

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

(1) **Crl. Appeal No.23 of 2021**
Taj Muhammad
Versus
The State

(2) **Crl. Appeal No. 38 of 2021**
Dolat Khan
Versus
The State

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Appellants By : Mr. Muhammad Asad Khan in Crl.Appeal
No.23 of 2021
Mr. Muhammad Sadiq Khan, Advocate in
Crl.Appeal No.38 of 2021.

State By : Mr.Zulfiqar Ali Tahir, SPP ANF.

Date of Hearing : 04.04.2022

ARBAB MUHAMMAD TAHIR, J: Through this common judgment, we intend to decide the above mentioned both the appeals filed by the appellants i.e. Taj Muhammad S/o Aman Khan and Daulat Khan S/o Ekil Khan, under section 48 of CNSA, 1997 (**“Act of 1997”**), against the impugned judgment, passed by Judge Special Court, (CNS), Islamabad in special case No. 52/2018, as both the appeals emanate from same judgment dated 13.01.2021, whereby the appellants were convicted under Section 9(C) of the Act of 1997, and sentenced to undergo 6 years R.I. with fine of Rs. 30,000/-, each, in default whereof, to further undergo 06 months S.I. each with benefit of section 382-BCr.P.C in case F.I.R No.153, dated 17.10.2018, under Section 9-C&15 of the Act of 1997, registered at Police Station ANF-RD North, Rawalpindi.

2. That as per the prosecution version, on 16.10.2018 at 08:45 p.m. on the basis of spy information received by PW-4/Hassan Feroz, S.I, P.S, ANF Rd. North Rawalpindi that one Taj Muhammad alongwith his companion Daulat Khan will come on his vehicle bearing registration No. LWC-97, Toyota Corolla having grey colour

to deliver huge quantity of narcotics to his specific customer at Missile Chowk, F-10, Islamabad; that in case of quick action arrest of the accused and recovery of narcotics was sure. On the said information, on the direction of highups, a raiding party was constituted by PW-4, consisting upon him and constable Ishafaq Ahmed, Atif Shahzad, Hussain Akhter, Fazal Qayyum, Muhammad Farooq, the raiding party boarded in official vehicle bearing registration No. RIG-1112, driven by shahid Iqbal, reached at the place regarding which the information was received and started secret surveillance and at about 10:00 pm a vehicle bearing registration No. LWC-97, Toyota Corolla was seen coming from North side wherein two persons were boarded. The vehicle was stopped with the help of the officials and persons sitting in vehicle were de-boarded from the vehicle and were overpowered. On inquiry, driver of the vehicle disclosed his name as Taj Muhammad, while the second person disclosed his name as Daulat Khan. On asking some questions regarding the spy information both the persons disclosed that Charas was concealed in the secret cavity made in the trunk of the vehicle. In the presence of witnesses and with the help of torch, trunk of the vehicle was opened and secret cavity was found in the trunk of the vehicle, that was opened with the help of tools and 03 packets wrapped in 'Khaki' insulation tape and polythene bag were recovered. On checking the recovered packets charas was found in the packets. On weighing each recovered packet was found to be 1200 grams each i.e. total weighing 3600 grams charas was recovered. Out of each packet, 10 grams charas was separated and three sample parcels were prepared for chemical analysis, whereas the remaining charas was packed in a separate parcel. All the four parcels were sealed HF. The 03 sealed sample parcels, one pack of remaining charas, vehicle bearing registration No. LWC-97 Toyota Corolla registration Book were taken into possession through recovery memo. After due investigation, on being found guilty, report in terms of section 173 Cr.P.C was submitted before the trial Court against the appellants to face the trial.

3. At the trial, prosecution relied upon 5 witnesses i.e. PW-1 Shahid-ur-Rehman H.C, PW-2 Atif Shahzad constable, PW-

3Muhammad Ilyas H.C, PW-4 Hassan Feroz, S.I/Investigating Officer and PW-5 Ashfaq Ahmad constable while the reports of the N.I.HIslamabad were tendered as Exh. PG, Exh. PH, and Exh. PJ respectively.

PW-1: **Shahid ur Rehman**, Head Constable PS ANF RD North, Rawalpindi has deposed that on 17.10.2018, he was posted as Duty officer at police station ANF Rd North, Rawalpindi and on the same day he received a complaint sent by Hassan Feroz S.I. through driver Fazal Qayyum. On receiving the complaint he chalked out an FIR/Ex.PA. While endorsing his report Ex. PA/1 on the complaint, PW-1, sent back the complaint alongwith copy of FIR to S.I Hassan Feroz through driver Fazal Qayyum.

PW-02: **Atif Shahzad**, Constable has deposed that on 18.10.2018 he was present at police station ANF Rd, Rawalpindi. That Hassan Feroz SI called him and handed over to him application in Urdu, Docket English along with sample seal HF and directed him to take sample parcels from Moharrar Maalkhana for onward transmission to NIH, Islamabad. That he received three sealed sample parcels said to contain Charas weighing 10/10 grams each, sealed with seal HF along with road certificate from Moharrar Maalkhana for onward transmission to NIH, Islamabad. That he deposited the parcels and during this period, parcels remained intact in his custody.

