JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Appeal No.13/2016
Rafaqat Khan
Versus
The State

Appellant by:	Ch. Muhammad Jehangir, Advocate,
Respondent by:	Mr. Muhammad Sohail Khursheed, learned State Counsel with Farooq SI, Police Station Shahzad Town,
Date of Hearing:	23.09.2020.

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 21.01.2016, passed by the learned Judge, Special Court (CNS), Islamabad, in F.I.R. No.189, dated 22.04.2014, under Section 9 (c) of the Act of 1997, Police Station Shahzad Town, Islamabad. Through the said judgment, the appellant was convicted under Section 9 (c) of the Act of 1997, and sentenced to **One year** rigorous imprisonment with fine of Rs.20,000/- or in default to pay the amount of fine, to further undergo simple imprisonment for two months. 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.PD, on the basis of which F.I.R. No.189, Ex.PA, was registered is that, on 22.04.2014 spy information was received by Shamas ul Akbar S.I, Police Station Shahzad Town, Islamabad that a drug peddler, waiting for a customer, is present at Bhatta Stop Zia Masjid, Islamabad. On the basis of said information, a raiding party was constituted which reached at the spot. At about 07:45 p.m., the said drug peddler was apprehended, who disclosed his name as Rafaqat Khan alias Bobi *(appellant)*. During his personal search, a black

color shopping bag which the appellant was holding in his right hand, was taken in possession by the S.I. where from charas in the shape of *littar* was recovered. On weighing, the said charas came to 1140 grams out of which 10 grams was separated as sample for chemical analysis. After due investigation, challan was filed in the Court of learned Special Judge (C.N.S.), Islamabad where the appellant was formally charge sheeted to which he pleaded not guilty and claimed to be tried.

3. At the trial, prosecution examined; Mohammad Niaz Khan ASI as PW-1, who on 22.04.2014 brought on record formal F.I.R, Ex.PA, on the basis of complaint, Ex.PD; PW-2 Mohammad Afzaal Moharrir P.S Shahzad Town who on 22.04.2014, received two sealed parcels of charas for safe custody in *Malkhana* and on 28.04.2014 handed over sample parcel of charas to Constable Saleem for onward transmission to the office of chemical examiner; PW-3 Shamas ul Akbar SI is the complainant as well as the Investigating Officer of the case, he deposed to prove the arrest of appellant, recovery of charas, Ex.P1, besides personal belongings, Ex.P2 to Ex.P5, of the appellant and the details of investigation conducted by him; PW-4 Constable Mohammad Saleem deposed to prove the recovery of charas Ex.P1, and personal belongings Ex.P2 to Ex.P5 from the appellant besides transmission of sample parcel to the office of Chemical Examiner on 28.04.2014. The other recovery witness Muhammad Imran Constable was given up on 02.09.2015 and after tendering the report of Chemical Examiner, Ex.PZ, the prosecution evidence was closed.

4. After the recording of above evidence, the appellant was examined under Section 342 Cr.P.C, wherein he denied the allegations and has taken the plea that he has been falsely involved in this case, on

22.04.2014, the police party arrested him from his house, nothing was recovered from his possession and that many persons of the area went to the police station for inquiring about illegal search of the house. The appellant also pleaded that his mother moved an application to the Inspector General of Police, Islamabad Capital Territory (I.C.T) for conducting fair inquiry and also moved an application under Section 22-A Cr.P.C, against the Senior Superintendent of Police, I.C.T. and the Investigating Officer.

The appellant, however, opted not to make his statement on oath under Section 340(2) Cr.P.C, however, in defense got examined one Ali Asghar, retired Honorary Captain of Pak. Army as DW-1. The said witness in his statement averred that on 22.04.2014, at about 08:00 pm in his presence 8-10 police officials entered the house of the appellant and arrested him; that he personally knows the appellant for the last 8-9 years and that the appellant retains good reputation in the vicinity, never involved in any illegal or immoral activities. The witness further deposed that he also tendered an affidavit dated 25.04.2014 before the S.S.P, I.C.T, Mark-A, regarding the innocence of the appellant.

