

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.D-29 of 2024

PRESENT:

Mr. Justice Mehmood A. Khan

Mr. Justice Abdul Hamid Bhurgri

Date of Hearing: 04.02.2025.

Date of Judgment: 04.02.2025.

Appellant: Muhammad Irshad @ Sheeda s/o Allah Deen
Khan Qaimkhani, through Mr. Mian Taj
Muhammad Keerio, Advocate.

The State: Through Mr. Nazar Muhammad Memon,
Additional P.G.

J U D G M E N T

Abdul Hamid Bhurgri, J.- This Appeal is directed against the Judgment dated 27.04.2024, passed by the learned 1st. Additional Sessions Judge/Special Judge for the Control of Narcotics Substances (CNS), Tando Allahyar, in Special Case No.64 of 2023 preferred by the appellant. The case arises from Crime No.92 of 2023, registered at Police Station Piyaro Lund, for an offence under Section 9-3(c) of the Control of Narcotic Substances {Amendment} Act, 2022. In the said Judgment, the appellant, Muhammad Irshad alias Sheeda was convicted under Section 265-H(ii) Cr.P.C for an offence punishable under Section 9-3(c) of the CNS Act {Amended Act 2022} and sentenced to Nine years with fine of Rs.50,000/-. In the event of non-payment of the fine, he was ordered to undergo further six months of Simple Imprisonment (S.I). However, the benefit of Section 382-B of the Code of Criminal Procedure (Cr.P.C) was extended to the appellant.

2. FIR that was lodged by the complainant SIP Imam Ali on 31.10.2023 at 1830 hours unveils that same day, he together with his staff HC Naseer Ahmed, PC Arif Ali and DPC Moula Bux left Police Station at 1630 hours vide roznamcha entry No.11 for patrolling in government vehicle; while patrolling through city Piyaro Lund, they were going towards Tando Allahyar via main road when they reached near Yaseen Boundary; they noticed availability of a person at right side of the road carrying a black shopper in

his right hand and he was looked to be waiting for some conveyance. Seeing our police mobile, he tried to evade towards mango garden, police party go suspicious and apprehended him along with aforesaid shopper, it was 1730 hours. It is alleged that the complainant secured the said black shopper from his right hand and further noticed accused to have his left arm enfolded with a yellow-coloured fracture belt. On inquiry, accused disclosed his name to be Muhammad Irshad alias Sheeda son of Allah Deen Khan Qaimkhani resident of Kumbhar Mohalla Tando Allahyar. He further disclosed that about 5/6 months ago he sustained fracture in car accident. It is also alleged that the complainant checked the recovered black shopper, which was found containing six big pieces of charas; each piece was weighed to be 500 grams through digital weighing scale; total charas became to be weighed as 3000 grams. On inquiry arrested accused disclosed that he is selling charas. The complainant during body search of accused, recovered two currency notes each of Rs.50/- (total Rs.100/-) from right side pocket of accused. The complainant sealed whole charas in a white parcel by affixing three seals and prepared such memo of arrest and recovery in presence of mashirs HC Naseer Ahmed and PC Arif Ali and obtained their signatures. Thereafter complainant brought accused and property at PS, where he lodged such FIR to above effect.

3. During the investigation, the Investigating Officer Inspector Shah Zaman recorded statements of witnesses under Section 161 Cr.P.C; he visited the place of recovery under such memo and dispatched the case property i.e. charas for chemical analysis on 02.11.2023, through HC Haq Nawaz (PW-5) and concluding the investigation and receipt of chemical report, he submitted charge sheet against the accused for the aforementioned offence.

