

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Criminal Appeal No. 82/2020**

**Muhammad Nazir.**

**Versus**

**The State.**

*Appellant by:* **Syed Kamran Hussain, Advocate.**

*Respondent by:* **Mr. Muhammad Sohail Khursheed, State Counsel.**  
**Mr. Nawaz Ahmad, S.I, P.S. Golra Sharif.**  
**Mr. Shahbaz Ahmad, S.I/I.O.**

*Date of hearing:* **29.04.2020.**

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**LUBNA SALEEM PERVEZ; J:** Through this criminal appeal, the appellant has assailed judgment dated 14.03.2020, passed by learned Additional Sessions Judge Islamabad, whereby, he has been convicted under Section 9-B of CNSA, 1997 in case FIR No. 169/2018 dated 13.04.2018, registered with P.S. Golra Sharif and has been awarded sentence for one (1) year and one (1) month rigorous imprisonment along with fine of Rs. 10,000/- and in case of default to further undergo simple imprisonment of two (2) months.

2. Brief facts of the case are that the appellant was apprehended on spy information by the police officials, who were on routine patrolling in search of narcotics and weapon paddlers. On personal search of the petitioner conducted by the I.O. of the case, 280 grams of heroin contained in a white plastic shopping bag was recovered from his right side armpit pocket. An electronic scale (*kanta*) was also recovered from the possession of the appellant. As per FIR, 1 gram of heroin was separated for chemical examination and two separate parcels of 279 grams and 1 gram of heroin which along with electronic scale and personal belongings were recorded in the recovery memo dated 13.04.2018 (Ex-PC/2). Challan u/s 173 Cr.P.C in the case was submitted on 20.04.2018 and the charge against the appellant was framed on 24.07.2018 for which the appellant

pleaded not guilty and claimed trial. Thereafter, on conclusion of the trial, the appellant was found guilty of possession of heroin as per FIR thus convicted for one year rigorous imprisonment along with fine of Rs. 10,000/- and in case of default to further undergo two months simple imprisonment, vide judgment dated 14.03.2020 impugned herein.

3. Learned counsel for the appellant argued that the prosecution has falsely implicated the appellant in the present case; that the conviction is harsh and not in accordance with the evidence; that instead of 279 grams of heroin allegedly recovered from the appellant, the prosecution has produced 284 grams of heroin during the proceedings before the trial Court which creates a substantial doubt in the prosecution case; that the samples separated for chemical examination were sent to the laboratory after a period of six days delay, which is against the judgments of the superior Courts; that the personal articles and the electronic scale recovered from the appellant were not produced before the Court during the trial, thus, conviction and sentence is not in accordance with law.

4. Conversely, learned State Counsel for respondent supported the impugned judgment as well as prosecution's case and submitted that the appellant was caught red handed while selling narcotics; that he is habitual offender and has been arrested in the similar offences of recovery of heroin in cases FIR Nos. 20/2018 & 123/2011 dated 16.01.2018 and 21.05.2011, respectively, both registered at P.S Golra Sharif, thus, has been rightly convicted for the offence under Section 9-B of CNSA, 1997, vide judgment dated 14.03.2020.

5. Arguments heard and record perused.

6. Scrutiny of Istaghasa and FIR revealed that the time of occurrence of offence is mentioned as 6:10 p.m. and the appellant was arrested red handed while selling heroin, however, there is no mention of witness in whose presence the arrest and recovery has been made. Though the CNSA, 1997 excludes the provisions of Section 103 Cr.P.C and it has been held by the Hon'ble Peshawar High Court in the case of Naseebullah Vs. The State (PLD 2014 Peshawar 69)

that *mere fact that witnesses were police officials would not discard their testimony because police officials were as good witnesses like others and their testimony would be relied upon unless and until any enmity or ill will is proved.*

7. There is an admitted delay in sending samples of heroin to the laboratory for chemical examination which has remained unexplained by the prosecution. Admittedly, 01 gram heroin taken as a sample on 13.04.2018 was transmitted to lab after a delay of about 06 days on 19.04.2018. The superior Courts in the cases reported as **Muhammad Aslam Vs. The State (2011 SCMR 820), Imtiaz Ali Vs. The State (2018 YLR 1067) and Shan Vs. The State (2018 MLD 702)**, have settled the law in this regard by not condoning the delay in sending the samples for chemical examination and resolved this lapse of the prosecution in favour of the accused/convict.