The learned Trial Court after hearing the learned counsel for the appellant and the learned Special Public Prosecutor, convicted and sentenced the appellant as mentioned in para-1 *supra* vide judgment dated 21.01.2016, being assailed through the instant appeal.

5. Learned counsel for the appellant submits that there are material contradictions in the statements of recovery witnesses; that there is delay of six days in transmitting sample parcel to the office of Chemical Examiner; that the place of recovery is thickly populated area but no witness from the public was associated with

the recovery proceedings and that actually the appellant was arrested from his house and the narcotics were planted upon him, therefore, the impugned judgment is liable to be set-aside. Learned counsel placed reliance upon case laws reported as **2019 SCMR 326, 2018 SCMR 149, 2010 SCMR 1009, 2017 P.Cr.LJ 501 Sindh, 2016 PCr.LJ 432 (Sindh), 2006 YLR 3188 (Karachi) and 1996 SCMR 308**.

6. On the other hand, learned State Counsel stood behind the judgment by endorsing the fact that the prosecution has successfully proved its case by producing evidence of unimpeachable character.

7. We have heard the learned counsel for the appellant, learned State Counsel and have gone through the record with their able assistance.

8. The prosecution case hinges upon statements of PW-3 Shamas ul Akbar SI, who is the complainant as well as Investigating Officer of the case. The PW-4 Constable Muhammad Saleem is an attesting witness to the recovery of charas Ex.P1 besides personal belongings, Ex.P2 to Ex.P5.

9. PW-3 while giving account of the proceedings conducted at the spot, in his examination-in-chief stated that on 22.04.2014, he alongwith other accompanied constables intercepted the appellant at about 07:45 p.m, a black color shopping bag which the appellant was holding in his right hand was taken into possession, on search of the said shopping bag charas in the shape of *littar* weighing 1140 grams was recovered out of which 10 grams was separated for chemical analysis and sealed in separate parcel. According to the said witness, he drafted recovery memo Ex.PB, took into possession personal belongings of the appellant vide memo Ex.PC, drafted complaint, Ex.PD and sent the same to the police station

for the registration of the F.I.R, Ex.PA. The witness further maintained that besides preparing site plan without scale Ex.PE, he recorded statements of witnesses at the spot and on return to the police station handed over the case property to the Moharrir, PW-2.

The witness was subjected to cross-examination wherein he admitted that he has not mentioned in his examination-in-chief that the recovered charas was weighed in the presence of witnesses and that he has not mentioned the color of the charas.

10. Adverting to the statement of second recovery witness i.e. PW-4 Constable Saleem, on 22.04.2014 he had accompanied the PW-3/I.O, who took in his possession charas weighing 1140 grams vide memo Ex.PB and that he is also marginal witness of memo Ex.PC whereby the personal belongings of the appellant were taken into possession. The said witness further affirmed that it was on 28.04.2014 (*typographically mistakenly mentioned as 2015 instead of 2014 on record*), when PW-2 Moharrir Malkhana had given sample sealed parcel to him which he deposited in the office of Chemical Examiner on the same day.

11. The witness has not given the details of the proceedings that had taken place on the spot, statedly conducted by the PW-3/I.O. Surprisingly, the defense questioned the said witness regarding the non-mentioning of the details but instead of elaborating the same, he admitted that he has not mentioned that from where the charas had been recovered; what was its color; at what time they reached the spot and that whether the PW-3/I.O, recorded his statement at the spot or otherwise. There is no detail, that whether, charas recovered from the accused was weighted in his presence? When no detail of such recovery, its weight in his presence is there, this negates the case of prosecution, in question No.1,

statement of appellant under Section 342 Cr.P.C and supports the answer of the appellant to said question, that case is false and no recovery of 1140 grams of charas was effected in presence of witnesses.

