

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

*(Judicial Department)*

**Cr.A No.639-P of 2013**

***Zakirullah Vs The State***

**JUDGMENT**

**Date of hearing     17.11.2015**

Appellant-Petitioner Mst. Farhana Marwat Advocate.

Respondent                     Mr. Mian Arshad Jan, AAG

\*\*\*\*\*

**MUHAMMAD YOUNIS THAHEEM, J.---** Through the instant criminal appeal, the appellant/accused Zakirullah has challenged the conviction and sentence of imprisonment for life awarded to him through impugned judgment dated 30.11.2013 passed by learned Additional Sessions Judge-IX/ Judge Special Court (CNS), Peshawar with a fine of Rs.100000/- or in default to undergo one year S.I. Benefit of section 382-B Cr.PC was, however, extended to him.

2.                     Brief facts of the case as per prosecution story are that on 28.05.2012 it was information to the complainant Behram Khan S.I that today at any time

through Tractor trolley huge quantity of narcotics would be smuggled from tribal area to settled area. On this information he alongwith other contingents made barricade near Mushtarzai Chowk Mil Dara; that in the meanwhile a tractor trolley bearing registration No.GAB 6707 came from Bara side which was stopped, interrogated and the accused who disclosed his name as Zakirullah alias Zakir. On search of the said tractor trolley 62 packets of charas pukhta was recovered beneath the frame in the secret cavities. Each packet contained 1000 grams and total 62 KGs of charas was recovered. The tractor trolley was taken into possession and the accused was arrested, murasila was drafted and the same was sent to the police station for the registration of the case.

3. After registration of case, the case file was handed over to the I.O Liaqat Ali Khan (PW3) for the purpose of investigation. He went to the

spot, prepared the site plan EXPB in the presence of complainant. The I.O also recorded the statement of PWs u/s 161 Cr.PC. He also obtained custody of the accused and recorded his statement u/s 161 Cr.PC. After completion of investigation, the case file was handed over to the SHO for onward submission.

4. On completion of investigation, complete challan was submitted against the accused before the Trial Court. Accused was summoned, who appeared and provisions of section 265-C Cr.PC were complied with charge was framed against the accused to which he did not plead guilty and claimed trial. In support thereof, the prosecution produced as many as 05 PWs, whose statements were recorded and placed on file.

5. On close of the prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, wherein he professed innocence and stated to has been falsely implicated in the case. Neither he had wished to produce evidence in defence, nor to examine himself on

oath as required u/s 340 (2) Cr.PC. The learned trial Court on conclusion of trial convicted and sentenced him for imprisonment of life, vide judgment impugned herein.

6. Learned counsel for the appellant/ accused contended that he has been falsely implicated in the instant case; that the learned trial Court has convicted the appellant/accused on the basis of contradictory evidence which creates many doubts and dents in the prosecution case; that the learned trial Court has failed to appreciate the fact that the alleged contrabands were not produced in the Court, nor were exhibited in the case. He further added that the vehicle which was used in the alleged offence was not produced before the Court to determine whether it contained secret cavities or not and lastly prayed for setting aside the impugned judgment of trial Court and acquittal of appellant/ accused.

7. On the other hand learned AAG for the State argued that the accused is directly charged in the FIR for having 62 KGs of Charas pukhta in his Tractor trolley; that the offence for which the accused was charged was

heinous in nature and the impact of the same is against the whole society especially on youth. That the FSL report was in positive and the evidence produced by the prosecution has fully supported its version and prayed for the dismissal of the instant appeal.

8. Arguments of learned counsel for the parties heard and record carefully gone through.

9. Perusal of the record reveals that Behram Khan, who is complainant of the instant case, was examined as PW-1. He narrated the facts leading to receipt of information, nakabandi, arrival of tractor trolley, its search and recovery of 62 Kilogram Charas beneath the trolley from its secret cavities, preparation of recovery memo Ex: PW 1/1, separation of 5/5 gram from each packet for sample. He also stated about drafting of *mursila* Ex:PA/1 and application Ex:PW ½ for sending the samples to FSL. While investigation was conducted by Liaqat Ali SI, (PW-3) who on receipt of copy of FIR proceeded to the spot, prepared site plan Ex:PB, recoded statements of PWs under section 161 CrPC and drafted

application Ex:PW 3/1, collected information regarding accused, as he was also involved in another same like case vide mad report No.250, Ex:PW 3/2. He further stated that he drafted application Ex:PW 3/3 for verification of particulars to Motor Vehicle Registration Authority; placed on file FSL report Ex:PZ, report of tractor Ex:PZ/1 and after completion of investigation forwarded the case to SHO Abidur Rehman Inspector PW-4, for onward transmission.