PW-03: **Muhammad Ilyas H/C**, has stated on oath that on 17.10.2018, he was posted as Moharrar Maalkhana in PS ANF RD North, Rawalpindi. That on the same day, Hassan Feroz SI handed over to him 03 sealed sample parcels said to contain Charas weighing 10/10 grams each sealed with the stamp HF, 1 parcel of remaining case property sealed with seal HF, vehicle No. LWC-97 and articles of personal

search of accused persons according to the recovery memos. That he made entry of above said articles, sample parcels, parcel of remaining case property, vehicle in register No. 19 and kept them in Maalkhana for safe custody and parked the vehicle in MT. That on 18.10.2018, Constable Atif Shahzad came to him along with application in Urdu, Docket English and sample seal and asked him for providing him sample parcels. That he handed over to PW-02, 03 sealed sample parcels of Charas weighing 10/10 grams each with seal HF intact, alongwith road certificate. That I.O recorded his statement under Section 161 Cr.P.C on 18.10.2018. That parcels remained safe and intact during the period the same remained in his custody.

PW-04: **Hassan Feroz S.I**, is the investigation officer of this case. In his statement recorded on oath, PW-4 has narrated almost the same facts as mentioned in para No. 2 of this judgment.

PW-05: **Ashfaq Ahmed, constable**, PS ANF RD, North Rawalpindi has deposed on oath that on 16.10.2018, he along with Hassan Feroz S.I, constables Atif Shahzad, Hussain Akhtar, Fazal Qayyum and Muhammad Farooq on official vehicle bearing registration No. RIG 1112 driven by Shahid Iqbal driver were present at Mizile Chowk F-10, Islamabad at about 10:00pm. That a car bearing registration No. LWC-97 came from North side and 02 persons were sitting/boarded in the said car. That Hassan Feroz SI with the help of accompanying officials signaled the car to stop and the persons sitting in the car were de-boarded from the car and were inquired about their names. The driver disclosed his name as Taj Muhammad and the person sitting on the front seat disclosed his name as Daulat Khan. Both the persons, after some hesitation, disclosed that narcotics was present in

the secret cavity made in the place of spare wheel in the trunk of the vehicle. That on the pointation of the accused persons, 03 packets of narcotics were recovered from the secret cavity made in the place of spare wheel in the trunk of vehicle that was opened with the help of tools. That on opening the recovered packets, charas was found therein. On weighing the recovered packets, each packet came out to be 1200/1200 grams each. i.e. total narcotics was weighing 3600 grams. From each recovered packet, 10/10 grams Charas was separated for the purpose of chemical analysis and 03 sealed parcels were prepared while the remaining narcotics was sealed in a separate parcel. Vehicle key, registration book and Charas was taken into possession through recovery memo Ex. PB. That personal search of accused was made by Hassan Feroz. That as a result of personal search of accused Taj Muhammad, purse brown colour, Pakistani currency, Rs. 1000, CNIC, different visiting cards while from the personal search of accused Daulat Khan, NIC and Pakistani currency Rs. 300 was recovered which were taken into possession through personal search memos Ex.PC and Ex. PD. That recovery memos were prepared at the spot. That he and Atif Shahzad attested the recovery memos as witness.

4. The appellants in their respective statements under Section 342 Cr.P.C. denied the allegations leveled by the prosecution. However they did not opt to make statements on oath under section 340(2) Cr.P.C, or to produce any defence evidence. The learned Trial Court, after hearing the counsel for the appellants and learned Special Public Prosecutor, convicted and sentenced the appellants to 6 year R.I along with fine of Rs. 30,000/- each in case of default in payment of fine to further undergo six months

S.I. each, vide judgment dated 13.01.2021, being assailed through the instant criminal appeals.

5. Learned counsel for the appellants argued that one of the witnesses namely Atif Shahzad PW-2, who accompanied the raiding party, in his statement did not state anything regarding the search and recovery of contraband; that the official who took the complaint to the Police station was neither cited as witness nor his statement under Section 161 Cr.P.C. was recorded; that the prosecution evidence is silent on the allegation of conscious knowledge against appellant Daulat Khan; that the reports of the Chemical Examiner are short of necessary protocols; that in presence of glaring discrepancies, conviction and sentence inflicted upon the appellants is not sustainable in the eye of law and that even otherwise, the sentence awarded is severe in nature and does not commensurate with the gravity of the offence as the appellants are first offender and retain no criminal record. Learned counsel placed reliance upon case law reported as **2009 SCMR 230, PLD 2004 SC 856, PLD 2012 SC 380, 2019 SCMR 326, 2020 SCMR 687 and 2018 SCMR 2019.**

6. On the other hand, learned Special Prosecutor, ANF repelled the above submissions by contending that the prosecution evidence is firm to establish unbroken chain of events that is corroborated by the NIH reports while no instance of malafide has come on record, therefore, the impugned judgment does not call for any interference.

