9. We have heard learned Counsel for the parties and have perused the material available on record.

10. It appears from the perusal of Ex.8-A that the mother of the appellant had filed this application under Section 491, Cr.P.C before the learned Sessions Judge, Sukkur on 24.01.2019, stating therein that there was a dispute between Amanullah son of Ghulam Nabi and her son i.e. the appellant on money transaction and in respect thereof an FIR bearing Crime No.80 of 2018 was lodged by her but the same was disposed of under "C" class. It was further stated in the said application that on 23.01.2019 Abdul Khaliq Shah, SHO of Police Station Kandhra, District Sukkur, along with 15-20 police officials raided her house at 5.30 a.m. and took away her son i.e. the appellant forcibly. It further appears that on such application of the mother of

the appellant, directions were issued by the learned III-Additional Sessions Judge, Sukkur to the said SHO to produce the appellant, but it was reported by the SHO that the appellant was arrested by the police of Police Station Hatri Ghulam Shah, District Larkana in Crime No.03/2019 registered under Section 9(c) of CNS Act, hence the same application was dismissed on being infructuous vide order dated 31.01.2019. Such documentary evidence available on the record appears to have been discarded by the learned trial Court without discussing and assigning any reason to it. Since it has already come on record that the appellant was forcibly taken away by the police of Kandhra Police Station, District Sukkur on 23.01.2019 and for that such application filed by the mother of the appellant for his production was already pending adjudication before the learned III-Additional Sessions Judge, Sukkur, it is sufficient to hold that the entire exercise of arrest and recovery of the contraband material from the possession of appellant in the instant case is highly doubtful. It is well-settled principle of law that benefit of doubt is to be extended to the accused not as a matter of grace but as a matter of right. Reliance in this context can be placed on the case of *Muhammad Akram v. The State* (2009 SCMR 230), wherein Hon'ble Supreme Court of Pakistan has held that:

"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."

11. In view of above facts and circumstances, we are of the considered view that the prosecution has in fact failed to prove its case against the appellant beyond reasonable doubt. Accordingly, this appeal is allowed. Resultantly, the conviction and sentence awarded to appellant Ranjhan son of



Faiz Mohammad Junejo by the learned trial Court vide impugned judgment dated 27.09.2019 are set aside and he is acquitted of the charge. The appellant is present on bail, his bail bonds are cancelled and surety, discharged.



JUDGE


JUDGE

The above order has been complied
On 11-02-2020


Accountant