

Judgment Sheet
LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Criminal Appeal No.631 of 2022

Muhammad Rizwan Ahmed alias Bablo

Versus

The State

JUDGMENT

Date of hearing:	11.12.2024
Appellant by:	Syed Zeeshan Haider, Advocate
State by	Ch. Asghar Ali Gill, Deputy Prosecutor General.

Syed Shahbaz Ali Rizvi, J. Through this criminal appeal, appellant Muhammad Rizwan Ahmed alias Bablo challenges the judgment dated 13.09.2022 passed by the learned Additional Sessions Judge, Bahawalpur, in connection with case FIR No.512 dated 25.08.2021 registered for offence under Section 9(c) of Control of Narcotic Substances Act, 1997, at Police Station Saddar, District Bahawalpur, whereby he was convicted under Section 9(c) of the Act ibid and sentenced to imprisonment for life with direction to pay Rs.100,000/- as fine and in case non-payment thereof, he shall have to further undergo simple imprisonment for six months.

2. Succinctly, facts of the case as canvassed in the complaint (Exh.PE) are that on 25.08.2021 on receipt of spy information, a

police raiding party headed by Rehan Nadeem, ASI (PW.4) conducted raid and apprehended the appellant while sitting on the driving seat of a grey colour car, Alto without registration number, who was having four packets of '*charas*' in his lap. During search of car, on the pointation of accused/appellant further 90-packets of '*charas*' from different parts of the car were also recovered and total contraband in 94-packets was 112-Kgs and 800-grams, when weighed. Sale proceed of Rs.120,000/- (details mentioned in the complaint [Exh.PE]) was also recovered during personal search of the appellant.

3. Prosecution in order to prove its case, produced as many as seven witnesses. Learned trial court after completing codal formalities, framed charge against the appellant to which he pleaded not guilty and claimed trial. Muhammad Adnan, SI (PW.1) and Ejaz Ahmad, ASI (then Sub-Inspector) (PW.7) are Investigation Officers of the case. Ishtiaq Ahmad (PW.2) is owner of the car used by the appellant for perpetration of the offence. Muhammad Sadique HC/845 (PW.3) being Moharrar received the case property, kept it in Malkhana, got transmitted the sample parcels to Punjab Forensic Science Agency and also got deposited the rest of the case property to '*Malkhana*' Saddar Bahawalpur. Rehan Nadeem, ASI (PW.4) is complainant of the case. PW.5 Muhammad Saleem 1779/C-II and Muhammad Irfan Nazir, SI (PW.6), witnesses of recovery also deposed against the petitioner. Prosecution gave up Muhammad Kamran C/1650 and Shoaib Aslam, ASI, being unnecessary and closed its evidence after

tendering report of Punjab Forensic Science Agency (Exh.PH) consisting of two pages. Appellant in his statement recorded under Section 342 of the Criminal Procedure Code, 1898, refuted the allegations and maintained that due to conflict with the complainant, false recovery had been planted upon him. Appellant neither opted to adduce evidence in his defence nor appeared as a witness to state on oath as provided under Section 340(2) of the Code of Criminal Procedure, 1898. After completion of trial, learned trial court convicted and sentenced the appellant as mentioned above vide judgment dated 13.09.2022.

4. Arguments heard. Record perused.

5. It has straightforwardly been observed that the case against the appellant as alleged in the charge is that on 25.08.2021, he was nabbed by the raiding party headed by the complainant at 04:40 p.m. when sitting in a car in possession of 94-packets of '*charas*' besides '*Wattak*' amount of Rs.120,000/- but weight of the contraband even separation of narcotic for samples, their weight or preparation of parcels thereof and details of the car are not mentioned therein. Though in the charge 04:40 p.m. time of recovery is given yet none of the three recovery witnesses PW.4, PW.5 & PW.6 has substantiated this part of charge. The Investigation Officer (PW.7) at the end of his cross-examination conceded that none of the witnesses disclosed time of recovery to him. The Control of Narcotic Substances Act, 1997, is a special law that per the kind and quantity of narcotic provides the quantum of sentence separately. Hence, this law requires that the

charge must carry specific kind and quantity of narcotic recovered and if it is bereft of the same, conviction and sentence of the accused against the quantity given by the witnesses in their statements would not be justified at all.