4. The trial court framed charge (Ex.02) against the accused, to which he pleaded not guilty and claimed trial vide his plea at Ex.2/A. During the proceedings, the prosecution examined PW-1 complainant SIP Imam Ali (Ex.3), he produced his departure entry, memo of arrest and recovery, his arrival entry, FIR and entry of register No.19 (Ex.3/A to 3/E). PW-2 HC Naseer Khan (Ex.4), he acted as a mashir, presented memo of inspection of place of recovery at Ex.4/A, PW-3 HC Haq Nawaz (Ex.5), the carrier of case

property while PW-4 Inspector Shah Zaman (Ex.6), the Investigating Officer, submitted entries No.18,19,33,6,33 and 24, letter to chemical examiner, its acknowledgment letter, report of chemical examiner and CRO record of the accused (Ex.6/A to 6/H) and PW-5 HC Mohsin Ali (Ex.7), he was incharge of malkhana at the relevant time and he had maintained entry of register No.19 of malkhana. The prosecution concluded its case following the statement of the learned ADPP at Ex.8.

5. The accused's statement was recorded under Section 342 Cr.P.C at Ex.9, where the incriminating evidence was brought to his attention for an explanation. The accused categorically denied the allegations, professing his innocence and asserting that he had been falsely implicated. He stated that on 31.10.2023 his son Saifullah had filed an application under Section 491 Cr.P.C against police of CIA Centre for his illegal arrest and detention. However, he did not lead any defence evidence or testing under oath to rebut the prosecution's claim.

6. The learned trial judge, after hearing both parties and examining the available evidence, convicted and sentenced the appellant accordingly. Hence the present appeal.

7. Learned counsel for the appellant contended that appellant has falsely been implicated in this case by the police as evident from the record. He further contended that appellant's son Saifullah had filed application for illegal detention of his father, the appellant on 31.10.2023 at about 11.30 am against the police officials, who in order to cover his detention had foisted charas upon him and shown the alleged recovery on the same day at about 05.30 pm. He further argued that the trial Court has failed to consider this important aspect of the case. He also contended that there are material contradictions and inconsistencies between the statements of the complainant and mashir which have also been overlooked by the trial court. He further stated that arrival entry No.17 of the complainant at PS after recovery, reflects the crime number No.92/2023, this fact clearly indicates that this case has been managed against appellant and all the documents were managed at PS in order to save their skin. He also argued that chain of custody is also not proved by the prosecution. He contended that all

prosecution witnesses are police officials. In the end, he prayed that the judgment of the trial court is liable to be set aside by allowing this appeal.

8. Learned APG has defended the judgment of the trial court, he stated that prosecution has established its case beyond shadow of reasonable doubt by producing credible witnesses. He contended that police officials are reliable and natural witnesses. He contended that the appeal is liable to be dismissed as the case has been established against the accused/appellant.

9. We have heard the arguments and meticulously perused the material. It is a fundamental tenet of criminal law that the burden of proof lies squarely with the prosecution, which bears the responsibility of substantiating the charge against the accused beyond reasonable doubt. This principle is deeply entrenched in the presumption of innocence, dictating that an accused person must be regarded as innocent unless proven guilty.

10. A meticulous examination of the case materials with the assistance of the learned Additional Prosecutor General (APG) and the appellant's counsel, revealed that the prosecution had failed to establish its case against the accused. The trial court, in rendering its verdict, appeared to have delivered a mechanical analysis, devoid of critical judicial analysis, as it relied entirely on the prosecution's narrative, which otherwise failed to withstand rational scrutiny. Serious inconsistencies emerged concerning the chain of custody of the seized contraband, which were conspicuously overlooked by the trial court. SIP Imam Ali, the complainant, provided the following testimony regarding the handling of the case property:

"I handed over the case property to the W.H.C. for safe keeping in Malkhana and proceeded to detain the accused."

Similarly, Shah Zaman (I.O.), in his deposition, stated:

"On the same date, I deposited the case property in Malkhana under entry No. 19 at 18:35 hours."

However, upon further questioning, he admitted:

"It is correct to suggest that the property was not directly deposited in Malkhana, nor had I affixed my signature in Register No. 19."

