

H C J D A 38.

JUDGMENT SHEET
IN THE LAHORE HIGH COURT MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT

Cr. Appeal No.206 of 2023

Muhammad Adnan v. The State

JUDGMENT

Date of hearing **26.09.2023**

Appellant by: Ch. Umar Hayat, Advocate.

Complainant/ Mr. Muhammad Ali Shahab, Deputy
State by: Prosecutor General.

MUHAMMAD WAHEED KHAN, J.- Through the instant appeal, the appellant has challenged conviction and sentence awarded to him by the learned Addl. Sessions Judge, Dera Gazi Khan vide judgment dated 25.02.2023 in case FIR No.709 dated 04.09.2022 registered u/s 9 (c) of the Control of Narcotic Substances Act, 1997 at Police Station Gaddai, Dera Gazi Khan, whereby on conclusion of trial, he was convicted u/s 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced to **rigorous imprisonment for six years and six months** alongwith fine of Rs.30,000/-, in default thereof, to further undergo six months simple imprisonment. Benefit of section 382-B Cr.P.C. was also extended to him.

2. Facts of the case are that on 04.09.2022, when complainant, Muhammad Tahir Saleem T/SI alongwith other officials was present at Paigah Chowk, on a tip off, they chased the appellant who was coming on a motorcycle and when a cloth bag hanging with the handle of his motorcycle was opened, three packets of charas (out of which one packet wrapped in yellow coloured tape

weighing 1080 grams, second wrapped in a blue coloured tape weighing 1070 grams and the third packet wrapped in blue coloured shopper bag weighing 1020 grams), total weighing 3170 grams, were recovered and an amount of Rs.4350/- was also recovered from him. The complainant prepared three separate sealed parcels of samples and three others of the remaining case property and took the said six parcels alongwith motorcycle and cash into possession, hence, this case.

3. After registration of case, police investigated the matter and submitted report u/s 173 Cr.P.C. before the learned trial Court by declaring the appellant as guilty. Learned trial Court after completing codal formalities, framed charge against the appellant, which was denied by him, so, the prosecution evidence was summoned. In order to prove the charge against the appellant, the prosecution produced as many as six witnesses. **Allah Bachaya ASI**, who chalked out FIR appeared as **PW-1**, **Shehbaz Qalandar 924/HC**, Moharrar of Police Station appeared as **PW-2**, **Muhammad Sadiq SI**, Investigating Officer of the case appeared as **PW-3**, **Allah Dewaya 930/C** witness of recovery appeared as **PW-4**, **Tahir Saleem T/SI** complainant of the case appeared as **PW-5** and **Muhammad Qasim 1148/C**, who transmitted the complaint to the Police Station appeared as **PW-6**. The prosecution after producing certain documents including report of Punjab Forensic Science Agency (Ex-PG) closed its evidence. The appellant was examined u/s 342 Cr.P.C., wherein he denied all the allegations leveled against him. He did not opt to appear u/s 340(2) Cr.P.C. as his own witness, however, produced certain documents in his defence.

4. In support of the instant appeal, learned counsel for the appellant has submitted that the prosecution story is inherently

flawed, failed to inspire confidence and the impugned judgment is not only based on surmises and conjectures but material evidence available on record has been mis-read; In alternate, learned counsel for the appellant submits that since the prosecution remained failed to prove the case qua the safe custody of the parcels containing the case property so the same cannot be used against the appellant and the maximum he could be saddled with the responsibility to the extent of sample parcels containing 54/54 grams and 51 grams (total 159 grams) of contraband in the light of guidelines given by the august Supreme Court of Pakistan in case titled as “AMEER ZEB v. THE STATE” (PLD 2012 Supreme Court 380).

5. Conversely, learned Deputy Prosecutor General while faithfully supporting the impugned judgment, candidly admitted that the prosecution could not prove the safe custody of the parcels containing the case property, so, the appellant can only be held responsible of quantity of narcotics containing in sample parcels i.e. 159 grams.

6. We have heard the arguments of learned counsel for the appellant, learned Law Officer and perused the record with their assistance. On in depth analysis of record, we have straightway noticed that as per testimony of Shahbaz Qalandar 924/HC Moharrar Police Station (PW-2), he handed over the parcels containing the case property to Tahir Saleem SI (PW-5) complainant of the case, for depositing the same in Sadar Mall Khana on 06.09.2022. Regarding this fact, he (PW-2) deposed in the dock in the following manner;-

“I sent the case property to Malkhana Saddar through Tahir Saleem SI on 06.09.2022. I.O recorded my statement in this regard. The parcels remained intact as long as in my custody.”

But the said Tahir Saleem SI, while appearing before the learned trial Court as PW-5 did not depose a single word

regarding receiving the parcel(s) containing case property from Moharrar Police Station (PW-2) for depositing the same in Saddar Malkhana. The said portion of testimony of (PW-5) is reproduced as under;-

“On 05.09.2022, Shahbaz Qalandar Moharrir handed over to me three sample parcels for onward transmission to the office of PFSA alongwith road certificate 990/2021, which I deposited the aforesaid office on 06.09.2022 intact.”

It shows that PW-5 did not depose about receiving of parcels containing case property for depositing the same in the Saddar Malkhana in safe custody.

