

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 660 of 2023

Mr. Justice Salahuddin Panhwar
Mr. Justice Arshad Hussain Khan

Appellant: Farooq Dad @ Bachu
through Mr. Muhammad Yousif Narejo advocate

Respondent: The State
through Mr. Qammaruddin Nohri,
A.P.G. Sindh

Date of Hearing: 10.12.2024

J U D G M E N T

SALAHUDDIN PANHWAR, J.-Appellant Farooq Dad @ Bachu was tried by learned Additional Sessions Judge-IV/Special Court (CNS), Malir Karachi in S.C.No. 1590/2023 arising out of FIR No. 228/2023 for offence punishable under section 6, 9(1)(3)(c) of CNS Act 1997 registered at PS Ibrahim Hyderi, Karachi, whereby after full-fledged trial, vide judgment dated 28.11.2023, the appellant was convicted under Section 265-H(ii) Cr.PC for offence under Section 6, 9(1)(3)(c) Control of Narcotic Substances Act, 1997 and sentenced to suffer 14 years R.I and to pay fine of Rs.5,00,000/-, in default whereof appellant was directed to suffer 0406 months' SI. Appellant was also extended benefit of Section 382-B, Cr.P.C.

2. Briefly, the prosecution case is that on 06.06.2023 at about 1515 hours, police party headed by SIP Imam Bux of PS Ibrahim Hyderi, on tipoff, apprehended the appellant from Piyala Chow, Siddique's Dhakka, Rehri Road, Ibrahim Hyderi, Malir Karachi and recovered 1700 grams of charas in presence of mashirs. Thereafter, accused and case property were brought at PS where aforementioned FIR was lodged against him on behalf of state.

3. During investigation, Charas was sent to the chemical examiner for chemical analysis and received positive report. After completing all the formalities, challan was submitted against the appellant. Upon indictment, accused pleaded not guilty and claimed trial.

4. At trial, prosecution examined four witnesses. Thereafter, prosecution side was closed.

5. Trial Court recorded statements of accused under Section 342 Cr.P.C in which appellant claimed his false implication in the present case and denied the prosecution allegations. Appellant neither examined himself on oath under section 340(2) Cr.P.C in disproof of the prosecution allegations nor led any evidence in his defense.

6. After hearing the learned counsel for the appellant, prosecutor and while examining the evidence, learned Trial Court vide judgment dated 28.11.2023, convicted and sentenced the appellant as detailed above. Hence, the appellant has preferred instant appeal against the conviction and sentence recorded against him.

7. We have duly considered the arguments presented by the learned counsel for the Appellant, as well as those put forth by the learned Additional Prosecutor General, and have thoroughly examined the evidence on record. In the instant case, the prosecution has failed to discharge its burden of proving the guilt of the accused beyond a reasonable doubt. It is the prosecution's duty to establish the accused's guilt to the requisite standard of proof, which is beyond a reasonable doubt. This principle forms a fundamental pillar of our legal system, ensuring that no individual is wrongfully convicted based on insufficient or unreliable evidence. In the present matter, the prosecution has failed to meet this burden, as demonstrated by the evident inconsistencies and gaps in the evidence produced.

8. The evidence presented in the prosecution's case against the accused reveals significant inconsistencies and discrepancies that undermine its credibility and raise reasonable doubts, which are as follows:

- **PW-2 SIP Imam Bux's Testimony:** He claimed that the recovered black shopper contained three pieces of *charas*. One piece was wrapped in yellow solution tape, and two pieces were wrapped in white plastic shoppers.
- **PW-1 PC Sajid Aziz's Testimony:** He stated that the black shopper contained two pieces of *charas*, one wrapped in white plastic, one without a wrapper, and one wrapped in yellow solution tape.
- **Discrepancy:** PW-2 speaks of three wrapped pieces, whereas PW-1 describes one piece being unwrapped and only two being wrapped. Such inconsistencies question the accuracy and reliability of their statements.
- According to the evidence produced in court, the recovered narcotic substance was presented in **two black shoppers**.

- However, PW-1 PC Sajid Aziz only referred to **one black shopper** during his testimony.
 - The memo of arrest and recovery, along with the testimonies provided by prosecution witnesses, notably fell short in detailing the physical characteristics of the recovered narcotics. Critical information such as the shape, size, and packaging of the narcotics—whether they were in the form of bars, slabs, or other configurations—was not adequately described. This lack of specificity could undermine the prosecution's case, as the identification and characterization of evidence are pivotal in establishing the nature of the substances involved in the alleged crime.
 - This lack of detail undermines the specificity and verifiability of the prosecution's claim and leaves room for manipulation.
 - The memo states that the appellant was arrested at **1515 hours**, and the memo was also prepared at **1515 hours**.
 - Considering the procedural steps—arrest, recovery of the narcotics, weighing, sealing, and preparation of the memo—this simultaneous timing appears implausible.
 - **Doubt Created:** The timing inconsistency raises questions about whether the memo was prepared contemporaneously at the scene or fabricated later.
9. The contradictions and inconsistencies in the prosecution evidence appear to be substantial and merit careful scrutiny. Below is an elaboration of the discrepancies:

- The **First Information Report (FIR)** indicates the recovery of **three pieces of charas**. This initial statement sets a foundation for the prosecution's case by outlining the quantity and nature of the evidence.
- Conversely, the **charge sheet/challan** states there are only **two pieces**: one wrapped in yellow tape and a half piece wrapped in white tape, totaling **1700 grams**. This significant reduction in the number of pieces raises immediate concerns about the reliability of the prosecution's claims.
- The **chemical report (Exh.6/G)** introduces further complexities by describing the recovered items as:
 - One big piece wrapped in yellow tape.
 - One big piece wrapped in white panni.
 - One small piece (dark brown).