7. We have heard the learned counsel for the appellants, learned Special Prosecutor and have gone through the record with their able assistance.

8. The prosecution case mainly relies upon the statements of PW-4 Hassan Feroz, S.I. /I.O. and PW-5, Ashfaq Ahmad constable. Both the witnesses were consistent on material particulars i.e. the venue, date and time of the raid, apprehension of the appellants with car bearing registration No, LWC-97 being driven by appellant Taj Muhammad while the appellant Daulat Khan was holding the front seat, recovery of three packets of chars weighing 1200 grams each, total 3600 grams, separation of 10-grams each from the said

three packets, preparation of three sample parcels for the purpose of chemical analysis besides preparation of recovery memo Ex.PB of the chars P1, vehicle P2, key P3 and registration Book P4.

9. The safe custody and transmission of the sample sealed parcels to the N.I.H. is established through the statements of PW-2 Atif Shahzad, constable, Moharrir Muhammad Ilyas H.C./PW-3 and Hassan Feroz S.I. PW-4. The latter after conducting necessary proceedings at the spot, went back to the Police Station and handed over the case property including the sample parcels to the Moharrir/PW-3 on 17.10.2018 and on the next day i.e. 18.10.2018 it was dispatched to the N.I.H. through Atif Shahzad constable, who deposited the same intact on the same day which was also confirmed from the reports of N.I.H Ex.PG, Ex.PH and Ex.PJ wherein the name of the said witness is duly mentioned to have delivered the parcels on 18.10.2018.

10. That the prosecution witnesses remained unshaken during the lengthy cross-examination on the material particulars/aspects of the case highlighted above while the attack on the reports of the N.I.H as being short of protocols is not worthy of credence as the requisite details are mentioned on the reverse of said reports. Even otherwise, as laid down by the Hon'ble Apex Court in an identical case vide judgment dated 09.03.2022 passed in **Jail Petition No.637 of 2016**, titled **"Liaqat Ali and Shad Muhammad v. The State" if the series of acts which ultimately resulted into recovery of contraband-narcotics are juxta poised with the violation of the Rules due to one reason or the other as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features.** Reliance is also placed upon the judgment dated 14.03.2022 passed by the Hon'ble Apex Court in **Jail Petition No.95 of 2017**, titled **"Faisal Shahzad v. The State."**

12. Adverting to the quantum of sentence, it is noticed that the appellants are first offenders, having no criminal record and previously non-convict. As per report of the Superintendent Central Jail Rawalpindi dated 23-10-2021, the appellants till 22.10.2021 had undergone i.e. 03-Years, 09-Months and 07-Days

sentence and thus till date had already served out major portion of the sentence i.e. more than 04-Years, therefore, deserves moderate reduction in sentence. While forming this view, beneficial guidance is taken from the judgment in the case of "**Niaz-ud-Din v. The State**"(2007 SCMR 206) wherein 5 KG of heroin was recovered from the possession of accused, sentenced to 10 years R.I. with fine of Rs.50,000/- in default, to undergo further R.I. for six months. The conviction of 10 years was converted into six (6) years, already undergone by the accused by observing in paragraph 6 as under:-

"However, coming to the question of sentence we note that it has been conceded by learned A.A.G. that petitioner is a previous non-convict and there is no other instance of petitioner's involvement in drug trafficking. It has also been brought in evidence that at the time of this arrest he met custodial violence and on that account he received injuries. Perhaps those who arrested him wanted to extract confession for his alleged involvement with some other narcotic dealer. In these circumstances petitioner need to be given a chance in his life to rehabilitate himself."

13. Reliance is also placed upon case of "**Muhammad Arshad Hussain alias Gul Khan v. The State**"(2012 YLR 1630 Sindh), wherein it has been held that "***Substantial part of sentence had already been undergone by the accused---Prosecution had contended that F.I.Rs. and criminal cases were pending against the accused but neither anything was brought on record to substantiate the same nor F.I.R. or impugned judgment of Trial Court reflected such fact---Sentence of accused was reduced from seven years to the one already undergone by him (four years, nine months and two days), and resultantly directions were given to release him.***" In the case of "**Raees Khan Jadon v. The State**"(2010 YLR 3240 Karachi), on the recovery of 5 KG heroin, sentence of 7 years and three months, was reduced to 4 years, 11 months and 3 days, the period already undergone by the convict. The practice can also be witnessed in case reported as "**Shahid Hussain v. The State**" (2010 YLR 2170 Karachi), wherein the accused was first offender and his sentence was reduced from 10 years to one already

undergone. Reliance is also placed upon case of **"Saeed Ahmed Kalhoro v. The State" (PLD 2017 Sindh 592).**

14. In view of above, the instant criminal appeals are **dismissed** with modification of sentence from six years R.I. each and fine of Rs.30,000/- each to one already undergone by the appellants. The appellants shall be released forthwith if not required in any other case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI