

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Appeal No. 04/2016

Najeeb Ullah

Vs

The State

Appellant by: Mr.Muhammad Aslam Chishti, Advocate,
Respondent: Mr. Muhammad Sohail Khurshid, learned
State counsel with M. Azam I.O. Police
Station Koral, Islamabad.
Date of Hearing: 02.06.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- The instant criminal appeal under Section 48 of the Control of Narcotics Substances Act, 1997 (“Act of 1997”), is directed against the judgment dated 07.01.2016 passed by the learned Additional Sessions Judge/Special Judge (CNS), Islamabad-East, whereby the appellant was convicted under Section 9(C) of the Act of 1997, and sentenced to undergo 10 months R.I. with fine of Rs.10,000/-, in default to pay the amount of fine, to further undergo SI for 15 days in case FIR No.409, dated 21.12.2014, under Section 9/C of the Act of 1997, Police Station Koral, Islamabad. The benefit of Section 382-B of Cr.P.C was also extended to the appellant.

2. Briefly, the accusation against the appellant in the complaint Ex.PC, on the basis of which FIR No.409, Ex.PB was registered is that on 21.12.2014 at 4:15 P.M. Muhammad Azam SI, P.S Koral, Islamabad along with Khalid Mahmood LHC, and Jahangir HC while on routine patrolling was present at Marwa Town, and received a spy information that one Najeeb Ullah is selling charas publically at the brick kiln of Ch. Ikram. On this information, they reached the brick kiln where said Najeeb Ullah was apprehended and on search, a shopper containing charas in the shape of liter was recovered, which was weighed 1100 grams, out of which 10 grams was separated for chemical examination and sent to the Forensic Science

Laboratory. After due investigation, challan was filed in the Court of learned Special Judge (C.N.S.), Islamabad-East where the appellant was formally charge sheeted to which he pleaded not guilty and claimed to be tried.

3. At the trial, prosecution examined Shah Muhammad ASI as PW-1, to whom two sealed parcels were handed over by the I.O. for its onward transmission while Muhammad Jahangir HC-1043 was examined as PW-2, who is also a recovery witness through recovery memo Ex.PA. Muhammad Iqbal, SI, PW-3 chalked out the FIR on the basis of complaint and the said FIR was exhibited as Ex.PB. The complainant is also the investigating officer of the case, who was examined as PW-4. The said witness testified that the charas, Ex-P1, was taken into possession by him vide recovery memo Ex.PA, it was deposited in the Malkahana, drafted the complaint Ex.PC and sent the same to the Police Station for registration of formal FIR. He also inspected the place of recovery and prepared rough site plan Ex.PD, recorded statements of the PWs under Section 161 Cr.P.C. He produced the accused in the Court on 22.12.2014 for judicial remand through application Ex.PE. On 30.12.2014, drafted application Ex.PF for issuance of English docket Ex.PG. One Akhtar Abbas HC-2082 was examined as PW-5, to whom sample parcel was handed over for its onward transmission to the office of PFSA, Lahore on 07.01.2015, which was duly deposited on the same day.

4. After the recording of above said prosecution evidence, the accused was examined under Section 342 Cr.P.C, wherein he denied the allegations and opted not to make statement on oath or produce any other person in his defence. The learned trial Court after hearing the counsel for the accused and learned Prosecutor, convicted and sentenced the appellant as mentioned in para-1 *supra* vide judgment dated 07.01.2016, being assailed through the instant criminal appeal.

5. Learned counsel for the appellant submits that there is a contradictions in the statement of PW-2 available at P-29; that material witness has been given-up by the prosecution; that there is 16 days' delay in sending the sample of recovered narcotics to the laboratory, while no private witness has been associated despite the fact that the place of occurrence is a public place; that at the time of occurrence, the appellant was juvenile; that he has already undergone 81 days rigorous imprisonment. He has no previous criminal record. The Learned counsel relied upon case laws reported in 2015 YLR 1786, 2011 SCMR 820, 2018 MLD 1257 and 2008 P.Cr.L.J. 1268 in support of his contentions.

6. On the other hand, learned Prosecutor-ANF stands behind the judgment by certifying the fact that previously no case had been registered against the appellant.

