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IN THE HIGH COURT SINDH, CIRCUIT COURT, LARKANA.

Criminal Appeals No. D- 15 of 2016.

Present:

Mr. Justice Zafar Ahmed Rajput -J

Mr. Justice Khadim Hussain Tunio -J

Appellant : Ghulam Shabbir Shar, through
Mr. Shahbaz Ali Brohi, Advocate.

Respondent : The State, through
Mr. Khadim Hussain Khoonharo, A.P.G.

Date of Hearing : 12.12.2017.

Date of Judgment: 12.12.2017.

J U D G M E N T

ZAFAR AHMED RAJPUT-J:- This Criminal Appeal, under Section 410 Cr. P.C R/W Section 48 of the Control of Narcotic Substances Act, 1997 (**hereinafter the "Act of 1997"**) is directed against the judgment, dated 09.03.2016, passed in Special Case No. 01 of 2015, arising out of Crime No.07/2014, registered at P.S Jamalpur under section 9(c) of the Act of 1997, whereby the learned Sessions Judge, Shikarpur/Special Judge, Narcotics convicted the appellant/accused under section 9(c) (ibid) and awarded him sentence to suffer R.I for four years and six months and to pay fine of Rs.20,000/= or, in default thereof, to undergo S.I for five months more. The benefit of Section 382(b) Cr. P.C has, however, been extended to the appellant.

2. Briefly stated facts of the case are that on 16.12.2014, at 1430 hours, the appellant was arrested at the bridge of Rice Canal, situated at link road leading from village Mirzapur to village Jamalpur by the police party headed by A.S.I Irshad Ali Meerani of C.I.A. Central, Shikarpur in presence

of mashirs, namely, P.C Fayaz Ahmed and P.C Mir Mohammad on being found in possession of 2 k.gs Charas in the shape of four pieces wrapped in black shopper. Thereafter, appellant was brought at P.S. Jamalpur, where aforementioned F.I.R. was recorded against him.

3. After usual investigation, police submitted the challan against the appellant. Formal charge was framed by the trial Court against the appellant as Ex.2, to which he pleaded not guilty and claimed to be tried, vide plea recorded at Ex.3. Prosecution, during trial, examined three witnesses, namely, PW-1A.S.I. Irshad Ali, the complainant, at Ex.5. PW-2 S.I.P/S.H.O. Mohammad Talib of P.S. Jamalpur, the investigation officer, at Ex.6 and PW-3 P.C Mir Mohammad, the mashir, at Ex.7. They produced relevant documents in their evidence. The statement of appellant under section 342 Cr. P.C was recorded at Ex.9 wherein he, claiming to be innocent, stated that he was arrested by H.C Talib Hussain Memon of C.I.A, Shikarpur about seven days before the registration of the F.I.R. and, subsequently, he was implicated falsely in this case, as he failed to fulfill the demand of said H.C Talib Hussain to pay Rs.1,00,000/= as illegal gratification for his release. Upon the assessment of evidence on record, the learned trial Court convicted and sentenced the appellant as mentioned above.

4. Learned counsel for the appellant has mainly contended that the appellant is innocent and has falsely been implicated in this case; that there is no independent evidence in the case against the appellant and police officials being interested witnesses have deposed falsely against him; that PW-3 Mir Mohammad, the mashir, has admitted in his cross examination that he had signed the sealed parcel at police station therefore, no credibility can be attached with the alleged recovery of the

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Charas; that even otherwise said PW has supported the version of the appellant that he was arrested by H.C Talib Hussain of C.I.A. by deposing in his examination-in-chief that he (PW) was along with H.C Talib Hussain and others when the police party arrested the appellant; that the learned trial Court failed to consider the defence plea taken by the appellant and, consequently, committed error in passing impugned judgment. He; however, admitted that neither any complaint was made by the relatives of appellant to any police official nor any application was moved before the court regarding illegal detention of the appellant.

5. On the other hand, learned A.P.G. has fully supported the impugned judgment and has maintained that the appellant had alleged enmity only against one H.C Talib Hussain of C.I.A., who is even not the witness in the case and he has not uttered even a single word in respect of any enmity with any of the prosecution witnesses; that in his examination-in-chief PW-3 Mir Mohammad, the mashir, has clearly stated that the mashirnama of arrest and recovery was prepared by the complainant and he signed the same at the spot; hence, merely on the basis of his assertion in cross examination that he had signed the sealed parcel in the police station can hardly render the recovery of 2 k.gs Charas from the possession of the appellant doubtful. He added that so far alleged recovery in terms of date, time and place is concerned; there is no contradiction in the depositions of the prosecution witnesses.