8. The prosecution while arguing his case also relied on the previous FIRs registered against the accused/appellant for similar offences. However, there is nothing available on record to show that except in the present FIR bearing No. 169/2018, he has been convicted in any other case. The learned trial Court also, keeping in view the fact that there is no previous conviction against the appellant, has acquitted him from the charge under section 75 P.P.C.

9. Perusal of the impugned judgment dated 14.03.2020 revealed that learned trial Court after recording evidence/testimony of the prosecution examined the appellant under section 342 Cr.P.C by confronting the questions based on the evidence and cross examination. It has been observed that the appellant's statement in response to the confronted questions was mainly based on the pleas of involving him in a fake and frivolous case and that he has been implicated in false recovery of contraband with ulterior motives. The learned Trial Court, therefore, by relying on the statements recorded in evidence of the prosecution witnesses came to the conclusion that the prosecution has established the case against appellant and the

minor contradiction in the statements is quiet natural, however, there is no shadow of doubt in the documentary evidence produced by the prosecution. Learned Trial Court in view of his findings convicted the appellant for imprisonment and fine as mentioned in the opening paragraph.

10. The appellant before the trial Court while submitting statement (not on oath) took the stance that prosecution has falsely involved him in criminal cases under CNSA, 1997, but he failed to produce any evidence to prove enmity or ill-will against the police, which could prove the false implication of the appellant in the case. The evidence of police officials cannot be disbelieved as a whole merely because of their being police officials until and unless some mala fide or enmity was brought on record duly supported with some material to indicate false implication of accused in case, which factor in the present case is missing. Thus, stance of false implication taken by the Appellant is nothing but an attempt to negate his guilt. The Honb'le Peshawar High Court while deciding the case of **Saif-ul-Abbas Vs. The State (2013 MLD 1078)** has observed that *absence of any motive on the part of the prosecution witness would further negate possibility of false implication*. Moreover, it is also a fact that the appellant has been booked by the same Police Station in commission of offence of the similar nature, therefore, presumption of drug trafficking by the appellant could not be totally ruled out and benefit of doubt cannot be extended to him.

11. Keeping in view the facts and circumstances, the summary of the case is that there is a recovery of 280 grams of heroin from the appellant wherefrom one gram was separated for chemical analysis which resulted in positive. There is a delay of 06 days in transmitting samples for chemical examination. There are minor contradictions in the testimonies of the prosecution witnesses. The appellant could

not prove the allegation of enmity and ill will against the prosecution. The appellant has a previous history of involvement in similar nature of offence i.e. selling of heroin as nominated in two other FIRs. The appellant has not been convicted in any FIR registered against him. He has been acquitted in FIR No. 20/2018. Keeping in view this summary, we are of the view that the trial Court has rightly convicted the appellant in the present case, however, the discrepancy of unexplained delay of six days for sending samples to the chemical examiner, and that the appellant has not been previously convicted in the cases against him, are sufficient factors for taking lenient view in reducing the sentence awarded to the appellant. Thus, for the forgoing reasons, the conviction of the appellant is hereby **maintained**; the criminal appeal is hereby **dismissed**, however, the sentence awarded to the Appellant is **reduced** to the period which he has already **undergone**. The Appellant is in jail, let he be released forthwith, if not required in any other case.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

***Announced in the Open Court on 13.05.2020.***

**JUDGE**

**JUDGE**

Adnan