Ishtiaq Ahmad, owner of the subject car Suzuki Alto bearing registration No.BSV-647, was produced by the prosecution during trial as PW.2 who during cross examination clarified that when his car was retained at the police station he obtained track report of the subject vehicle. He also replied as under:-

“...My vehicle i.e. BSV/647 was having a tracker of U-Track car tracking company. I got installed the tracker from U-Track company in the month of July 2021. An alert message is always sent to owner of vehicle by tracking company whenever the ignition of car is switched ON. I use to receive the messages of U-Track Company on my SIM Card No.0300-5445827. It is correct that every movement of vehicle is conveyed by the tracking company by sending the location of the vehicle through message. Link sent by tracking company can be check by tracking the location through the software of U-Track Company. I used to receive the location of vehicle mentioned in this case also remained checking the same. It is correct that tracking company issues report regarding the movement, location and alert of vehicle registered with it. When my car was detained at police station then I obtained track report of this vehicle.

I have brought the track report of vehicle BSV-647 with me today. Track report is available before me. I received alerts from U-Track Company on 24.08.2021 and 25.08.2021. I also received the location of my vehicle from U-Track Company on 24.08.2021 and 25.08.2021. I do not remember as to location sent to me about the presence of vehicle at 10:22 pm on 24.08.2022. According to track report available before me, said vehicle was present at the

office of CIA staff, Bahawalpur near Sabzi Mandi on 24.08.2021 at 10:22 pm. I receive the alert of presence of my vehicle mentioned above in the office of Rescue 15 Model Town-A Bahawalpur at 10:27 pm on 24.08.2021. According to track report, said vehicle remained present in the office of Rescue 15 Model Town-A on 24.08.2021 from 10:27 pm. As per track record for whole night of 24.08.2021 vehicle BSV-647 remained at the office of Rescue 15 Model Town-A Bahawalpur.

On 24.08.2021, I after receiving alerts of presence of my vehicle at Rescue 15 became worried and after checking the location through mobile app, I proceeded to police station Saddar, Bahawalpur where I found my vehicle parked. On the same night of 24.08.2021, I sought information from police station Saddar regarding the detention of my vehicle where I was informed that Rizwan alias Bublo and my vehicle is detained by the police and after seeing them I returned back. I demanded my vehicle back but I was informed that the same would be given after obtaining Superdari. Police Station Saddar, Bahawalpur and office of Rescue 15 are adjacent. Even my vehicle remained at police station Saddar on next morning of 25.08.2021. I was only informed about the detention of Rizwan accused and vehicle on 24.08.2021 but I do not know about the investigation of this case. As per track report as well as alert messages received to me my vehicle BSV-647 came out from police station Saddar, Bahawalpur/Rescue 15 in the noon of 25.08.2021. It is incorrect to suggest that police compelled me to issue bogus rental.”

This reproduced part of the statement of a witness produced by the prosecution itself reveals that the subject vehicle was in possession of Bahawalpur Police on 24.08.2021 and remained so till the noon of 25.08.2021. The complainant during his cross examination candidly admits that on the next day of the registration of this case, he was suspended by the District Police Officer, Bahawalpur. He concedes that in the case of

Ayyaz-ur-Rehman earlier got registered by him recovered contraband was of the description similar to that of the case in hand. Likewise, description of recovered '*charas*' in earlier registered case of Raaz Muhammad was also the same. In this view of the matter, the argument furnished by learned counsel for the appellant to the effect that the contraband recovered from others mentioned above has been planted against him could not specifically be responded by the learned Prosecutor. The argument further finds support from the supra reproduced excerpt from the statement of Ishtiaq Ahmad (PW.2). These facts create reasonable doubts about the credibility of prosecution story canvassed by the recovery witnesses.