Mohsin Ali, incharge of malkhana stated in his examination in chief that;

"SIP Imam Ali handed over the sealed parcel of recovered case property containing charas and one envelop containing two currency notes of Rs.50/- for depositing in police malkhana. He deposited the same under entry No.78 at about 1835 hours".

In his cross examination he stated that;

"it is correct to suggest that IO did not hand over the case property to me for depositing the same with police malkhana".

11. A comparison of the testimonies of all three witnesses exposes glaring discrepancies regarding the handling and transfer of the seized narcotics. Such inconsistencies undermine the integrity of the chain of safe custody of the recovered contraband, an essential evidentiary component in narcotics-related prosecutions.

12. We have also noticed so many inconsistencies, discrepancies and contradictions in the statements of the complainant SIP Imam Ali and the mashir of recovery Naseer Khan, which are discussed as follows:

The complainant stated in his cross examination that;

"it is correct to suggest that accused person did not try to escape"

Mashir stated that;

"on seeing police party accused run away towards western side and he covered for about ten paces".

Complainant stated that;

"I myself sewed recovered charas by sew and affixed three seals. He further stated that it is correct to suggest that sealed parcel produced before this court does not show stitching marks/signs on it which could show that it was sewed with needle".

The complainant and mashir have admitted that;

"2 black colour shoppers have been produced before this Court as case property albeit one black shopper was allegedly recovered from possession of accused. The complainant admitted that another black colour shopper is not mentioned in the FIR".

Mashir stated that;

"at the time of recovery only one black shopper was available".

Complainant and mashir have admitted that;

"different size and weight of the case property have been produced. These contradictions crop serious doubt in the prosecution case".

13. The material contradictions delineated above unmistakably suggest that the police orchestrated and manipulated the evidentiary record against the accused. The learned trial court failed to consider the evidence in its totality, which would have revealed that the police had falsely implicated the appellant. Regrettably, in our societal framework, the role of law enforcement in such matters often engenders skepticism, especially where the accused produces credible defence evidence. While the menace of narcotics poses a significant threat to societal well-being, the prosecution is duty-bound to proceed with fairness and avoid entangling innocent individuals in fabricated charges. The judiciary has consistently expressed grave concern regarding the role of the police in such cases, particularly where their incompetence allows the real culprits to evade justice while innocent individuals are falsely accused and prosecuted.

14. Nevertheless, the courts must scrutinize the entirety of the prosecution's case and assess the full scope of evidence adduced. If, upon such consideration, the court concludes that the prosecution has proved its case beyond reasonable doubt, a conviction must naturally follow. However, in the present instance, the conduct of the police has raised serious questions, giving rise to reasonable doubt, which must operate to the benefit of the appellant. A careful perusal of the impugned judgment reveals that critical elements of the case escaped the attention of the learned trial judge, omissions sufficient to cast serious doubt on the prosecution's version. It is a well-settled principle that even a single circumstance giving rise to reasonable doubt in the mind of a prudent person entitles the accused to acquittal. This benefit is not extended as an act of concession or clemency.

but as a matter of inviolable right. This principle has been firmly established in Tariq Pervez v. The State, (1995 SCMR 1345), which held as under:

"The concept of benefit of doubt when accused person is deep, rotate in our country for giving him benefit of doubt it is not necessary that there should be many circumstances creating doubts. 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 matter of grace and concession but as a matter of right."

In the case of Muhammad Mansha v. the State (2018 SCMR, 772), the Honourable Supreme Court has observed as under:-

"4. Needless to mention that while giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim "it is better that then guilty person be acquitted rather one innocent person be convicted. Reliance in this behalf can be made upon the cases of Tariq Parvez v. The State (1995 SCMR 1345)(Ghulam Qadir and 2 others v. the State (2008 SCMR 121). Muhammad Akram v. the State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

15. Another aspect that undermines the prosecution's narrative is its reliance on arrival entry No.17, which bears the crime number and confirms that all procedural documentation had already been orchestrated by the police prior to the lodging of the FIR. This sequencing reveals that the FIR was registered prior to the said arrival entry, a glaring irregularity suggesting manipulation i.e how the FIR number has been shown in the arrival entry No.17, which was maintained prior to registration of FIR. Unfortunately, the trial court failed to appreciate this fundamental defect in the prosecution's case.

