

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

**CASE NO. : CRIMINAL APPEAL NO.332-2019**

**Wazir Ahmed Khiljee & Another**

**Vs.**

**The State & Another**

**Appellants by : Raja Shahzad Anwar, Advocate**

**Respondents by : Dr. Waseem Ahmed Qureshi, Special Prosecutor, ANF  
with Sheraz, Inspector/IO, ANF.**

**Date of hearing : 15.04.2020**

**AAMER FAROOQ J.** Wazir Ahmed Khiljee and Khan

Muhammad (the appellants) were tried in case FIR No.05 dated 12.01.2019 under section 9-C/15 CNSA, 1997, Police Station ANF/RD, Rawalpindi and were convicted of the charges leveled against them. Wazir Ahmed Khiljee was awarded eight years and six months rigorous imprisonment with fine of Rs.40,000/- and in default thereof, simple imprisonment for seven months; Khan Muhammad was awarded seven years and six months rigorous imprisonment with fine of Rs.35,000/- and in default thereof, simple imprisonment for six months and fifteen days. Both the appellants were afforded benefit under section 382(b) Cr.P.C.

2. Learned counsel for the appellants, *inter alia*, contended that conviction and sentence awarded to the appellants is not tenable in the facts and circumstances of the case; in this behalf, it was contended that prosecution has failed to prove safe custody of the

samples taken from the alleged narcotic substance; that the prosecution witnesses PW-I & PW-III both stated that samples/parcels were sealed in white color cloth, whereas forensic report submitted by National Institute of Health (NIH) states that the samples were received in dark brown semi-solid mass packed in polythene sealed in a khaki envelope. It was further contended that there is considerable difference in quantity of contraband narcotic substance weighed by the investigation authorities and when weighed in the court. It was submitted that difference in the weight, which was lesser when contraband substance was weighed in the court, shows that it was not the same as was when allegedly taken in custody.

3. Learned counsel for the appellants further contended that case of the prosecution, as made out, is not tenable inasmuch as officers of ANF raided the house of the appellants and took them in custody and narcotic substance was planted and, valuable items belonging to the appellants' family, were also taken in possession and were not accounted for and in this behalf, even FIR was got registered and the matter is pending. In support of contentions, learned counsel for the appellants placed reliance on cases reported as 'Muhammad Akram Vs. The State' (1994 SCMR 277), 'Abdul Ghani and others Vs. The State and others' (2019 SCMR 608), 'Zahir Shah alias Shat Vs. The State through Advocate-General, Khyber Pakhtunkhwa' (2019 SCMR

2004), 'Mst. Razia Sultana Vs. The State and another' (2019 SCMR 1300) and 'Faizan Ali Vs. The State' (2019 SCMR 1649).

4. Learned Special Prosecutor, ANF *inter alia* contended that safe custody of contraband narcotic substance has duly been proved inasmuch as the parcels were received by the officer and were transmitted under valid road certificate and the appellants are trying to take advantage of minor discrepancies in the statements of witnesses. It was further contended that story of the prosecution remains un-shattered and unimpeachable. It was submitted that difference in weight is inconsequential for the case of defence inasmuch as it is trite law that if recovery is duly proved, but there is a difference in weight, it only affects quantum of sentence and not the conviction.

5. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. The case of the prosecution, against the appellants, is that on 12.01.2019, at about 5:00 a.m., Inspector Gohar Nabi Baig along with staff of ANF, were keeping the area of Ibne-a-Seena Road near PIMS Hospital, Islamabad under surveillance, when on spy information, they were tipped that the drug paddlers could be conducting transaction in the vicinity; at about 5:15 a.m., raiding party reached at spot when two vehicles Toyota Aqua bearing

Registration No.AKT-261 and Honda Civic bearing Registration No.ADA-787 were parked on the road side; Inspector/IO along with the uniformed officials, intercepted the vehicles and the drivers were asked to walk out of the same; the cars were searched; upon disclosure and pointation of Wazir Ahmad Khiljee (appellant No.1), search of vehicle Toyora Aqua was made and it was found that in the trunk (dicky) of vehicle, at the place of spare tyre, five packets of charas wrapped in Khaki insulation tape and polythene bag were found; in the dashboard, one packet of ICE packed in polythene bag, one packet of cocaine (white in color) wrapped in polythene bag and one packet of 20-tablets wrapped in polythene bag (yellow in color) were recovered; charas was weighed at spot and found each packet containing 1200/1200 grams (total six kilograms) along with packing material; 10-grams from each packet was separated for chemical analysis and sealed in five parcels while the remaining charas was sealed in another parcel along with packing material; total six parcels of charas were prepared and sealed; likewise, recovered ICE was weighed and found to be 25-grams, out of which, 10-grams was separated for the purposes of chemical analysis and was sealed in sample parcel while the remaining was sealed in another parcel; recovered cocaine was weighed at the spot and found 15-grams, out of which, 5-grams was separated for chemical analysis and sealed in one sample parcel, while the remaining cocaine was sealed in

another parcel; 20-tablets were found 11-grams and were sealed in one parcel; all the items along with cars, were taken in custody and recovery memo was prepared. Khan Muhammad (appellant No.2), who was driver of Honda Civic Car was searched and upon his pointation, five packets of charas wrapped in khaki insulation tape and polythene bag; upon search of dash board of said vehicle, one packet of cocaine (white in color) wrapped in polythene bag, one packet of 17-intoxicated tablets wrapped in polythene bag (yellow in color) were recovered; recovered charas was weighed at spot and found each packet containing 1000/1000 grams (total five kilograms along with packing material); 10-grams from each packet was separated for the purposes of chemical analysis and sealed in five sample parcels while the remaining charas was sealed in another parcel along with packing material; total six parcels of charas were prepared and sealed; recovered cocaine (white in color) was weighed at the spot and found 10-grams, out of which, 5-grams were separated for chemical analysis and sealed in one sample parcel while the remaining cocaine along with packing material was sealed in another parcel; on weighing the recovered intoxicated 17-tablets, found 10-grams and sealed in one sample parcel for chemical analysis; recovery memo of all the items along with car was prepared.

