

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

Criminal Appeal No D-66 of 2016.

Present:

Mr. Justice Zafar Ahmed Rajpur-J

Mr. Justice Muhammad Iqbal Kalhoro-J

Appellant Aijaz Ahmed Brohi, through his advocate  
Mr. Shahbaz Ali M. Brohi.

Respondent The State through Mr. Sardar Alil Shah, APG.

Date of hearing: 08.11.2016.

Date of judgment: 17.11.2016.

**J U D G M E N T**

**Muhammad Iqbal Kalhoro-J:** Appellant was arrested on 22.11.2014 at 0720 hours from Brohi Colony near Railway Track Shikarpur city on spy information and from his possession 1100 grams of charas in three pieces were recovered by the police headed by ASI Hafeezullah of P.S. New Faujdari Shikarpur. The applicant as a result of such recovery was arrested and was booked in present crime and offence.

In the trial, prosecution examined complainant Hafeezullah at Exh.5, Mashir PC Kashif Ali at Exh.6 and SIP Sher Mohammad at Exh.7 who have produced all the necessary documents of the prosecution case in their evidence. After their evidence, 342 Cr.P.C statement of the appellant was recorded wherein he has denied the allegations. At the conclusion of the trial, learned Sessions Judge, Shikarpur/Special Judge, Control of Narcotics Substances found the appellant guilty of offence and convicted him to suffer R.I for four years and six months and to pay fine of Rs 20,000/= in default of which to further undergo S.I for five months more vide impugned judgment dated 17.10.2016. Being aggrieved by the said findings the appellant has preferred the instant appeal.

On 08.11.2016 this appeal was fixed for hearing on M.A No.3902/2016 moved U/S 426 Cr.P.C but as the R & Ps of the case were available hence with the consent of parties the entire appeal was heard and reserved for judgment. Learned counsel for the appellant Mr. Shahbaz Ali M Brohi, mainly argued that the prosecution case was full of contradictions and discrepancies; that although prosecution was not able to prove the recovery

of alleged charas from the appellant beyond reasonable doubt but the learned trial Court while ignoring all the contradictions, convicted the appellant which had resulted into miscarriage of justice. Learned counsel further contended that the prosecution case showed that charas recovered from the appellant was in three pieces but when the same was produced before the trial Court by the witnesses, it was found containing more than three pieces which clearly indicated that the charas produced in the Court was not the same substance allegedly recovered from the appellant. Learned counsel also vehemently contended that the complainant and mashir in their depositions had given the names of different areas which they, on the day of incident, had allegedly patrolled. He also referred to the evidence of the witnesses and stated that there were discrepancies in respect of time consumed at the place of incident and with whom the custody of the appellant was while the formalities of the case at the spot were being completed. He also contended that the appellant was implicated in the case due to enmity with DSP City and the alleged charas was foisted upon him and that there was delay of four days in sending the charas to the office of Chemical Analyser which had virtually made the entire prosecution case as doubtful. In support of his contentions, learned counsel relied upon the case laws reported in 2015 P.Cr.L.J 1430, 2001 P.Cr.L.J 1865, 2014 P.Cr.L.J 1358 and 2015 P.Cr.L.J 1402.

Canvassing the opposite view, learned A.P.G argued that the prosecution was able to prove its case beyond reasonable doubt as all the prosecution witnesses had supported each other on salient features of the case and there was no material contradiction or irregularity to justify acquittal of the appellant. He also emphasized that the offence was against the society, therefore, dynamic approach was needed to deal with the narcotics dealers.

We have considered the submissions of learned counsel for the parties and perused the material including the case laws. The prosecution case indicates that the appellant on a tip-off was arrested from Brohi Colony near Railway Track Shikarpur city and from him 1100 grams charas was recovered. The entire recovered charas was sent to the office of Chemical Analyser, the report of whom dated 01.12.2014 produced by the I.O at Exh.7-A, is in positive confirming the said substance to be charas. The discrepancies pointed out by learned Defence Counsel in respect of the time consumed at the place of incident or the mention of different places visited by the police party on the day of incident or as to where was the appellant, while formalities were being completed, are of no importance and do not constitute the material facts of the case for the purpose of giving benefit whereof to the

appellant. It is a well settled principle of law that while appreciating the evidence the minor discrepancies which are bound to occur in the evidence of the prosecution witnesses due to lapse of time between the incident and recording of evidence has to be ignored and the truth has to be sifted from the falsehood. Although learned Defence Counsel vehemently contended that the applicant was implicated falsely on account of some enmity with DSP City but no any material to that effect has been produced by the appellant in the trial to establish the same.

As to contentions of learned Defence counsel that when the alleged charas was produced in the Court it was found containing more than three pieces, it may be mentioned that the charas received by the Chemical Analyser was in three pieces as is evident from his report and there it was subjected to examination and 10 grams from each piece were separated, therefore, the original three pieces of charas reducing into many pieces can not be ruled out. More so, the alleged charas was recovered from the appellant on 22.11.2014, whereas the evidence of complainant was recorded on 23.04.2016 and other witnesses were examined thereafter, it is natural therefore that by that time the moisture which is otherwise found in the charas must have evaporated and in such circumstances the breaking of original three pieces into many pieces was but a natural phenomenon. Thus on account of such fact, no benefit can be extended to the appellant.

As regards the delay of four days in sending the charas to the Chemical Analyser, it is relevant to state that although the relevant rules of Control of Narcotic Substances (Government Analysts) Rules, 2001, prescribe that the narcotics has to be sent to the Chemical Analyzer within a period of 72 hours of its recovery but the same requirement is directory and not mandatory in nature. Reliance in this regard can be placed in the case law reported in 2011 SCMR 624 and 2013 YLR 1683.

From the above discussion, it is obvious that prosecution has been able to prove its case against the appellant beyond the reasonable doubt and there are no contradictions or discrepancies or any other material on record to consider extending benefit of doubt to the appellant. Notwithstanding the above, since it has not been denied by the learned A.P.G that the appellant is first offender as there is no record available to show that previously he has been found involved in any of such like cases, we tend to take a lenient view against him. Accordingly, while dismissing this appeal we modify the sentence awarded to the appellant vide impugned judgment and reduce it to two years and fine of Rs.20,000/= in default, of which to undergo further suffer 5 months' S.I. The benefit of section 382-b is

also extended to the appellant. The appeal stands dismissed with the above stated modification in sentence awarded to the appellant by the trial Court.