

Form No: HCJD/C-121

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Criminal Appeal No. 397/2019**

**Yasir Mehmood**

V/s

**The State and another.**

Appellant By : Mr. Zeeshan Gohar, Advocate.

State By : Sadaqat Ali Jehangir, State Counsel.  
Muhammad Khan S.I, with record.

Date of Hearing : 28.01.2020

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**Ghulam Azam Qambrani, J. –** This appeal is directed against the judgment dated 26.11.2019, passed by the learned Additional Sessions Judge-IX/Judge Special Court CNSA (West), Islamabad, whereby the appellant (Yasir Mehmood son of Sakhawat Khan) has been convicted in case F.I.R No.264/2019 under Section 9-C of the Control of Narcotic Substances Act, 1997 (hereinafter be called as CNSA) and sentenced to rigorous imprisonment of two years with fine of Rs.30,000/- (thirty thousand). In default of payment of fine the appellant is to suffer further simple imprisonment of five months; benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Briefly stated facts of the prosecution case are that on 25.06.2019, on the written report of Muhammad Khan, S.I., F.I.R No. 264/2019 was registered with the averments that on the alleged day, at about 03:30 p.m. he alongwith Sarfraz Ahmed Head Constable, Haider Ali Constable and Sarfraz Khan Constable were on routine patrolling and held "Naaka" at Marchan Stop, Fateh Jung Road, Tarnol, Islamabad. It has been further alleged that at about 03:30 p.m. a person was seen coming towards there, holding a shopper bag in his hand, who on seeing the police party, turned back, being suspicious the person

was overpowered. On query, he disclosed his name as Yasir Mehmood. Search of shopper bag resulted into recovery of two (02) packets slab shaped *Charas*, one of the slab was wrapped with a solution tape while the other with a white coloured envelope. It has been also stated that on weighing each slab turned out to 1070 grams and 1080 grams respectively, total 2150 grams. Out of which 10 grams from each packet was separated for chemical analysis.

3. After investigation challan/report under Section 173 Cr.P.C was submitted before the learned Trial Court and the appellant was sent to face the trial. The learned Trial Court after fulfilling codal formalities, framed the charge against the appellant to which he pleaded not guilty and claimed trial. In order to prove the allegations of recovery of contrabands, the prosecution examined following witnesses:-

- i. PW-1, Tariq Chohan, ASI (Duty Officer at PS Tarnol);
- ii. PW-2, Muhammad Asif, Head Constable;
- iii. PW-3, Haider Ali, Constable, recovery witness;
- iv. PW-4, Muhammad Khan, S.I, (Investigation officer); and
- v. PW-5, Salah ud Din, Constable.

4. On completion of prosecution evidence, appellant/accused was examined under section 342 Cr.P.C. wherein he categorically denied the allegations in totality. The appellant did not opt to record statement on oath as envisaged under section 340(2) Cr.P.C nor produce any defence witness. After hearing the parties, learned Trial Court passed the impugned judgment whereby the appellant was convicted and accordingly punished, in the case in question, as mentioned above.

5. Learned counsel for the appellant contended that the prosecution miserably failed to prove the charge against the appellant beyond reasonable doubt; that there are material contradictions in the evidence of prosecution witnesses which were raised before the learned Trial Court, but the same were ignored; that the complainant himself is Investigating Officer of the case, hence,

the factum of false implication of the accused/appellant cannot be ruled out; that the alleged place of recovery was populated area even then no private witness has been associated thus I.O. has violated the provision of Section 103 Cr.P.C which makes the story of the prosecution concocted and fake. Finally, learned counsel for the appellant prayed for setting aside of the impugned judgment and acquittal of the appellant.

6. On the other hand, learned State Counsel vehemently opposed the appeal and while supporting the impugned judgment stated that prosecution witnesses have no ill-will or enmity against the appellant; that recovery of contraband has been effected from physical and conscious possession of the appellant; that samples were separated and sealed at the spot; that samples were sent to the laboratory and the positive report is available on record, which duly followed by protocols with the result that the recovered contrabands were "*Charas*".

7. We have heard learned counsel for the parties and gone through the available record, which reveals that alleged recovery was effected on 25.06.2019 at about 03:30 p.m. The recovery memo was prepared on the spot, samples were separated for chemical analysis purpose, which were sent through PW-5, Salah ud Din, constable to the laboratory.

8. Perusal of the depositions of the witnesses shows that there are glaring contradictions in the statements of the witnesses with regard to presence of appellant at the place of occurrence, mode of arrest, which has cut the roots of the prosecution story.