6. We have heard the learned counsel for the appellant and learned A.P.G for the State and have perused the material available on record with their assistance.

7. It reflects from the evidence of prosecution witnesses that on 16.12.2014, complainant A.S.I Irshad Ali proceeded from CIA Center

Shikarpur, vide Entry No. 5 at 1300 hours (Ex. 5/C) along with P.Cs Fayaz Ahmed, Mir Mohammad, Shah Mohammad and driver Hazar Khan and reached at link road leading from village Mirzapur to village Jamalpur, near Rice Canal Bridge at 1430 hours where they saw the appellant having a polyphene bag in his hand. They apprehended the appellant and seized from his hand the polythene bag containing four pieces of Charas which were, on being equalized at the spot, came to 2 k.gs, the same was sealed at the spot and such mashirnama of arrest and recovery (Ex. 5/A) was prepared in presence of mashirs, namely, Fayaz Ahmed and Mir Muhammad and; thereafter, appellant along with case property was brought at police station Jamalpur where F.I.R. (Ex.5/B) was lodged against him by A.S.I. Irshad Ali who, subsequently, handed over the memo of arrest and recovery, F.I.R. and case property to S.I.P Muhammad Talib of P.S. Jamalpur for investigation purpose. S.I.P Muhammad Talib, during investigation, visited place of recovery, under Entry No. 7 at 1550 hrs. (Ex. 6/A) and prepared memo of site inspection (Ex.6-B) in presence of mashirs Fayaz Ahmed and Mir Muhammad. On 18.12.2014, he recorded the statements of witnesses under section 161 Cr. P.C. and sent the case property to chemical examiner for analysis, which was received to his office on the same day. As per report of chemical examiner (Ex. 6/C), the parcel was found bearing three perfect seals, containing four brown colored pieces of Charas, each wrapped in plastic and kept in black plastic shopper having total 2 kilo grams net weight. The case property was produced before the trial Court during evidence of P.Ws 1 & 3 i.e. A.S.I. Irshad Ali and P.C Mir Muhammad, respectively in sealed condition, which was de-sealed and after showing to said P.Ws., it was re-sealed in presence of parties.

8. All three P.Ws have implicated the appellant to have been apprehended on/at aforementioned day, time and place on being in possession of 2 k.gs Charas. The evidence of PWs. in respect of arrest and recovery of charas is consistent and confidence inspiring. There appears no material contradiction in the depositions of P.Ws rendering the prosecution case as doubtful. Admittedly none of the prosecution witnesses had any enmity with the appellant nor was it ever suggested. In absence thereof, there appears no reason why the appellant should be falsely implicated. It goes without saying that in narcotic cases the Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in the statements of prosecution witnesses due to lapse of time or those having no impact on the material aspects of the case, have to be ignored.

9. So far, as argued by the learned counsel for the appellant, the admission by the P.W-3 Mir Muhammad (mashir) in his cross-examination with regard to the signing of the sealed parcel at the police station is concerned, said P.W has clearly deposed in his examination-in-chief that the mashirnama of recovery was prepared at the spot by the complainant A.S.I. Irshad Ali and he signed the same at the spot. The credibility of the recovery of Charas is attached with the mashirnama of recovery, which does not lose in case the sealed parcel is stated to be signed by the mashir at police station. As regards the defence plea, it may be observed that, admittedly, neither the appellant nor any of his relatives had made any such complaint to any police official nor any application was moved before the court regarding his illegal detention. Moreover, as stated above, the appellant has not alleged any enmity with any of the prosecution witnesses out of them PW-2 SIP Mohammad

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Talib is not from C.I.A police; hence, plea taken in his defence by the appellant appears to be afterthought.

10. For the foregoing facts and reasons, we have not found any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording sentence and conviction to appellant by the trial Court. Hence, instant criminal appeal is dismissed. The appellant is present on bail, his bail bond stands cancelled and he is taken into custody and remanded to jail to serve out his sentence.