

40

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Appeal No.D-19 of 2016.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
-----------------------	---------------------------------------

1. For Hearing of M.A.No.1358/2016.
2. For Regular Hearing.

13.6.2017.

Messrs Ali Nawaz Ghanghro and Mohammad Hashim Soomro, advocates for the appellant.

Mr. Sardar Ali Shah, A.P.G.

Heard learned counsel for the appellant and learned A.P.G for the State.

For the reasons to be recorded later on, instant appeal is allowed. The conviction and sentence awarded to appellant Mohammad Uris @ Uris son of Akbar Ali Arisar, vide impugned judgment dated 09.04.2016, passed by learned Sessions Judge, Shikarpur/Judge, Special Court for CNS, in Special Case No.731 of 2014 for offence punishable under section 9 (c), Control of Narcotic Substances Act, 1997, arisen out of Crime No.29/2014, registered at Police Station Jagan @ Hamanyun, are set aside and the appellant is acquitted of the charge. He is directed to be released forthwith, if not required in any other case.

M.Y.Panhwar/**

67

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

Criminal Appeal No. D-19 of 2016

Present:

Mr. Justice Zafar Ahmed Rajput.

Mr. Justice Adnan-ul-Karim Memon.

Appellant : Muhammad Uris @ Uris s/o Akbar Ali,
through Mr. Ali Nawaz Ghangro, Advocate.

Respondent : The State,
through Mr. Sardar Ali Shah, APG.

Date of hearing : 13.06.2017
Date of order : 13.06.2017

JUDGMENT

ZAFAR AHMED RAJPUT, J:- This criminal appeal is directed against the judgment dated 09.04.2016 passed by the learned Sessions Judge/ Special Judge Narcotics, Shikarpur in Special Case No. 731 of 2014, arising out of Crime/F.I.R. No. 29 of 2014, registered at P.S. Jagan @ Hamanyun, under Section 9 (c) of the Control of Narcotic Substances Act, 1997, whereby the appellant was convicted and sentenced to suffer R.I. for seven years and six months with fine of Rs.35,000/- or in default thereof, to undergo six months further S.I. The benefit of Section 382-B Cr.P.C. was; however, extended to the appellant.

2. Briefly stated facts of the case are that on 17.08.2014, upon receiving spy information during patrolling that near Qalander Shah Bahy Wahi, one person was waiting for conveyance having charas to go to Sukkur, the complainant S.I.P. Riaz Husain Sanjrani of C.I.A., Shikarpur, along with subordinate staff, reached the pointed place at 1200 hours and arrested the

484

appellant/accused on being found in possession of six packets of charas, each containing 3 slabs, in a blue polythene bag, weighing 4680 grams, the same was sealed by him at the spot, under the mashirnama prepared with the signatures of mashirs, namely, H.C Qurban Ali and P.C. Khalid Hussain and; thereafter, he brought the accused along with case property at police station Jagan @ Hamayoon where aforesaid F.I.R. was recorded.

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

4. The prosecution, in order to substantiate the charge, examined in all three witnesses. **PW-1** H.C Qurban Ali, the mashir, examined at Exh. 6, he produced mashirnamas of arrest and recovery and site inspection at Exh. 6/A and Exh. 6/B, respectively; **PW-2** A.S.I. Abdullah Brohi, the I.O, examined at Exh. 7, he produced F.I.R. and report of chemical examiner at Exh. 7/A and Exh. 7/B, respectively and **PW-3** S.I.P Riaz Hussain Sanjrani, the complainant, examined at Exh. 8, he produced attested copies of departure and arrival entries at Exh. 8/A and Exh. 8/B, respectively.

5. The statement of appellant under section 342 Cr. P.C. was recorded at Exh. 10, wherein he denied the allegations of prosecution and stated that he was arrested by Major Imran Rahimu on 29.03.2014, who, subsequently, handed over his custody to police on 17.08.2014 due to Constitution Petition filed by his grandfather before the High Court of Sindh, at Karachi and; thereafter, he was booked in this false case by the police by managing charas. He produced certified true copy of the C.P bearing No. 5-2339 of 2014 and case diaries at Exh. 10-A and Exh. 10-B, respectively. He;

nt.

however, neither opted to be examined himself on oath in term of Section 340 (2) Cr.P.C. nor led any evidence in his defense. Upon the assessment of evidence on record, the learned trial Court convicted and sentenced the appellant as mentioned above.

