

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Acq. Appeal No. D - 32 of 2022.

Date	Order with signature of Judge
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Present.

M/s.Naimatullah Phulpoto &
Abdul Mobeen Lakho, JJ.

Appellant:

The State
Through Mr.Zulifqar Ali Jatoi
Addl.P.G.

Respondent.

Talib Hussain in person.

Date of Hearing 15th November, 2022.

JUDGMENT.

NAIMATULLAH PHULPOTO, J- Respondents Talib Hussain and Wahid @ Abdul Wahid were tried by the learned Additional Sessions Judge-I (MCTC) CNS, Khairpur for the offence under Section 9(c) of the Control of Narcotic Substance Act, 1997. After regular trial vide judgment dated 11.04.2022, the respondents were acquitted of the charge. The State has filed this appeal against acquittal of the respondents.

2. Brief facts of the prosecution case are that on 20.10.2021 ASI Allah Bux left Police Station alongwith sub-ordinate staff vide Roznamcha entry No.13 dated 20.10.2021 at 1445 hours for patrolling duty. While patrolling at the various places, police party

reached near graveyard where saw one person standing there and he was carrying a plastic bag in his hand. He tried to run away while seeing the police Mobile; however police succeeded in catching him hold and the plastic bag was taken from his possession by the ASI. At that time, the private persons were not available. ASI made PCs Gulzar Ali and Naveed Ali as mashirs and opened the plastic shopper. There were two big and six shall pieces of Charas in it. On enquiry, the accused disclosed his name as Talib Husain and further disclosed that he has purchased said Charas from one Wahid Bux. Thereafter, Charas was weighed, which became 2000 grams. The accused was arrested and the Charas was sealed at the spot. Thereafter, accused Talib Hussain was brought to the Police Station alongwith case property recovered from him. Hence, the FIR on behalf State was lodged against them vide Crime No.131/2021 for offence under Section 9 (c) CNS Act, 1997. Thereafter, challan was submitted against the respondent/accused under Section 9(c) CNS Act, 1997.

3. Trial Court framed the charge against the respondents/accused under Section 9(c). They pleaded not guilty and denied the allegation.

4. At the trial, prosecution examined P.W 1 ASI Allah Bux, P.W 2 PC Gulzar Ahmed, P.W 3 SIP Abdul Kareem, P.W 4 PC Abdul Hakeem and P.W 5 PC Naveed Ali. Thereafter, prosecution side was closed.

5. Learned trial Court recorded the statement of accused under Section 342, Cr.P.C in which they claimed their false implication and denied the allegation.

6. Learned trial Court after hearing the learned counsel for the accused and Prosecutor, on the assessment of evidence vide judgment dated 11.04.2022 acquitted the respondents/accused of the charge. Thereafter, this acquittal appeal has been filed.



7. Learned Additional Prosecutor General has mainly contended that the trial Court failed to appreciate the evidence according to the settled judicial principles. It is submitted that this is a case of mis-reading and non-reading of the evidence and the impugned judgment is perverse in law. It is also argued that trial Court has disbelieved the evidence of the police officials without assigning sound reasons and prayed that the acquittal may be converted into conviction.

8. Respondent Talib Hussain is present and submits that he has been falsely implicated in this case.

9. We have perused the impugned judgment dated 11.04.2022 and it shows that the trial Court has recorded acquittal in Para-12 of the impugned judgment, which is reproduced as under:-

"12. In view of the above said contradictions in the evidence of the prosecution witnesses, so also admissions made by them coupled with legal flaws and lacunas in the prosecution case as pointed out above, it can safely be held that the prosecution has not succeeded in proving its case against the accused beyond shadow of doubt. I find support in this behalf by case law reported as 1996 SCMR 167 (Riaz Hussain Kalhor v. The State), 2004 P.Cr.L.J 290, Mashooque Ali Mallah v The State. It is well settled principle of law that to convict an accused with the offence with which he is charged it requires strong evidence but it is lacking in this case. Moreover, it is also a well settled principle of law that for entitlement to benefit of doubt to the accused, it is not necessary that there should be many circumstances creating doubts. Even if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he becomes entitled to such benefit not as a matter of grace and concession but as a matter of right. The reliance in this behalf is placed on the case reported as 1995 SCMR 1345 (Tariq Parvaiz versus The State), 2011 P.Cr.L.J 643 (Federal Shariat Court) (Mohammad Nawaz and another versus the State) and 2014 YLR 1573 (Sindh). On the other hand, accused in his statement recorded

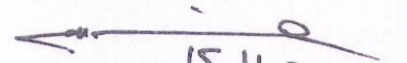
under Section 342 Cr.P.C has categorically denied the allegations as leveled against him by the prosecution and professed his innocent and claimed false implication at the hands of police I am also in agreement with the submissions made by the learned counsel for accused, while I find no substance in the arguments advanced by the learned S.P.P for the State, therefore, for the above reasons, I decide the point No.1, as doubtful."

10. We have re-examined the evidence of the prosecution witnesses and have come to the conclusion that trial Court has assigned sound reasons for disbelieving the prosecution evidence. While discussing in Para-11 of the impugned judgment, trial Court has mentioned that the Charas was recovered on 20.10.2021 but it was sent to the Expert after 02 days. It means that the safe custody and safe transmission of the Charas to the Expert, have not been established before the trial Court. It has come on record that the Charas was kept in Malkhana but the Incharge of the Malkhana was not examined by the prosecution. The Police party was headed by ASI Allah Bux when he was examined before the trial Court, he had not mentioned the time at which time respondent Talib Hussain was arrested by the police. In the cross examination, it has come on record that the place of recovery was a busy road but we are unable to understand as to why the efforts were not made by the ASI Allah Bux to associate the independent persons available at the place of incident We have come to the conclusion that the learned trial Court has rightly appreciated the evidence and for sound reasons, recorded the acquittal.

11. There is another aspect of the case also when the acquittal is ordered by the competent Court of law, this Court is always slow to interfere with the acquittal unless judgment is perverse. Moreover, the principles for appreciation of evidence in

respect of the appeal against acquittal are entirely different from appeal against conviction. We are not convinced that the impugned judgment is perverse in law but it is based on sound reasons therefore, the appeal being without merits, is dismissed.


JUDGE


JUDGE 15.11.2022

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