This description deviates significantly from both the FIR and the charge sheet, neither of which classify the pieces of the alleged narcotic substance as “big” or “small.” Furthermore, the FIR, charge sheet/challan, and testimonies of

the prosecution witnesses fail to specify the individual weights of the recovered pieces of narcotic substance. The chemical analysis report, which identifies the color of the recovered substance as dark brown, also introduces a notable inconsistency, as no mention of the substance's color is found in the FIR, the arrest and recovery memo, or the evidence provided by the prosecution witnesses. Such material discrepancies raise serious concerns about the integrity, reliability, and probative value of the prosecution's evidence, particularly in light of the strict evidentiary standards required in criminal proceedings under legal norms.

10. Surprisingly, the learned Trial Court recorded the appellant's statement under Section 342 of the Criminal Procedure Code (Cr.P.C.), wherein Question No. 2 referenced only exhibit numbers 3/A, 3/B, 5/A to 5/D, 6/A, and 6/G. However, the specific descriptions and details of these documents were notably absent from the accused's statement. This omission constitutes a clear contravention of the mandate set forth in Section 342 of the Cr.P.C., which stipulates that the purpose of such questioning is to enable the accused to elucidate any circumstances arising from the evidence against him. It is a matter of record that the incriminating material pertaining to the specific number of recovered pieces of charas was not presented to the accused. Furthermore, the chemical report, along with its brief analysis, was not confronted with the accused during his examination under Section 342 of the Cr.P.C. Consequently, the prerequisites established by Section 342, Cr.P.C. have not been adequately fulfilled. It is an established principle of law that any piece of incriminating evidence must be put to the accused during his statement under Section 342 of the Code of Criminal Procedure (Cr.P.C.). Failure to do so renders the evidence inadmissible against the accused. This principle has been consistently reiterated by the Apex Court of Pakistan in a plethora of cases, including the landmark judgment in *Muhammad Saddique v. The State* (2018 SCMR 71), which serves as a guiding authority on this issue.

11. It is an established fact that the alleged incident occurred in broad daylight, with the Complainant acting upon prior information received through a tip-off. However, despite possessing this prior knowledge, the Complainant failed to take adequate measures to involve independent private witnesses to substantiate the arrest of the accused and the recovery of the alleged narcotic substance, despite the location being a densely populated area and the Complainant having ample time to arrange for such witnesses. While it is true

that Section 25 of the Control of Narcotic Substances Act, 1997 excludes the mandatory application of Section 103, Cr.P.C., and police officials can be considered competent witnesses, this does not absolve the Complainant of the responsibility to involve independent public witnesses to dispel the presumption of false implication of the accused. Reliance may be placed on the legal principles articulated by this Court in the case of *Ghulam Shabbir and Another v. The State* (2023 YLR 153).

12. Furthermore, the conflicting testimonies of the prosecution witnesses regarding the description of the case property, the preparation of the memo of arrest and recovery, and the omission to secure the presence of independent witnesses despite prior tip-off, seriously undermine the credibility and reliability of the prosecution's evidence. These material discrepancies and inconsistencies create substantial doubt regarding the integrity and authenticity of the prosecution's case, thereby entitling the accused to the benefit of the doubt as mandated by established legal principles.

13. It is also an established principle of law that an accused person is presumed to be innocent till the time he is proven guilty beyond a reasonable doubt and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond a reasonable doubt on the basis of legally admissible, confidence-inspiring, trustworthy and reliable evidence. It is well-settled law that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. The rule of giving the benefit of doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, the principle is grounded in the maxim, "It is better that ten guilty persons be acquitted than that one innocent person be convicted". Conversely, Islamic criminal law is founded on the esteemed teachings of the Holy Prophet Muhammad (Peace Be Upon Him), which underscore the importance of safeguarding individual rights. Notably, he stated, "Avert punishments (hudood) when there are doubts", and, "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him (the accused), let him have his wall; for the leader's mistake in granting pardon is preferable to his

mistake in administering punishment". The Honorable Supreme Court of Pakistan has referenced the latter part of this teaching in the landmark case of *Ayub Masih v. State (PLD 2002 SC 1048)*, articulating that *"the mistake of the Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent"*. This foundational principle has also been reaffirmed by the Honorable Supreme Court in its recent judgment in *Naveed Asghar and 2 Others v. The State (PLD 2021 SC 600)*.

14. After our reassessment of the evidence produced by the prosecution as discussed above and while taking the defence plea of the appellant in juxtaposition with the prosecution case we find that the prosecution has not proved its case against the appellant beyond a reasonable doubt and for extending the benefit of the doubt there does not need to be multiple circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused then the accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of *Tariq Pervez v. The State reported as (1995 SCMR 1345)*, wherein the Honourable Supreme Court of Pakistan has 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 doubt. 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".

15. In light of the foregoing discussion, it is evident that the prosecution has failed to establish its case beyond a reasonable doubt, as required under the law. Consequently, the benefit of the doubt must be extended to the appellant. Accordingly, this jail appeal is allowed, and the conviction and sentence awarded by the learned trial Court are hereby set aside. The appellant is acquitted of the charges leveled against him and shall be released forthwith unless he is required to be detained in connection with any other case.

16. These are the detailed reasons for the short order pronounced in open Court on 10.12.2024.

JUDGE

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