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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Criminal Appeal No. **D-120** of 2011

Present:

Mr. Justice Zafar Ahmed Rajput
Mr. Justice Adnan-ul-Karim Memon

Appellant : Bangul S/o. Oad, by caste Sabzoe, in person
Respondent : The State,
through Mr. Khadim Hussain Khoharo, DPG.
Date of Hearing : 07.06.2017
Date of order : 07.06.2017

JUDGMENT

ZAFAR AHMED RAJPUT, J:- This Criminal Appeal is directed against the judgment, dated 19.10.2011, passed by the learned Special Judge, Control of Narcotic Substances/ Sessions Judge, Kashmore at Kandhkot in Special Case No.17 of 2011, arisen out of F.I.R No.158 of 2011, registered under Section 9 (c) of the Control of Narcotic Substances Act, 1997 at P.S. A-Section Kandhkot, whereby the appellant was convicted under section 9 (c) ibid and sentenced to suffer four years R.I. and to pay fine of Rs. 20.000/= or in default thereof, to undergo five months further S.I. with benefit of section 382-B, Cr. P.C.

2. Briefly stated, the facts of the case are that on 18.05.2011, at 1730 hours, on Link Road, near Rasaldar Railway Crossing, Kandhkot, the appellant was arrested by the police party headed by ASI Hairuddin Dahani of P.S. A-Section, Kandhkot, being absconder in Crime Nos. 75/2010 and 196/2010 of P.S. A-Section, Kandhkot, and recovered from his possession one black color polythene bag containing 1150 grams Charas.



3. After completion of investigation, challan was submitted against the appellant; thereafter, the appellant was formally charged to which he pleaded not guilty and claimed trial.

4. At the trial, prosecution examined three witnesses i.e. PW-1 ASI, Hairuddin, the complainant, at Ex. 4, who produced mashirnama of arrest and recovery, F.I.R and copies of entries of station diary bearing Nos. 25 and 32 at Ex. 4-A to Ex. 4-D, respectively; PW-2 H.C. Nabi Dad, the mashir at Ex. 5, who produced mashirnama of site inspection at Ex. 5-A and PW-3 SIP Abdul Razaq Sarki, the I.O, at Ex. 6, who produced report of chemical examiner at Ex. 6-A. The statement of appellant under section 342 Cr. P.C. was recorded at Ex. 8, wherein he, denying the charge against him, claimed to be innocent and prayed for justice. He, however, neither appeared as his own witness on oath nor even produced any witness in his defence. Upon assessment of evidence on record, the learned trial Court convicted the sentenced the appellant as mentioned above.

5. Since the appellant is appearing in person, we examined the material available on record with the assistance of learned DPG.

6. It has been brought on record through the prosecution witnesses that on 18.05.2011, complainant ASI Hairuddin Dahani proceeded from police station for patrolling in Government vehicle, driven by P.C Bhagio, vide entry No. 25 at 1510 hours (Ex. 4-C), along with sub-ordinate staff, namely, H.Cs. Muhammad Ibrahim, Nabi Dad, P.Cs. Muhammad Sharif and Shahnawaz, and reached Rasaldar Link Road at 1645 hours, where he arrested the appellant who was absconder in Crime No. 75/2010, under section 324,3532,196 P.P.C., and 196/2010, under section 17/1 & 2 EHO, registered at P.S. A-Section, Kandhkot. It also reflects that the appellant was carrying one polythene bag containing Charas which was on being equalized at the spot came to 1150 grams, the same was sealed and such mashirnama of recovery and arrest (Exh:4-A) was prepared

by the said ASI at the spot in presence of mashir H.Cs. Muhammad Ibrahim, Nabi Dad. Subsequently, the said ASI brought the appellant at police station along with case property where after recording F.I.R. (Ex. 4-B) against the appellant on behalf of the State, he handed over copy of mashirnama, case property and custody of appellant to SIO Abdul Razaq for investigation; thereafter, during course of investigation, the said SIO visited the place of incident and prepared such mashirnama (Ex. 5-A) in presence of mashirs H.Cs Muhammad Ibrahim and Nabi Dad and he sent the case property for chemical examiner.

7. The perusal of record shows that the signatures of complainant A.S.I. Hairuddin appearing in memo of arrest and recovery (Ex. 4/A) and on the F.I.R. (Ex. 4/B) do not tally with each other. In cross examination, the said P.W. while admitting difference in his signatures has deposed that the said difference was because of the places of the preparation, as he made his signature on memo on body of the vehicle. It might have been so, but it is also an admitted fact that the signatures of mashir Nabi Dad which he made on memo of recovery of Charas allegedly, prepared by the complainant A.S.I. Hairuddin (Ex. 4/A) and on memo of site inspection, prepared by the investigation officer SIO Abdul Razaq (Ex. 4/A) are significantly different from each other and for that he has failed to furnish any explanation in his evidence. Under such circumstances, no credibility can be attached with the memo of arrest and recovery.

8. It is also an admitted position that the article seized allegedly from appellant on 18.05.2011, sent to Chemical Examiner for analysis after delay of eleven days on 30.05.2011. It has not been explained that where the articles remained for the period of eleven days, which fact alone casts serious doubt on prosecution case.



9. Resultantly, this appeal is allowed. The conviction and sentence of appellant recorded by the learned trial Court vide impugned judgment are set aside and the appellant is acquitted of the charge. The sentence of appellant was suspended by this Court vide order dated 10.11.2011; therefore, his surety stands discharged from the liability of bail bonds.