6. Learned counsel for the appellant has contended that the appellant has falsely been implicated by the police by foisting upon him the alleged charas on 17.08.2014, though he was already in illegal custody since 29.03.2014 and at the time of his arrest nothing was recovered from his possession. He has further contended that the leaned trial Court did not consider the contradictory evidence of prosecution witnesses on the point of preparation of memo of arrest and recovery, as Pw-1 Qurban Ali, the mashir, (Exh. 6) has deposed that SIP Riaz Hussain prepared the said memo in his presence, while PW-3, SIP Riaz Hussain, the complainant, (Exh.8) has deposed that it was prepared by P.C. Khalid on his dictation, while the latter did not appear as witness to testify the recovery. He has further contended that the impugned judgment is result of misreading and non-reading of evidence on record; hence, the same is not sustainable under the law. He has also contended that the learned trial Court ought to have believed the defence version, which was supported with documentary evidence but the learned trial Judge did not apply his judicious mind at the time of passing the impugned judgment and convicted the appellant without ascertaining the fact that the prosecution had miserably failed to prove the case against the appellant.

7. On the other hand, the learned APG has fully supported the impugned judgment and has argued that the defence version has been discussed by the learned trial Judge in the impugned judgment.

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

9. It appears from perusal of the case file that the learned trial Court in its impugned judgment has discarded the defence plea by observing as under:-

"18. Conversing to the version put forth by the accused that he was arrested by Major Imran on 29.03.2014, such Constitution Petition No.D-2339/2014 re. Hameed Arisar versus the Federation of Pakistan and others was filed on 29.04.2014 by his grandfather before Honourable High Court of Sindh, Karachi (he produced C.T.C of such petition and case diary at Ex.10/A and 10/B), subsequently on 17.08.2014, Major Imran handed over his custody to police due to above petition and the Police managed charas and foisted upon him and booked him in false case. The case diaries in above Constitution Petition produced by the accused reveal that on 16.05.2014 learned A.A.G sought time for submitting his comments and the matter was adjourned to 04.06.2014, but on said date again learned A.A.G requested for time for filing of comments and matter was adjourned to 12.06.2014 on said date counsel for Petitioner was called absent and matter was put off to 19.06.2014. On 12.09.2014 at the request of learned counsel for Petitioner, notice was issued to respondent No.3 (Major Imran) for production of detenue before the Court and matter was adjourned to 15.09.2014. It would be pertinent to mention here that the accused has failed to produce subsequent diaries after 12.06.2014 or 15.09.2014 or order passed by the Honourable High Court of Sindh, Karachi in the above Constitution Petition, which reflects that the defence theory pressed into service by the accused appears to be after thought."

55

10. It reflects from the record that although the P.W-3, complainant S.I.P. Riaz Hussain in his cross-examination has denied the suggestion that the appellant was handed over to C.I.A. by the army personal, who had arrested him from Umer Kot on 29.03.2014, and nothing was recovered from his possession. He also showed his ignorance about filing of any petition, under section 491 Cr. P.C, before High Court of Sindh, at Karachi by the grandfather of appellant regarding his detention. As such, on the material point of arrest of appellant and recovery of charas from his possession on 17.08.2014 by the complainant SIP Riaz Hussain, the prosecution's evidence appears to be doubtful in view of defence version, which is supported with the documentary evidence that suggests a different story and negates the prosecution version. Even if both versions, one put forwarded by the appellant and the other put forwarded by the prosecution, are considered in juxtaposition then the version of the appellant seems more plausible and convincing, while the version of prosecution is totally doubtful, keeping in view the contradictory evidence of PW-1 H.C Qurban Ali and PW-3 S.I.P Riaz Hussain on the point of preparation of memo of arrest and recovery, which was, as per admission of PW-3 S.I.P Riaz Hussain, prepared by P.C Khaild, who has not been produced by the prosecution for evidence, hence, no credibility can be attached with alleged arrest of appellant and recovery of charas on 17.8.2014.

11. In short, the prosecution has failed to bring home charge against the appellant. It is not necessary that there should be more than one reason; in the circumstances, if one reason creates reasonable doubt in the prudent mind, which alone would be sufficient for discarding the prosecution evidence as held in the case of *Riaz Maeeh alias Mithu vs. State (1995*

SCMR 1730) and Saeedullah vs. Shah Nazar and others (2001 P.Cr.L.J. 1740).

12. For the foregoing facts and reasons, 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. He is directed to be released forthwith if his custody is not required by any Court in any other case/crime.

Above are the reasons of our short order dated 13.06.2017,