6. The appellant as per contents of the crime report disclosed that he uses '*charas*' and also supplies the same to the big dealers in different districts of the Punjab but surprisingly neither the appellant was got medico legally examined nor his blood test was got conducted. It is also relevant to mention here that no intended buyer at the place of recovery, the appellant allegedly was waiting for, could be arrested and even it was not attempted by the complainant and no disclosure regarding dealers in other districts of the Punjab could be obtained from the appellant during his physical custody. It is also to be noticed that without further investigation, the Investigation Officer got him sent to the judicial custody on 26.08.2021 i.e. very next day of his arrest. He even did not bother to know about and to associate the dealer to whom the appellant had already supplied the contraband against

the ‘Wattak’ amount of Rs.120,000/- recovered from him during body search.

7. According to the prosecution case canvassed by the witnesses in their examination-in-chief case property allegedly recovered on 25.08.2021 was handed over to the Investigation Officer Ejaz Ahmad, SI (PW.7) by Rehan Nadeem, ASI (PW.4), complainant of this case, in the shape of parcels besides ‘wattak’ amount of Rs.120,000/- (P.102 to 141), threads (P.99) and polythene bags (P.95 & P.96) which were given to the Moharrar (PW.3) by Investigation Officer (PW.7) on the return of police party to the police station immediately but surprisingly complainant (PW.4) as well as the recovery witness Muhammad Irfan Nazir, SI (PW.6) during cross examination concedes that complainant (PW.4) Rehan Nadeem, ASI convened a press conference at the police station on the day of recovery wherein none from the police party who captured the contraband and the accused/appellant except the complainant was visible in the photograph of press conference. In the said picture admittedly parcels of contraband are visible lying on the table in large number. The recovery witnesses in this regard are discrepant as according to PW.4 & PW.6 press conference took place at police station on 25.08.2021 but PW.5 denies the press conference on 25.08.2021. He and PW.6 however, stated that immediately on return to the police station, the Investigation Officer (PW.7) deposited the case property with the Moharrar Muhammad Sadique (PW.3) and it was placed in ‘Malkhana’ thereafter. How

and when the complainant received back the case property in absence of other members of the raiding party and how and when he deposited the same back to '*Malkhana*' is a fact that has not been explained by any of the witnesses as the prosecution case is silent in this regard. The Investigation Officer (PW.7) during his cross examination has categorically stated that he never returned the parcels to the complainant after receiving the same from him. He also stated voluntarily that soon after bringing the parcels of contraband he got them deposited in *Malkhana* of Police Station and never produced before the DPO or any court. The vehicle used by the appellant for perpetration of the offence as per prosecution case was produced in the court but at that time the back of rear seat was intact while Muhammad Saleem 1779/C-II (PW.5) during cross examination stated as under:-

"Back seat of the car of accused was torn by the accused for producing the contraband to us. Investigation officer weighted the contraband with the help of digital scale. Rehan Nadeem ASI is the complainant of this case whereas Ejaz Ahmad SI is the investigating officer of this case."

The reply given during the cross examination of Rehan Nadeem, ASI (PW.4) on that point reads as under:-

"It is correct that meter reading of the vehicle P-101 brought in the court today is 36659 KM. It is correct that back seats of P-101 are neither torn from front side nor from backside. Partial plastic paper which usually available with the new cars is also present on the back seat of car. It is correct that back seat of the car is completely covered with its covering cloth and even stitching all around of the back seat of the car is available. Volunteered a separate cover was available at the time of recovery of Chars which

is not present today in this car. It is correct that the only cover available on back seat of the case is intact.”

