

Judgment Sheet

PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.68-A of 2017

JUDGMENT

Date of hearing.....30.10.2018.....

Appellant(s) ... (Asad) by Mr. Asad Khan, Advocate....

Respondent(s) ... (The State etc) by Mr. Yasir Zahoor Abbasi, Assistant AG...

SYED MUHAMAMD ATTIQUE SHAH, J:-

This appeal is directed against the judgment dated 23.05.2017 recorded by learned Additional Sessions Judge-V / Judge Special Court, Manshra, in case FIR No.688 dated 03.07.2013 under Section 9-C CNS Act, 1997, Police Station City, Manshra, wherein, the present appellant Asad Khan was convicted under section 9-C CNSA and sentenced to one year Rigorous Imprisonment and was held liable to pay a fine of Rs.15,000/- or in default thereof, he has to suffer further one month Simple Imprisonment.

2. The allegation against the appellant, as narrated in F.I.R (Ex.PA/1) is that he was found in possession of 1100 grams of 'charas' by

Inspector/SIIO/complainant Amjad Hussain (PW-5) on 03.07.2013 and he was arrested in the case. After investigation, challan was submitted against the appellant. The appellant was charged for the offence under section 9-C CNSA, but he did not plead guilty and claimed trial. The prosecution examined six witnesses in support of its case against the appellant.

4. The appellant was examined under Section 342 Cr.P.C., wherein, he pleaded innocence and false implication. He wished not to produce defence evidence or to give statements on Oath.


5. Learned counsel for the appellant vehemently argued that the prosecution had failed to prove the case against the present appellant; that nothing was recovered from possession of the appellant; and that the recovery of 'charas' from possession of appellant was not established in accordance with law.

6. In rebuttal, learned AAG opposed the contentions of the learned defence counsel and contended that the recovery of 'charas' was duly made from possession of the appellant, which was duly proved through testimony of witnesses having no enmity with him.

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7. Arguments of the learned counsel for the appellant and learned Assistant AG heard and the available record perused.

8. Perusal of record would reveal that PW-4 Ishtiaq No.471 had furnished his testimony before the learned trial Court as marginal witness to recovery memo Ex.PW 4/1 through which the complainant of the case, Amjad Hussain, SHO has recovered alleged contraband from possession of the appellant. It is evident from record of the case that appellant was shown to have been apprehended from College 'Dohrah' near 'Mama Hotel', at 18.40 hours on 03.07.2013, which is admittedly a busy place having markets and main KHI road. However, no independent person was associated with the said recovery. Moreover, the alleged recovery was effected on 03.07.2013, whereas, it was received in FSL, Peshawar, on 26.07.2013 i.e. after twenty four days, as is evident from report of FSL, (Ex.PZ). Nothing is available on record of the case as to where the alleged samples were lying for twenty four long days after its recovery, which raised doubt regarding safe custody of the material and no explanation is



forthcoming regarding its late dispatch to the FSL, Peshawar. No explanation on the part of the prosecution is forthcoming on record qua such considerable delay in dispatch of parcels. The previous conviction of the appellant could not be established by the prosecution in accordance with law. Thus, the above glaring lapses/dents in the investigation create serious doubt in the prosecution case and benefit of the same should have been extended to the appellant. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled 'Ghulam Qadir Vs. The State' (2008 SCMR 1221), wherein, it has held that:

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makes the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any

shadow of doubt in this duty does not change or vary in the case."

Reliance is also placed on case law reported as 2009 SCMR 230, 1995 SCMR 1345, 2017 SCMR 596 and 2017 SCMR 709.

9. Accordingly, for the reasons stated hereinabove, this appeal is accepted, the conviction and sentence awarded to the appellant vide the impugned judgment dated 23.05.2017 passed by learned Judge Special Court, Mansehra, are set aside and he is acquitted of the charge leveled against him in this case.

The appellants being on bail stands discharged from the liability of bail bonds.

Announced.
Dt.30/10/2018.


JUDGE


JUDGE

/*M.SALEEM*/

(DB) Mr. Justice Lal Jan Khattak and Mr. Justice Syed Muhammad Attique Shah