12. It is thus obvious that not only the statement of PW-3/ I.O. is discrepant with regard to the proceedings of weighing the charas Ex.P1 in presence of witnesses but the testimony of PW-3 did not lend corroboration to the statement of PW-4, regarding material aspects, highlighted above. So much so the said witness had no knowledge that whether the I.O/PW-3 recorded his statement on the spot or not.

13. There is no cavil with the proposition that for award of conviction, chain of proceedings/events should be complete and without any flaw but in presence of above discrepancies, the prosecution has not been able to prove the chain of events, as alleged, to substantiate the charge against the appellant. This aspect, if put in juxtaposition to the defense plea, the latter appears to be just for the reason that it had been the consistent stance of the appellant that on the relevant date and time he was arrested by the police officials from his house; both the star-witnesses were also put suggestions in this regard and to substantiate the same, the appellant examined one Ali Asghar as DW-1, a retired Honorary Captain from Pakistan Army, an aged person having good credentials. The said witness unequivocally stated that he is living contiguous to the house of the appellant and that in his presence police tress passed into the house and arrested the appellant. The witness went on to say that in order to highlight this fact he tendered affidavit Mark-A before the S.S.P, ICT.

14. The question that cropped up at this juncture is that whether in presence of the discrepancies

highlighted above in the statements of two recovery witnesses, can the impugned conviction be dittoed by following the principle of sifting grain from the chaff considering the partial statements as gospel truth by discarding the rest. Moreover, the samples were dispatched with a delay of about six days which is violation of Rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001.

15. Contemporary jurisprudence has now been evolved from the concept of sifting grain from the chaff to the rule of "*falsus in uno, falsus in omnibus*" which has been made an integral part of our jurisprudence in criminal cases. The Hon'ble Apex Court in case reported as PLD 2019 SC 527 *(Notice to Police Constable Khizar Hayat son of Hadait Ullah on account of his false statement: In the matter of Criminal Miscellaneous Application No.200 of 2019 in Criminal Appeal No.238-L of 2013, decided on 4th March, 2019.)* has graciously held that:-

> "Holding that the rule *falsus in uno, falsus in omnibus* is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country. A court of law cannot permit something which the law expressly forbids.
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> 16. It can be seen from the analysis of the judgment mentioned above that the main reasoning given for not applying the rule relates to the social conditions prevalent in the country. It seems that because it was felt by the superior Courts that generally witnesses testifying in criminal cases do not speak the whole truth and have a tendency to exaggerate or economise with the real facts, there is a danger of miscarriage of justice in the sense that a real culprit may go scot free if a court disbelieves the whole testimony on account of reaching the conclusion that the testimony was false in some respect. [Emphasis added]

16. It has further been observed in the above referred case that "*such an approach, which involves extraneous and practical considerations, is arbitrary besides being subjective*

and the same can have drastic consequences for the rule of law and dispensation of justice in criminal matters."

17. The Hon'ble Apex Court in the judgment *supra* henceforth made the rule '*falsus in uno, falsus in omnibus*' as an integral part of our jurisprudence in criminal cases in following terms:-

> "We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."

18. The dictum referred above guides us to hold that when there are glaring flaws and omissions in the statements of witnesses, the same cannot be overlooked by applying the principle of sifting grain from the chaff by accepting the same in piecemeal. Quite to the contrary, the statements, as a whole, are to be discarded. The principle, if applied to the facts of the instant case, it emerges that the statements of the two recovery witnesses being discrepant qua material aspects, essential to constitute chain of events, cannot be relied upon and are accordingly discarded.

19. As a corollary, it is held that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt. Consequently, the instant criminal appeal is allowed, impugned judgment dated 21.01.2016 is set-aside. The appellant is acquitted of the charge. He is present on bail discharged of his bail bonds.

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

Imran

Announced in open Court on 26.10.2020.

JUDGE **JUDGE**

Approved for reporting