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JUDGMENT SHEET

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

Criminal Appeal No.214/2021

Ijaz Hussain alias Jajay Shah

Vs.

The State and another

JUDGMENT

Date of hearing	**5.10.2023**
For the Appellant:	Syed Zeeshan Haider, Advocate, with the Appellant
For the State:	Mr. Najeeb Ullah Khan Jatoi, Deputy Prosecutor General.

Tariq Saleem Sheikh, J. – This appeal is directed against the judgment dated 26.3.2021 handed down by the Additional Sessions Judge, Chishtian, in case FIR No. 518/2020 dated 12.10.2020 registered at Police Station Bakhshan Khan, District Bahawalnagar, for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 (the "Act").

2. Brief facts of the case are that on 12.10.2020, Muhammad Afzal/ASI (PW-2) was present in the area of Bakhshan Khan with other police officials when he received spy information that a drug peddler named Ijaz Hussain, also known as Jajay Shah (the Appellant), was seen at the Sheli Gharbi-wala Bridge carrying a huge quantity of *charas*. The source indicated that immediate action could lead to the Appellant's arrest. The Complainant and his team responded quickly to the tip-off and apprehended the Appellant at the specified location. The Complainant inspected the plastic bag that the Appellant was carrying and found 1210 grams of *charas* in it. He extracted 61 grams from it and prepared a sealed sample parcel for chemical analysis. Then, he secured the remaining *charas* P-1 in a separate sealed parcel and took both these parcels into his possession vide the Recovery Memo Exh. PB. Thereafter, the Complainant drafted the complaint Exh. PC, and sent it

to the Police Station Bakhshan Khan, District Bahawalnagar, through Sagheer Ahmad 287/C where FIR No.518/2020 Exh. PC/1 was registered. Following the completion of the investigation, a report under section 173 Cr.P.C. was submitted.

3. On 18.11.2020, the Additional Sessions Judge framed charge against the Appellant to which he pleaded not guilty and claimed trial. On its conclusion, vide judgment dated 26.3.2021, he convicted him under section 9(c) of the Act and sentenced him to rigorous imprisonment for four years and six months with a fine of Rs.20,000/- and, in default thereof, to undergo simple imprisonment for a further period of five months. The benefit of section 382-B Cr.P.C. was extended to him. This appeal stems from that judgment.

4. In support of this appeal, Syed Zeeshan Haider, Advocate, contended that the Appellant was innocent and the police had concocted this case against him. According to him, no raid was conducted and the alleged contraband was not found in the Appellant's possession. Mr Haider cited various passages from the testimony of the prosecution witnesses to support his contention. He argued that the trial court had erred in appraising the evidence, which had resulted in a serious miscarriage of justice.

5. The Deputy Prosecutor General vehemently opposed this appeal. He contended that the prosecution had established its case convincingly, leaving no room for doubt. He argued that the prosecution case was supported by Muhammad Afzal/ASI (PW-2) and Muhammad Adnan 441/C (PW-3) and the forensic report Exh. PG. He maintained that the prosecution evidence was trustworthy and the contradictions, if any, were minor and inconsequential. The Deputy Prosecutor General prayed for the dismissal of this appeal.

6. Arguments heard. Record perused.

7. The prosecution case is that on 12.10.2020, the Appellant was apprehended at the Sheli Gharbi-wala Bridge and 1210 grams of *charas* were recovered from him. It examined Muhammad Afzal/ASI (PW-2) and Muhammad Adnan 441/C (PW-3) to prove that recovery. They deposed in line with the complaint Exh. PC and the FIR Exh. PC/1,

and supported each other on all critical details, such as the date, time, place, and the method of the recovery. However, some aspects of this case raise concerns.

8. As noted above, the prosecution claims that Muhammad Afzal/ASI led the operation based on the information from a spy. However, nothing on the record suggests that he accompanied the police force to the Sheli Gharbi-wala Bridge. There is also no evidence that any member of the raiding party knew the Appellant previously. In these circumstances, the prosecution was bound to explain how PW Muhammad Afzal/ASI recognized him. This explanation is conspicuously missing.

9. According to PWs Muhammad Afzal/ASI (PW-2) and Muhammad Adnan 441/C (PW-3), as well as the Investigating Officer, Waqas Jamil/SI (PW-4), two officials of Eagle Squad No.13 also joined the raid. They were important witnesses to the occurrence and could have added to the credibility of the prosecution case, but their statements under section 161 Cr.P.C. were not recorded. Importantly, not even their names were mentioned in any proceedings.