7. We have heard the learned counsel for the appellant, learned Prosecutor-ANF and have gone through the record.

8. The examination of record reveals that no material contradiction could be highlighted in the evidence led by the prosecution and the findings of the learned trial Court regarding guilt of the appellant are based upon correct appraisal of the evidence and warrant no interference. The emphasis of the learned counsel was that appellant is at the verge of a tender age and he may be awarded an opportunity to rehabilitate himself for his future life particularly when he is a first offender and no previous record is attributed against him and that he has already served 81 days of his sentence.

9. If an offence is committed at the verge of juvenility, it has far reaching consequences upon the future of an offender. Every sentence has a purpose though the way in which it is to be accomplished might vary or differ. The case of a repeater or habitual offender where the

probability of reformation is little and the case of a first time novice offender, where he/she regrets his wrongdoing, the two cases cannot be measured on same yardsticks and the latter case deserves a lenient view.

The High Court of Sindh in case law reported as PLD 2017 Sindh 592 held that ***“a jail term should normally be enough to wipe out the stain of guilt, but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated.”***

10. The appellant is a first time offender and claims to be of less than 18 years of age at the time of occurrence. He, by appearance seems to be of tender age, in such circumstances, the chances of his rehabilitation outside the prison seems to be better than to the probability of sending him behind the bars and being exposed to undesirable elements in jail.

11. For deciding the instant appeal, beneficial guidance is taken from the judgment reported as **2007 SCMR 206 Supreme Court of Pakistan (Niaz-ud-Din Vs. The State)**, wherein 5 KG of heroin was recovered from the possession of accused and was sentenced to 10 years R.I. along with Rs.50,000/- fine and in default, to undergo further R.I. for six months. The conviction of 10 years was converted to six (6) years, which had already been 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.”

12. The Hon’ble Supreme Court of Pakistan in the case supra has reduced the sentence to same, which had already undergone on the basis of being first offender and future prospects of the convict. This view was followed by the Hon’ble Sindh High Court in judgment reported in 2012 YLR 1630 (Sindh), wherein 1100 grams heroin was recovered, sentence of accused was reduced from 7 years to one already undergone by him (four years, nine months and two days). The practice was also followed in 2010 YLR 3240 (Karachi), wherein 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 2010 YLR 2170 Karachi, wherein the accused was first offender and his sentence was reduced from 10 years to one already undergone.

13. The aspect of juvenile at the time of its occurrence in the light of international prospects/ agreement signed by the Government of Pakistan regarding protection of children, warrants further leniency to the appellant. Reliance is placed upon case law reported as 2019 P.Cr.L.J. 1176 (Islamabad) (Mst.Jamila Vs. The State), wherein Paragraph 13 is relevant, in which, it is held as:-

“13. Even otherwise, all the Trial Courts are bound to observe issues while awarding sentence to juvenile keeping in mind the international instruments as referred in 2017 YLR 2031 (Whishal Masih Vs. The State and others).

22. *In addition to above case studies, it has also been observed that issues relating to sentence of juvenile have been seen in the context of following international conventions and rules:-*
- i. convention of rights of child (CRC).*
 - ii. Guidelines for action on children in the criminal justice system recommended by Economic and Social Council Resolution 1997/30 of 21 July 1997.*

- iii. *United Nations Rules for the Protection of Juveniles Deprived of their liberty (Havana Rules)*
- iv. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*
- v. *United National Standard Minimum Rules for non-custodial Measures (the Tokyo Rules).*
- vi *United National Guidelines for the Prevention of Juvenile Delinquency (Reyadh Guidelines).*

23. In view of the above international documents and standards, Pakistan being signatory of CRC and member of United Nations is under obligation to provide the protection available under the law to the juvenile offenders of the standard settled in the above referred documents. Keeping in view the Juvenile Justice System Ordinance, 2000, the procedure provided in the Punjab Borstal Act, 1926 and the Reformatory School Act, 1897, following Act, 1926 and the Reformatory School Act, 1897, following guidelines are drawn from International Conventions and related documents only for reference for Juvenile Courts for awarding sentence to the juvenile offender on the basis of international Conventions and Rules."

14. In view of above, by following the precedents laid down by the superior courts, it is held that the appellant being first offender and of the age less than eighteen years at the time of occurrence, is entitled to leniency. Consequently the instant criminal appeal is **dismissed** with modification of sentence from 10 months R.I. and fine of Rs.10,000/- to one already undergone by the appellant. He is discharged of his bail bonds.

(MOHSIN AKHTAR KAYANI) (FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

A.R. ANSARI

Announced in open Court on _____

JUDGE

JUDGE

Approved for reporting.