The other material contradiction between the witnesses is that according to recovery witnesses nothing was written on the recovered packets of contraband but during cross examination of Ejaz Ahmad, ASI (PW.6) the parcels were desealed inside the court and the answers given by the said witness goes as under:-

“It is correct that at present writing with bold blue marker in English and Urdu is available on the packet of de-sealed parcel. It is correct that writing is available on both sides of other de-sealed parcel with blue pen. It is correct that the same writing is available on 3rd and 4th parcels is available. It is correct that words Afridi-A is written on 5th parcel.”

It, in our opinion, shows that these witnesses actually never ever saw the contraband before it was produced in the Court.

8. We have also noticed that the three witnesses of recovery are not consistent even with regard to the place of recovery. According to the statement of Muhammad Irfan Nazir, SI (PW.6) place of recovery was situated at a distance of 10 to 15 feet from the road while Muhammad Saleem 1779/C-II (PW.5) stated that road was far behind the place of recovery. Controverting both Rehan Nadeem, the complainant (PW.4), stated that place of recovery was situated on the road though it is not a busy road. PW.5 & PW.6 even confute each other qua the writing available on the parcels of contraband statedly prepared by the complainant. Per the statement of PW.5, parcels were carrying the writing of Investigation Officer while the other witness

(PW.6) states that complainant did the same though both claim their availability at the relevant time.

9. Perusal of the statements of Moharrar Muhammad Sadique HC/845 (PW.3) and that of Ejaz Ahmad, ASI (PW.7) reflects remarkable inconsistencies as Moharrar (PW.3) in his examination-in-chief and cross examination has stated that on 18.09.2021 he handed over 94-sealed parcels of '*charas*' of remaining quantity and 'Wattak' amount of Rs.120,000/- to Ejaz Ahmad, SI/NIV for their transmission to Makhana Saddar Bahawalpur and the Investigation Officer also recorded his statement under Section 161 of the Criminal Procedure Code, 1898, in this regard but during cross examination he also stated as under:-

"It is correct that in road certificate No.1103 of this case regarding deposit of articles in Makhana Saddar. There is nothing mentioned regarding deposit of plastic bags, threads, amount Rs.1,20,000/- and ALTO car. It is correct that except road certificate No.1103 no other road certificate regarding depositing any other articles in Makhana Saddar is available on judicial file as well as police file."

The said witness also concedes in the next paragraph of his statement that there was no case diary dated 18.09.2021 in police file. Relevant part of the second last and last paragraphs of his statement reads as under:-

"Police file of this case is present before me. It is correct that there is no case diary dated 18.09.2021 in police file.

It is correct that I am duty bound to incorporate a rappat in station diary whenever I received any articles

from any police officer. It is also correct that even at the time of handing over of any article to any police officer by me, incorporation of a rappat is a legal requirement. I incorporated rappat in station diary at the time of receiving articles from the police officer and even at the time of handing over of articles. On record of this case only rappat number 28/2 is available which was incorporated on my behalf. It is correct that no detail any case property is mentioned in rappat No.28/2. It is correct that only available rappat is of dated 25.08.2021. It is correct that is not mentioned in said rappat as to the person from whom I received said articles. It is correct that it is not mentioned in the rappat that two whom the articles were further handed over. Volunteered that it is mentioned in said rappat that articles were kept in Malkhana of police station.”

But when we go through the statement of Ejaz Ahmad, ASI (PW.7) he though supports the statement of PW.3 to the effect that on 18.09.2021 Muhammad Saddique HC/845 (PW.3) handed over to him parcels of remaining quantity of charas for onward transmission in Malkhana Saddar and the same was submitted intact on the same day. He also stated there that he recorded statement of Moharrar under Section 161 of the Criminal Procedure Code, 1898, but during his cross examination he also conceded that on 18.09.2021 he was not the Investigation Officer of this case and even he was not posted at Police Station Saddar Bahawalpur then. He also concedes as under:-