10. The law does not expressly forbid the complainant/raiding officer from investigating narcotics cases, though it is not appreciable. In the present case, two different officers conducted the raid and the investigation. Muhammad Afzal/ASI (PW-2) led the police team during the raid, seized the contraband *charas*, and reported the crime through complaint Exh. PC. On the other hand, Waqas Jamil/SI (PW-4) investigated the case. Given this situation, Muhammad Afzal/ASI was responsible for preparing the Recovery Memo Exh. PB, and lodging the complaint Exh.PC, while Waqas Jamil/SI should have done all the other proceedings.

11. A recovery memorandum is the fundamental document in cases involving narcotics. In ***Zafar Khan and another v. The State*** (2022 SCMR 864), the Supreme Court of Pakistan outlined its importance and emphasized that the Seizing Officer should draft it carefully, ensuring that it includes a comprehensive inventory of the items recovered. This document must be executed in the presence of two or more credible witnesses, who are then required to endorse it with their

signatures. The primary objective of drawing the recovery memorandum on the spot, with the signatures of such witnesses, is to ensure that the recovery process is carried out transparently and with integrity, reducing the possibility of false allegations or evidence tampering. Once the recovery memorandum is prepared, the next step for the prosecution is to produce the same before the trial court, to prove the recovery of the material and the memo's preparation through the scribe and the marginal witnesses.

12. Both Complainant Muhammad Afzal/ASI (PW-2) and Muhammad Adnan 441/C (PW-3) admitted in their cross-examinations that the handwriting on complaint Exh. PC, Recovery Memo Exh. PB, rough site plan Exh. PE and the statements of witnesses recorded under section 161 Cr.P.C. was the same. The Investigating Officer, Waqas Jamil/SI (PW-4), tried to save the situation by stating that the handwriting on these documents was different. On this, the Appellant's counsel requested the trial court to examine these documents upon which it found that they were in the same hand.

13. The Deputy Prosecutor General objected strongly to the trial court comparing the handwriting on the above-mentioned documents, arguing that it should have referred them to the forensic expert. We are not inclined to agree with him in the circumstances of the present case and because of the admissions of PWs Muhammad Afzal and Muhammad Adnan. Besides, in ***Khudadad v. Syed Ghazanfar Ali Shah alias S. Inaam Hussain and others*** (2022 SCMR 933), the Supreme Court of Pakistan held:

> "It is true that it is undesirable that a Presiding Officer of the court should take upon himself the task of comparing signature in order to find out whether the signature/writing in the disputed document resembled that of the admitted signature/writing but Article 84 of Qanun-e-Shahadat 1984 does empower the court to compare the disputed signature/writing with the admitted or proved writing[1] … The court has all the essential powers to conduct an exercise of comparing the handwriting or signature to get hold of a proper conclusion as to the genuineness of handwriting or signature to effectively resolve the bone of contention between the parties. The real analysis is to ruminate the general character of the inscriptions/signatures for comparison and not to scrutinize the configuration of each individual letter. It is an unadorned duty of the court to compare the writings in order to reach at precise

[1] In this context, the Supreme Court referred to (i) *Ghulam Rasool and others v. Sardar-ul-Hassan and another* (1997 SCMR 976); (ii) *Mst. Ummatul Waheed and others v. Mst. Nasira Kausar and others* (1985 SCMR 214) and (iii) *Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and others* (1999 SCMR 85).

> conclusion, but this should be done with extreme care and caution and from dissimilarity and discrepancy of two signatures, court may legitimately draw inference that one of these signatures is not genuine and when the court is satisfied that the signature is forged and feigned then nothing prevents the court from pronouncing decisions against the said documents."

14. In ***Ikram Ullah v. The State and others*** (2017 YLR 712), one of the grounds that weighed with the Islamabad High Court to acquit an accused in a narcotics case was that the Recovery Memo and the complaint were in the handwriting of two different persons rather than one. Similarly, in ***Mst. Marvi Bhatti v. The State*** (2018 MLD 1329), the Sindh High Court ruled against the prosecution because the handwriting on the Memo of Arrest and Seizure did not match the *Mashirnama* of the Place of Incident. During cross-examination, a witness attempted to explain this difference by citing variations in the type of pen used, but the court rejected his explanation. Again, in ***Aslam Khan v. The State*** (2021 PCr.LJ 1018), based on the contents of the documents, including the recovery memorandum and the statements of prosecution witnesses, it was initially claimed that the Seizing Officer prepared these documents. However, during the trial, at the defence counsel's request, the Seizing Officer's handwriting was obtained and placed on the record. Upon comparing the Seizing Officer's handwriting with the aforementioned documents, it was revealed that they were dissimilar. The court concluded that the Seizing Officer did not draft these documents, which was considered one of the grounds for the accused's acquittal.

