

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Jail Appeal No. D – 79 of 2024
(*Ali Raza alias Photo & others v. The State*)

Present:
Mr. Zulfiqar Ahmad Khan, J.
Mr. Khadim Hussain Tunio, J.

Date of hearing : **18.12.2024**

Date of decision : **18.12.2024**

Mr. Rukhsar Ahmed M. Junejo, Advocate for appellants.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

J U D G M E N T

Zulfiqar Ahmad Khan, J. – The appellants Ali Raza alias Photo S/o Moharram Ali Ghanghro, Aakash S/o Hali Lal and Muhammad Ali S/o Ghulam Muhammad Rajput have filed this appeal against the judgment dated 06.07.2024, passed by learned Sessions / Special Judge (CNS), Sukkur, in Special Case No.41 of 2024 (*Re: Ali Raza alias Photo & others v. The State*), arising from Crime No.44 of 2024, registered at Police Station ‘A’ Section, Sukkur under Section 9(1)3(c) of CNS (Amendment) Act, 2022. The appellants were convicted and sentenced to undergo rigorous imprisonment for a period of ten (10) years, along with a fine of Rs.1,00,000/- (Rupees one lac) each. In the event of default in payment of the fine, the appellants were ordered to undergo an additional two months of simple imprisonment. The appellants seek to challenge their conviction and sentence.

2. The brief facts of the case are that on 29.02.2024, at approximately 08:00 PM, the appellants were apprehended by ASI Ghulam Hyder Niazi and his team during a regular patrol at Fish Market Chowk, Qasimabad, Sukkur. A piece of charas weighing 1005 grams was allegedly recovered from each of the appellants. Additionally, cash amounts were seized from each accused: Rs.20/- from Ali Raza, Rs.10/- from Muhammad Ali and Rs.20/- from Aakash. The charas was properly sealed for chemical analysis. A memo detailing the arrest and recovery was prepared at the site, and the appellants, along with the recovered property, were brought at Police Station ‘A’ Section, Sukkur, where the aforementioned FIR was lodged against them.

3. After the FIR was registered, the investigation was initiated by Inspector Hasnain Raza Shah, who, upon completing the investigation, submitted the challan to the competent Court. At the outset of the trial, a formal charge was framed against the appellants. However, they refuted the charges and chose not to enter a guilty plea, instead requested the prosecution to present its evidence.

4. The prosecution presented its case by examining the witnesses, including ASI Ghulam Hyder Niazi (complainant), PC Shahbaz Ghuniyo (*mashir*) and Inspector Hasnain Raza Shah (Investigating Officer). They produced various documents as evidence, such as the FIR, memo of arrest and recovery, memo of site inspection, RC and chemical report. The appellants' statements were recorded under Section 342, Cr.P.C, where they denied all the incriminating evidence against them. Appellant Muhammad Ali claimed that he had a dispute with the complainant regarding the parking of a fruit cart in front of Police Station 'A' Section, Sukkur, while accused Aakash stated that the ASI had a personal grudge against him. At the conclusion of the trial, the appellants were convicted and sentenced as detailed above.

5. Learned Counsel has contended that the appellants are innocent and have been falsely implicated in this case. He raised concerns about the safe custody of the property, pointing out that it has not been clarified who was the Incharge of the Malkhana and under whose possession the property was kept. Additionally, he highlighted the discrepancy between the form in which the charas was allegedly recovered and the form in which it was received by the chemical examiner. Learned Counsel further claimed that the appellants were implicated due to a personal grudge of the ASI.

6. Learned Additional Prosecutor General has firmly supported the impugned judgment and prayed for dismissal of the instant appeal, emphasizing the established recovery of the contraband and the positive report of the chemical examiner.

7. We have carefully listened to the arguments of learned Counsel for the appellants and learned Additional Prosecutor General, and have reviewed the material on record.

8. A number of inconsistencies and issues emerged during the trial that have led to the filing of this appeal. The first point of contention relates to the discrepancy in the description of the recovered charas. According to the police officials, the charas was allegedly wrapped in a white transparent cover with a golden seal affixed to it. However, the chemical examiner's report described the charas as being in the form of a black-brown patti inside a black shopper. There was no mention of the white transparent cover or the golden seal as described by the police. This raises serious doubts about the authenticity and integrity of the recovered substance and suggests that the police may have fabricated evidence to strengthen their case.

9. The appellants also raised the defense that they were falsely implicated due to personal animosities with the complainant. Accused Muhammad Ali, in his statement, claimed that he had a dispute with the complainant, ASI Ghulam Hyder Niazi, over the parking of his fruit cart in front of Police Station 'A' Section, Sukkur. In a similar vein, accused Aakash claimed that ASI Ghulam Hyder Niazi had a personal grudge against him. Regarding the plea of accused Muhammad Ali, the complainant said that "*It is incorrect to suggest that accused Muhammad Ali used to run fruit cart outside the P.S.*", while *mashir* admitted that "*It is correct to suggest that accused Muhammad Ali used to park the carts in front of the P.S.*" Despite the complainant's extensive time spent at the police station, he failed to acknowledge this fact during his testimony, raising concerns about his credibility. This concealment of information, corroborated by the *mashir's* admission, casts doubt on the complainant's version of events and suggests potential bias or ulterior motives in his actions.

10. Further complicating the case is the issue of the chain of custody of the recovered narcotics. Investigating Officer, Inspector Hasnain Raza Shah, testified that the case property was placed in the *Malkhana* under entry No.14. However, he failed to provide any details regarding the Incharge of the *Malkhana* and the handling of the property. There was no evidence presented regarding the identity of the person responsible for the safe custody of the recovered narcotics, nor was any *Malkhana* Incharge examined in the Court. This lack of transparency and the failure to properly account for the custody of the evidence raises serious doubts about the integrity of the prosecution's case. The principle of the unbroken chain of

custody is crucial in criminal cases involving narcotics, as it ensures that the evidence has not been tampered with or altered.

11. The arrest and recovery of the narcotic substance were carried out at 08:00 PM, and the inspection of the site was conducted at 07:25 AM the following day. The police claimed that there were no private individuals present at the fish market during the time of the recovery and inspection, a location situated in the heart of the city. As a result, the police officials acted as *mashirs* in the absence of independent witnesses. This is highly suspicious, given that the fish market is a busy area, and it is unlikely that no private individuals were present during the recovery. This omission casts further doubt on the validity of the recovery process and raises questions about the transparency of the police's actions.

12. In the case of *Barkurdar v. The State and another* (2023 SCMR 1791), the Hon'ble Supreme Court observed that the accused is entitled to the benefit of the doubt, even if there is only one uncertainty in the case, and it is not necessary for multiple doubts to exist. The Hon'ble Supreme Court emphasized that for a conviction to stand, the evidence must be unimpeachable, trustworthy and reliable. Any doubt arising in the prosecution's case must be resolved in favour of the accused, ensuring fairness and upholding the presumption of innocence. This reinforces the standard that the prosecution must prove its case beyond a reasonable doubt, and if it fails to do so, the accused must be acquitted.

13. Based on the identified inconsistencies and extending the benefit of doubt to the appellants, the appeal was **allowed** vide short order dated 18.12.2024. As a result, the conviction and sentence awarded to them were nullified, and the appellants were acquitted of all charges. They were directed to be released immediately by the jail authorities, unless they were needed for any other custody matter. These are the reasons of the short order dated 18.12.2024.

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Abdul Basit