16. The Honourable Supreme Court, in Muhammad Akram v. The State, (2009 SCMR 230), held that if there exists any circumstance capable of creating reasonable doubt in the mind of a prudent person regarding the guilt of the accused, the accused is entitled to the benefit of such doubt not

as a matter of grace or indulgence, but as a right anchored in the principles of criminal justice.

17. In Criminal jurisprudence, the Principle of benefit of doubt "is fundamental aspect of criminal law, including Narcotics cases, this principle rooted in presumption of innocence until proven guilt, which is the corner stone of the justice system. The prosecution must prove the accused's guilt beyond reasonable doubt. If there is any reasonable doubt regarding accused's involvement in crime the Court is obligated to grant benefit of the doubt to the accused.

18. The appreciation of the entirety of the evidence in criminal cases is corner stone of the justice system. Courts are required to meticulously evaluate or evidence ensuring that no aspect is overlooked and that the final decision is based on comprehensive and balanced assessment. This approach safeguards the rights of accused while upholding integrity of the judicial process.

19. If the cumulative effect of the evidence gives rise to reasonable doubt, the accused must be given the benefit thereof. This principle has been reaffirmed in Liaquat Ali v. The State, PLD 1999 SC 404, wherein the Court held that any doubts arising from the evidentiary record must be resolved in favour of the accused. Courts frequently stress the necessity of corroboration and consistency, both of which are glaringly absent in the present case, as earlier discussed. Where material contradictions pervade the prosecution's narrative, the higher judiciary has consistently ruled that the credibility of evidence must be assessed holistically. Courts must refrain from selectively relying on certain fragments of evidence to uphold preconceived conclusions. Under Islamic jurisprudence, the doctrine of benefit of doubt is deeply embedded, deriving its foundation from the Holy Quran and Sunnah. It serves a critical function in safeguarding individuals from unjust suspicion and punishment. In narcotics cases, the courts have repeatedly held that an exceptionally high standard of proof is required, owing to the severity of the penalties involved including prolonged imprisonment and capital punishment. Consequently, the burden on the prosecution in such cases is considerably higher.

20. A further significant flaw in the impugned judgment lies in the trial court's omission to consider crucial defence evidence. The accused, in his statement under Section 342 Cr.P.C., contended that his son, Saifullah, had filed an application under Section 491 Cr.P.C. before the Sessions Judge, Tando Allahyar. According to the appellant's counsel, this application alleging illegal detention was presented at approximately 11:30 a.m., significantly earlier than the alleged arrest of the accused. This substantiates the defence plea that the arrest was unlawful and premeditated, thus undermining the prosecution's version. The matter raised serious doubt about the legitimacy of the prosecution's case and pointed to a pre-existing vendetta between the police and the accused. Yet, despite the gravity of this issue, the trial court completely ignored it in the impugned judgment. Not a single word was uttered by the learned judge on this pivotal defence. Upon perusal, the application and the affidavit filed by the accused's son show that the affidavit was sworn at 1:23 p.m., which predates the alleged time of arrest, thereby corroborating the appellant's claim of wrongful implication. Application u/s 491 Cr.PC along with affidavit filed by son of appellant is available at pages 81 and 83 of R & Ps of the trial Court.

21. In the present case, after a comprehensive evaluation of the material and evidence adduced by the prosecution, we are of the considered view that the prosecution has failed to establish its case beyond the threshold of reasonable doubt. Therefore, **the appeal is allowed**, and the conviction and sentence awarded by the learned trial court through judgment dated 27.04.2024 are hereby set aside. The appellant is acquitted by extending him the benefit of doubt. He shall be released forthwith unless required to be detained in any other custody case.

22. These shall constitute the reasons of our short order dated 04.02.2025.

Judge