15. The facts and circumstances of the present case indicate that the same person prepared the entire file in a single sitting. It is hard to reject the Appellant's contention that it was at the police station and that no raid was ever conducted.

16. It is a cardinal principle of criminal law that the burden of proof rests squarely on the prosecution, and it is obligated to prove the charge against the accused beyond a reasonable doubt. This canon is firmly grounded in the presumption of innocence, which dictates that an accused person is regarded as innocent until proven guilty. In the United States, the concept that the prosecution must prove the accused defendant's guilt beyond a reasonable doubt is deeply ingrained in the

Constitution. The Sixth Amendment to the U.S. Constitution guarantees the right to a fair trial, and the Due Process Clause of the Fourteenth Amendment extends this right to the states. Numerous rulings by the U.S. Supreme Court have underscored the significance of this principle. One of the most renowned cases exemplifying it is ***In re Winship,*** 397 U.S. 358 (1970). In this case, the Supreme Court held that the prosecution must prove every element of a criminal offence beyond a reasonable doubt rather than by a preponderance of the evidence or some lesser standard. Justice Harlan, writing for the majority, stated that "the reasonable-doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude of the facts in issue.' "

17. In the United Kingdom, ***Woolmington v. The Director of Public Prosecutions***, [1935] AC 462, is one of the important cases in which the House of Lords reaffirmed the presumption of innocence and held that it is the prosecution's duty to prove the guilt of the accused beyond a reasonable doubt. Lord Sankey famously stated, "Throughout the web of the English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception."

18. In ***R. v. Lifchus***, 1997 CanLII 319 (SCC), [1997] 3 SCR 320, the Supreme Court of Canada stated:

> "The phrase 'beyond a reasonable doubt', is composed of words which are commonly used in everyday speech. Yet, these words have a specific meaning in the legal context. This special meaning of the words 'reasonable doubt' may not correspond precisely to the meaning ordinarily attributed to them. In criminal proceedings, where the liberty of the subject is at stake, it is of fundamental importance that jurors fully understand the nature of the burden of proof that the law requires them to apply. An explanation of the meaning of proof beyond a reasonable doubt is an essential element of the instructions that must be given to a jury. That a definition is necessary can be readily deduced from the frequency with which juries ask for guidance with regard to its meaning. It is therefore essential that the trial judge provide the jury with an explanation of the expression ... Perhaps a brief summary of what the definition should and should not contain may be helpful. It should be explained that:
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> - the standard of proof beyond a reasonable doubt is inextricably intertwined with that principle fundamental to all criminal trials, the presumption of innocence;
> - the burden of proof rests on the prosecution throughout the trial and never shifts to the accused;

- a reasonable doubt is not a doubt based upon sympathy or prejudice;
- rather, it is based upon reason and common sense;
- it is logically connected to the evidence or absence of evidence;
- it does not involve proof to an absolute certainty; it is not proof beyond any doubt nor is it an imaginary or frivolous doubt; and
- more is required than proof that the accused is probably guilty – a jury which concludes only that the accused is probably guilty must acquit."

19. The Supreme Court of Pakistan has ruled in several cases that there does not need to be a plathora of circumstances raising doubt. Even a single event that creates reasonable doubt in the mind of a prudent person regarding an accused's guilt would entitle him to acquittal as a matter of right, not grace. Reference in this regard may be usefully made to the following cases: ***Tariq Pervez v. The State*** (1995 SCMR 1345), ***Riaz Masih alias Mithoo v. The State*** (1995 SCMR 1730), ***Muhammad Akram v. The State*** (2009 SCMR 230), and ***Hashim Qasim and another v. The State*** (2017 SCMR 986).

20. Having reappraised the evidence, we hold that the prosecution has failed to prove its case against the Appellant beyond any reasonable doubt. Hence, we **accept** Crl. Appeal No.214/2021, set aside the conviction and sentence awarded to the Appellant and acquit him of the charge. The Appellant is on bail as his sentence was suspended by this Court vide order dated 12.8.2021. His surety stands discharged.

(Muhammad Tariq Nadeem)
Judge

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge Judge