7. The prosecution, in order to prove its case, led Azhar ur Rehman, Head Constable, ANF Rd, North, Rawalpindi as PW-1, Shahid-ur-Rehman, H/C ANF, PS Gilgit as PW-2, Muhammad Zulfiqar Constable ANF RD, North Rawalpindi as PW-3, Inspector Gohar Nabi Baig, ANF as PW-4 and Constable Atif Shahzad, PS ANF Dina as PW-5. The statements of the appellants were also recorded under section 342 Cr.P.C. as well as statement of other defense witnesses and documentary evidence was also tendered in affidavit. In this behalf, FIR is Ex.PA, FIR registered by defence against the officers of ANF is Ex.DW-A, memo of recovery is Ex.(PB) and (PD), articles recovered from the persons of the appellants were also exhibited along with complaint and site plan.

8. The thrust of the arguments by learned counsels for the appellants is that safe custody has not been proved by the prosecution inasmuch as it has been stated in the evidence of PW-I and PW-3 that samples were parceled in white cloth, whereas chemical analysis report does not depict the same. Azhar-ur-Rehman PW-1, who received the recovered alleged narcotic substance and other material from Investigating Officer; in his examination-in-chief, deposed nothing regarding color of the parcel, however, in cross-examination, he stated that all case properties/samples were sealed in white color cloth. Likewise, Muhammad Zulfiqar PW-3 who took the samples from Moharar Mall

Khan for onward transmission to forensic laboratory for chemical analysis of samples of narcotic substance categorically stated that the parcels remained intact in his possession and he took the same from Moharar Mall Khana i.e. Azhar ur Rehman PW-1 and delivered the same to the Office of National Institute of Health (NIH), Islamabad. In cross-examination, he stated that parcels were sealed in white cloth.

9. The Chemical Analysis report stipulates that the samples were in polythene sealed in a khaki envelope but the above witnesses have stated in evidence that the samples were in white cloth. The referred ambiguity has been clarified by the Investigating Officer in his evidence. During his cross-examination, the defence requested to re-examine recovered narcotic substance which was allowed by learned trial court and cross-examination of the Investigation officer divulges that at the request of defence counsel, the narcotic substance was de-sealed (Exb.P13 and Exb.PG), which was in white cotton stitched bag. He further clarified the position in statement that samples/parcels were put in Khaki sealed envelope, then in polythene bag and then white cloth as they were quite a few. It seems that since parcels were large in number, for ease of convenience, they were put in white cotton bag and which accordingly, PW-1 and PW-III deposed, however, when same were received by NIH, since white parcel was not sealed as submitted by

the Investigating Officer, they did not mention the same and only mentioned that samples received were in a polythene bag sealed in Khaki envelope. The defence, through ambiguity in the statement of Investigation Officer, has tried to place doubt in the case of the prosecution, which as such, is not made out. Likewise, it is trite law that where recovery of the narcotic substance is duly proved, the difference in weight is immaterial in as far as conviction of appellants is concerned. During the cross examination of PW5 the defense requested that the possessed narcotic substance be weighed again, which was allowed. In this behalf Parcel P/1GN was de-sealed which contained five packets wrapped in Khakki insulation tape and polythene bag having cut on each and every packet corner. On weighing the contraband substance it was found packet number 1 contained 1015 grams, packet number 2 1079 grams, packet number 3 1048 grams, packet number 4 1069 grams and packet number 5 1059 grams. Moreover, in stitched bag there was 21 grams in powder form. The learned trial court observed that cuts on each four packets material found as in powder form and the fifth packet was in solid form containing 1095 grams and due to it being solid the cut in the slab was visible. On de-sealing P/13 (white cotton stitched bag) five packets wrapped in khaki insulation tape and polythene bag having cut on each and every packet corner; packet number 1 had 836 grams, packet number 2 851 grams, packet number 3 850 grams,



packet number 4 896 grams and packet number 5 976 grams. Though there is difference in the quantity recovered initially and when weighed again in the court, the same could be due to faulty scale or the contraband substance having dried since lapse of time, however, the possession of contraband substance has been duly proved by the prosecution by producing in evidence, memo of recovery, which was duly witnessed by Muhammad Naveed and Atif Shehzad Constables. Atif Shehzad Constable appeared as PW-5 and reiterated in evidence the factum of recovery and possession. Reliance is placed on Muhammad Khan versus The State (2008 SCMR 1616), Abdul Rasheed versus The State (2009 SCMR 306), Ameer Zeb versus The State (PLD 2012 Supreme Court 380) and Muhammad Yasir versus The State (2017 P. Cr. LJ 1077). All the material evidence was confronted to the appellants. In defence, they led evidence to substantiate that story, made out by the prosecution, is not correct and is tainted with malafide and is concocted, however, CCTV which allegedly recorded the episode of weighing the contraband substance, was held to be inadmissible and no exception thereto can be taken. The defence failed to substantiate its version of the facts. In view of above, learned trial court has rightly concluded that prosecution has duly proved its case and established the same beyond reasonable doubt. Appellants did not raise any argument regarding the quantum of sentence.

10. In view of above, no interference is warranted in the impugned judgment, hence instant appeal is without merit and is accordingly dismissed.

(CHIEF JUSTICE)  
JUDGE

(AAMER FAROOQ)  
JUDGE

Announced in Open Court on 08-07-2020

(JUDGE)

JUDGE

Zawar