7. A case under the Control of Narcotic Substances Act, 1997 contains two components/limbs i.e. firstly, the prosecution is bound to establish the safe custody and safe transmission from the place of recovery of seized drug by the police, including separation of representative parcel(s) of the seized drug and its despatch to the testing laboratory and secondly, the chain of custody of the parcel(s) containing the ‘case property’ is also pivotal, and the prosecution is also supposed to prove its safe custody as far as the same remained with the police and then despatched to the trial Court as a ‘case property’ intact, and any break in the chain of custody or lapse in the control of possession of the sample(s) containing case property causes doubt on its safe custody and safe transmission to the Court of law. In case of “AMEER ZEB v. THE STATE” (PLD 2012 Supreme Court 380), the top Court has observed that the Control of Narcotic Substances Act, 1997, stipulates disproportionately long and harsh sentences and, therefore, for the purpose of safe administration of criminal justice, some minimum standards of safety are to be laid down so as to strike a balance between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration by the Investigating Agency. Such minimum

standards of safety are even otherwise necessary for safeguarding the Fundamental Rights of the citizens regarding life and liberty which cannot be left at the mercy of verbal assertions of police officers, which assertions are not supported by independent evidence provided by a Chemical Examiner. In cases of “The State through Regional Director ANF v. Imam Bakhsh and others” (2018 SCMR 2039), “Ikramullah and others v. The State” (2015 SCMR 1002) and “Amjad Ali v. The State” (2012 SCMR 577), the Apex Court had bound down the prosecution to substantiate the safe transmission of sample(s) of the recovered substance right from its recovery from the accused, keeping it safe with the police and then its onward transmission to the Forensic Laboratory but in case of “ABDUL GHANI and others v. The STATE and others” (2019 SCMR 608), the top Court went ahead of this by observing that in a case where the safe custody of the recovered substance or safe transmission of sample(s) of the recovered substance was not proved by the prosecution through independent evidence, it cannot not be concluded that the prosecution had succeeded in establishing its case against the accused beyond reasonable doubt. In the above referred case, the top Court had given its observation in the following manner;-

“There is hardly any occasion for discussing the merits of the case against the appellants because the record of the case shows that safe custody of the recovered substance as well as safe transmission of samples of the recovered substance to the office of the Chemical Examiner had not been established by the prosecution in this case. Nisar Ahmad, S.I./SHO complainant (PW1) had stated before the trial Court that he had deposited the recovered substance at the Malkhana of the local Police Station but admittedly the Moharrir of the said Police Station had not been produced before the trial Court to depose about safe custody of the recovered substance.”

Underline provided for emphasis.

Meaning thereby that it was incumbent upon the prosecution to prove the safe custody and transmission of both components/

limbs of case i.e. sample parcel(s) and the case property. In the judgment passed by this Court in case of “ABID ALI v. The STATE” (2022 P.Cr.L.J 1088), the case of the prosecution was disbelieved as the prosecution remained unable to prove the safe custody of the second component i.e. safe custody of parcel(s) containing the case property. In another judgment rendered by this Court in case of “ABDUL GHAFUOR v. The STATE and others” (2021 P.Cr. L J 1624), it had been observed that a portion of 78 grams of recovered narcotic was segregated for chemical analysis and the rest of 1472 grams recovered narcotic was secured separately however, prosecution witnesses could not prove as to who transmitted parcel containing said 1472 grams and no evidence was presented to show how such parcel was retrieved and brought to Court to be exhibited as evidence. The accused was held responsible/guilty to the extent of narcotic containing sample parcel.

8. So, in the light of above discussion, we believe that the prosecution remained failed to adduce the evidence qua the safe custody and safe transmission of the sample(s) containing the ‘case property’ as observed earlier that Tahir Saleem SI (PW-5) had not deposed in the line of the assertion of Shahbaz Qalandar 924/HC, Moharrar of Police Station (PW-2), wherein he claimed that he handed over the parcels containing the case property to the said Tahir Saleem SI (PW-5), rather he did not utter a single word about handing over the parcels containing ‘case property’ to him. Meaning thereby that an important link is missing regarding the safe custody of the ‘case property’ and we have reached to an irresistible conclusion that the prosecution remained failed to prove its case to the extent of parcels containing the ‘case property’. Hence, in all eventualities the narcotic containing the ‘case property’ cannot be used against the appellant. So, he cannot be held guilty of

the quantity i.e. 3011 grams of charas and as such conviction and sentence awarded to him by the learned trial Court u/s 9 (c) of the Act ibid cannot be allowed to stand, rather he would be convicted and sentenced to the extent of samples consisting of 54/54 grams and 51 grams (total 159 grams), which were received in the Punjab Forensic Science Agency (PFSA) and the same were tested as positive through report Ex-PG. Therefore, the appellant is held responsible for having only to the extent of three 'sample parcels' weighing 156 grams in his possession. In this view of the matter conviction recorded by the learned trial Court is converted into conviction of the appellant from section 9 (c) to section 9 (b) of the Act ibid and he is sentenced to one year and three months rigorous imprisonment and fine of Rs.9,000/-, in default whereof, to further undergo simple imprisonment for three months and fifteen days while applying the sentencing policy of this Court, laid down in case of "GHULAM MURTAZA and another v. THE STATE" (PLD 2009 Lahore 362). Benefit of section 382-B Cr.P.C. is also extended to the appellant.

9. With the above modification in conviction and sentence of the appellant, the instant appeal is **dismissed**.

(SARDAR MUHAMMAD SARFRAZ DOGAR)
 JUDGE

(MUHAMMAD WAHEED KHAN)
 JUDGE

APPROVED FOR REPORTING

Singed on 04.10.2023

JUDGE