

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 303 of 2005.
Muhammad Yousaf Versus The State.

Crl. Appeal No. 315 of 2005.
Chanar Gul & another Versus The State.

DATE OF HEARING:	<u>08-06-2011.</u>
APPELLANTS BY:	M/s B.H. Shah & Raja Aftab Ahmad, Advocates.
STATE BY:	Malik Ishtiaq Ahamd Standing Counsel.

JUDGMENT

MUHAMMAD ANWAR KHAN KASI, J.

The above captioned two appeals are directed against the judgment dated 30-07-2005, passed by learned Additional Sessions Judge Islamabad, whereby he convicted the appellants U/S 9-C CNS Act, 1997 and sentenced them to undergo Life Imprisonment, with fine of Rs. 1,00,000/- each and in default whereof further to undergo Six Months SI each in case F.I.R. No. 55, dated 18-3-2004, registered U/S 9-C of CNSA, 1997, at P.S. Tarnol (Islamabad). Through the impugned Judgment, both the convict/appellants were extended benefit of Section 382-B Cr. PC.

2. Besides filing a joint appeal through Jail, appellant Muhammad Yousaf also preferred a separate appeal bearing No. 303 of 2005 challenging his conviction.

3. Per contents of complaint Ex. PG, on 18-3-2004, at 03:00 am (late night) on the basis of secret information, Customs Officials under the command of Rao Javed Ali Superintendent barricaded G. T Road near Sang-Jani Toll Plaza and intercepted Bus No. K-



6410 and on its search, backed charas in the shape of sleepers weighing 60-KG & raw charas weighing 18-KG, wrapped in cellophane packing were recovered. From backed & raw charas, two samples each of ten grams was separated & sealed for chemical analysis. Remaining charas was also sealed in three sacks and the same along-with the Bus was taken into possession. Both the present appellants, the owner & conductor of the bus, were also taken into custody along-with the driver Syed Liaqat Ali, who was acquitted of the charge by the learned ASJ vide Impugned Judgment.

4. After investigation, the accused were challaned to the Court. Formal charge against the appellants and their co-accused Syed Liaqat Ali (since acquitted) was framed, to which they pleaded not guilty and claimed trial.

5. During trial, prosecution got examined five witnesses in all to prove the charge against the appellants, while two witnesses namely Muhammad Ashraf and Muhammad constables were given-up. At the end, statements of accused/appellants U/S 342 Cr. P.C. were recorded, wherein they denied the incriminating evidence led against them. It was the stance of the appellants that they are innocent. The case was made against them by the customs officials maliciously and falsely involved them and tried to succeed the concocted case.

6. The learned trial Court after hearing arguments convicted & sentenced the appellants as mentioned above. Hence, these appeals.

7. Learned counsel for the appellants straightaway drawn our attention to the fact that prosecution evidence with regard to collection of samples from the recovered substance is highly discrepant, the benefit of which must go to the appellants. It is

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stance of the learned counsel that admittedly the recovered substance was in the shape of sleepers but the samples were taken from the sacks in whole and not from each sleeper/rod. In the light of this argument, learned counsel for the appellants opted not to press the appeals provided the sentences of the appellants are reduced to one already undergone by them.

8. Conversely, learned Standing counsel argues that if the conviction is maintained, he will not argue much on the sentence as the matter lies with the discretion of the Court.

9. Arguments heard & record examined.

10. We have gone through the statements of PW-2 Arshad Bin Inham Inspector Customs & PW-4 Javed Ali Shah Inspector, the recovery witnesses. They both were in agreement that in consequence of search of the bus in question, 60-KG charas in the shape of sleepers rusty green stitched with packing cellophane P-2 was recovered. Garda (raw) Charas 18-KG in the shape of sleepers rusty green stitched with packing cellophane P-2 was also recovered and taken into possession alongwith the Bus No. K-6410. The recovered chars were made into two sealed parcels in two bags and another bag of garda charas was also made into a sealed parcel. 10/10 grams charas and 10-gram garda was separated for chemical analysis and made into sealed parcels separately. Thus in presence of this assertion, the contention of the learned counsel for the appellants is plausible and convincing that sample was not taken from each sleeper. This discrepancy cannot be taken lightly as stringent sentences having been provided under the Control of Narcotic Substances Act, 1997, if offences charged against the accused within any component of S. 9 were proved, therefore, said Act had to be construed strictly and the relevant provisions of law dealing with the procedure as well as

furnishing the proof like the report of expert, were to be followed strictly in the interest of justice, otherwise in such like cases it would be impossible to hold that total commodity recovered from the possession of the accused was charas. Presumption in the given circumstances of the present case, was that sample was not taken out from each sleeper, therefore, it would not be possible to hold that they were the rods of charas or otherwise. The Hon'ble Supreme Court, while taking into consideration such aspect of the case, held that for such reason, the case of the prosecution has become doubtful. With utmost reverence reliance is placed upon case of "Muhammad Hashim Versus The State (PLD 2004 Supreme Court 856)".

11. Suffice it to say, in view of above, the appellants deserves remission in sentence, therefore, while maintaining conviction under section 9-C of CNSA, 1997, their sentences are reduced to one already undergone by them. Benefit of Section 382-B would remain intact. The amount of fine i.e. Rs. 1, 00,000/- each shall also remain intact - and in default thereof the appellants will undergo Six Months SI each.

12. With above modification, the appeals stand dismissed.

(RIAZ AHMAD KHAN)
 JUDGE

(MUHAMMAD ANWAR KHAN KASI)
 JUDGE

M. Sohail

Approved For Reporting

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