“A statement of Muhammad Siddique Moharrur, dated 18.09.2021 is available on file written by me. It is correct that date 18.09.2021 on said statement is of different pen. It is incorrect to suggest that hand writing of statements of rest of PWs is different than the hand writing of statement of Muhammad Siddique/845-HC...It is correct that every proceeding of investigating officer requires to be recorded in case diary. Incomplete report u/s 173, Cr.P.C., dated

31.08.2021 was maintained vide case diary No.4. I do not remember whether I recorded any case diary after 31.08.2021. It is correct that there is no case diary, dated 18.09.2021 on record. Except mentioned in examination in chief today, I nowhere recorded in entire investigation of this case about receiving of any article from Moharrur on 18.09.2021 and its deposit in Malkhana Saddar. Volunteered said proceedings were not the part of police investigation due to this I did not mention in my proceedings. I do not remember whether I made any statement before investigating officer of this case regarding receiving of parcels from Moharrur and its deposit in Malkhana Saddar. It is correct that no such statement is available on record of this case...Statement of Moharrur, dated 18.09.2021, is recorded mistakenly by me. I was not competent to record the statement of any witness on 18.09.2021. It is correct that I was not competent to proceed with the investigation of this case on 18.09.2021. I did not object before the then investigating officer regarding my incompetency to investigate this case on 18.09.2021. I do not remember the time when I received the file of this case on 18.09.2021. I was present at P.S. Saddar, Bahawalpur when I receive the file of this case on 18.09.2021. I do not remember the name of then SHO. I was having no order of any police authority to investigate of this case on 18.09.2021. I do not know whether investigation of this case was ever changed. I did not record the statement of incharge Malkhana on 18.09.2021 or thereof. I do not remember whether I incorporate any rapat at P.S. Saddar, Bahawalpur on 18.09.2021.”

The Investigation Officer also admitted that witnesses of this case did not verify the handing over of any article to him by Rehan Nadeem, ASI/complainant (PW.4) at the spot in their statements recorded under Section 161 of the Criminal Procedure Code, 1898. He further expressed that he could not tell the date when he prepared the parcel of currency notes and when same was deposited in double lock of treasury. He also conceded that when

he prepared the parcel of currency notes and deposited in the treasury, investigation of the case was being conducted by Muhammad Adnan, SI (PW.1), though he again stated that he was not sure about this. He also conceded that Moharrar (PW.3) stated nothing in his statement regarding handing over the currency notes to him. Collective consideration of the facts mentioned above leads us to hold that evidence produced by the prosecution in this case is swerving besides being materially inconsistent. Harsh sentences carried by the relevant penal provisions of Control of Narcotic Substances Act, 1997, require strict scrutiny of evidence produced against the accused but from the facts mentioned above, we are of the considered opinion that in this case prosecution remained fail to establish its case against the appellant beyond shadow of a reasonable doubt. In Ayub Masih v. The State" (**PLD 2002 SC 1048**), at page 1056 the Hon'ble Apex Court has been pleased to observe as under:-

“....It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. In simple words it means that utmost care should be taken by the Court in convicting an accused. It was held in *The State v. Mushtaq Ahmad* (PLD 1973 SC 418) that this rule is antithesis of haphazard

approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.”

10. There is no cavil about the proposition that even a single reasonable doubt in the prosecution case is sufficient to warrant acquittal of the accused. In the light of above discussion, **Crl. Appeal No.631 of 2022** filed by Muhammad Rizwan Ahmed alias Bablo (appellant/convict) is accepted, his conviction and sentence recorded by the learned trial court is set aside and he is acquitted of the charge levelled against him by extending him the benefit of doubt. He is in jail, be released forthwith if not required to be detained in connection with any other criminal case. Case property, the car, be released in favour of its owner in accordance with law.

Signed on 30.12.2024.

(Anwaarul Haq Pannun)
Judge

(Syed Shahbaz Ali Rizvi)
Judge

Approved for reporting.

(Anwaarul Haq Pannun)
Judge

(Syed Shahbaz Ali Rizvi)
Judge

Nazir