9. PW-2, Muhammad Asif, Head Constable, in his deposition stated that on 25.06.2019, he was posted as Muharar Mal Khana at PS Tarnol, Islamabad. On the same day I.O handed over to him three samples (02 samples and 01 remaining case property) which he kept in Mal-Khana and on 27.06.2019, he handed over the two samples parcels to Constable Salah ud Din vide road

certificate No. 381/19, dated 27.06.2019, who issued docket from the ETO office thereafter, submitted the samples parcels to the NIH Laboratory. During cross examination, he stated that three parcels were of *herion*. I.O. told him that these parcels were of *herion*. PW-3, Haider Ali, Constable, on oath stated that on 25.06.2019 at about 03:30 p.m. he alongwith Muhammad Khan S.I was patrolling at Marchan Stop, Fateh Jung Road, Tarnol, Islamabad, a person was deboarded from a vehicle who was holding a shopper bag in his hand, which resulted into recovery of two packets slab shaped *Charas*. The recovery memo was prepared, he signed over the same, which is EX-PB/1. During cross examination, he stated that the appellant/accused was sitting in a bed-ford wagon and 2/3 persons were also deboarded from the said vehicle. PW-4, Muhammad Khan, S.I, deposed that on 25.06.2019, he was on duty at Marchan Stop, Fateh Jung Road, Tarnol, Islamabad, during patrolling, a person was seen coming from Pindparian side, on seeing the police he abruptly turned back who was overpowered. He was holding a shopper bag in his hand, on search, two packets slab shaped *Charas* were recovered from him and further stated that on 27.06.2019, two sealed parcels of the samples were sent through Salah ud Din Constable to NIH Laboratory. He further stated that he recorded the statement of Salah ud Din constable on the same day. PW-5, Salah ud Din, Constable, deposed that on 26.06.2019 at about 08:30/09:00 a.m. I.O handed over to him two parcels for onward submission of the same to NIH laboratory, Islamabad. He further deposed that I.O did not record his statement in this regard. During the cross examination, he stated that after submission of parcels he handed over the receipt of laboratory to Shakeel Moharrir.

10. The above contradictions in the statements of witnesses have made the case of prosecution highly doubtful on the two points:-

- (i). that the complainant (PW-4) stated that the appellant was arrested when he was coming on foot, while PW-3 stated that

the appellant was deboarded from bed-ford wagon alongwith 2/3 persons; and

- (ii). that I.O handed over to Salah ud Din (PW-5) three parcels of herion and on 27.06.2019 he handed over two parcels to Sala ud Din (PW-5) for onward transmission of the same to the NIH laboratory, Islamabad, while PW-5 himself stated that on 26.06.2019, he was handed over the parcels by the I.O.

11. The contradictions with regard to mode of arrest, as per statement of PW-2 handing over all the three parcels of herion to the Salah ud Din (PW-5) on 27.06.2019, on the contrary, Salah ud Din (PW-5) stated that on 26.06.2019, he was handed over the parcels for laboratory, has made the case of prosecution highly doubtful.

12. Perusal of NIH report EX-PF/1-1 reveals that the samples of *Charas* received on 27.06.2019, wherein no-where it has been stated that by whom the samples were brought. As per the statement of PW-5 the samples were handed over to him on 26.06.2019; while the samples were received in the laboratory on 27.06.2019, during the intervening period of one day, it cannot be said with certainty that whether the samples were in safe custody or not. We have noticed that the safe custody and safe transmission of alleged narcotics from the police station till its receipt by the Forensic Science Laboratory has not been satisfactorily established. The chain of custody begins with the recovery of the seized *Charas* by the police and includes the separation of representative samples of the seized narcotics and their dispatch to the Narcotics Testing Laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, safe and secure. Any break in the chain of custody or lapse in the control of possession of samples will cast doubts on the safe custody and safe transmission of the samples and will impair the reliability of the report of the Government Analyst. In this regard, reliance is placed on the judgment reported as "**The State through Regional Director ANF Vs. Imam Bakhsh and others**" (2018 SCMR 2039),

**"Amjad Ali vs. State" (2012 SCMR 577), "Zahir Shah alias Shat vs. The State" (2019 SCMR 2004) and "Ikramullah vs. State" (2015 SCMR 1002).**

The discrepancies and the contradictions pointed out by the learned counsel for the appellant cannot be taken lightly. It is well settled principle of law that the accused is entitled to get the benefit of slightest doubt, whereas in the instant case, there are doubts and discrepancies apparent on the face of record. Keeping in view the statement of Salah ud Din (PW-5) and report of the chemical expert relied upon by the prosecution, being unreliable, cannot made a basis to sustain the conviction and sentence awarded to the appellant.

13. For the above reasons, this appeal is **accepted** and impugned judgment dated 26.11.2019, passed by the learned Additional Sessions Judge (West)/Special Judge CNSA, Islamabad, is set aside. Benefit of doubt is extended to the appellant namely Yasir Mehmood son of Sakhawat Khan and he is acquitted from the charges in the abovementioned case under Section 9(c) of the CNSA. The appellant being in custody is ordered to be released forthwith, if not required in any other case.

**(AAMER FAROOQ)**  
**JUDGE**

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

Announced in open Court on 19th March, 2020.

**JUDGE**

**JUDGE.**

*\*A. RahmanAbbasi.*