10.           So for as Ibne Abbas No.2304 is concerned, he has been examined as PW-5 and he has stated in support of the version of the seizing officer and admitted the recovery memo Ex: PW 1/1 to be correct and correctly bearing his signature.

11.           Perusal of the record would show that seizing officer, investigation officer and marginal witness to the recovery memo were subjected to searching and taxing cross-examination by the learned defence counsel, but their testimony could not be shaken in any manner. There is nothing in their cross-examination, which could

give an impression that he was involved falsely or the matter was prompted by his enemies to foist such a huge quantity of narcotics on him. In fact, the testimony of all the three PWs is free from any material infirmity and in line to the precaution case.

12. Report of FSL Ex:PZ is available on file and it appears from the same that the stuff recovered from the trolley of the appellant was in fact charas, hence, it has been proved that the recovered stuff was charas and nothing else.

13. So far as the question regarding conscious knowledge is concerned, at the time of occurrence, the appellant/ convict Zakirullah alias Zakir was present at the driving seat of the vehicle, which was in his possession and from its secrete cavities a huge quantity of narcotics was recovered, hence it can easily be inferred that the recovered stuff was his ownership and he was having its conscious knowledge. The accused/ appellant has failed to prove through evidence that he did not had conscious knowledge of the same. In this regard reliance

is placed in case titled as “Billal Vs The State”, (2007 YLR 3096). The relevant Para of Judgment is reproduced as:

*“Nevertheless, it is different thing to say that the prosecution should prove that the accused was knowingly in possession. It seems to us that by virtue of section 29, the prosecution has only to show by evidence that the accused has dealt with the narcotic substance or has physical custody of the same or directly concerned with it. Unless the accused proves by preponderance of probability that he did not knowingly or consciously possess the article without such proof the accused will be held guilty by virtue of section 29 of the Act, 1997. Reliance is placed on the case Inder Sain Vs State of Punjab (AIR 1973 SC 2309).”*

14. So for as contention of learned counsel for appellant, that despite prior information no warrant was obtained, suffice it to say that in such state of urgency and exigency obtaining of search warrant would have benefited the accused, as by then he would have escaped and reached at his destination. Thus non-obtaining of



warrant becomes immaterial in such like situation. Likewise compliance of section 103 Cr.P.C. has also been dispensed with by virtue of section 25 of Control of Narcotics Act, 1997 and the police officials are as good witnesses, as private persons unless any animosity is brought on record, but there is nothing on record nor even a suggestion remotely on behalf of the appellant that he has got any ill will or grudge with the prosecution witnesses.

15. So far as contention of learned counsel for the appellants that neither the recovery memo was prepared at the spot nor the case property was sealed there at the venue of occurrence is concerned, suffice it to say that in view of the recovery of such a huge quantity of narcotics, which too was very smartly paved in the secrete cavities of Trolley and taking the vehicle alongwith appellant to the Police Station concerned for further proceedings and search would not amount any illegality in prevailing law and order situation of the area,

for the purpose of thorough search by the seizing officer, as he had no other option except above exercise.

16. In view of above, we have no doubt in our mind that the charge against the appellant has been proved beyond any shadow of doubt and that the appellant has rightly been convicted. Learned counsel for appellant could not point out any illegality, irregularity, mis reading or non reading in the impugned judgment, and sentence awarded to the appellant which could warrant interference of this court. Learned trial court has rightly appreciated the evidence and held guilty the appellant for the offence. Wisdom is derived from the judgment of Hon'able Supreme Court in case titled

**“Tariq Mehmood Vs The State” (PLJ 2009 SC 113),**

relevant Para is reproduced as below:

***“The perusal of the record would not show any legal or factual defect in the current findings of the two courts regarding the guilt of the appellant. The Charas in huge quantity has been recovered from the bag carried by the appellant. The recovery was***

*proved by the members of raiding party, who had no personal reasons to involve the appellant in a false case. The explanation offered by the appellant for false implication is not plausible. The learned counsel for the appellant has not been able to point out any material discrepancy and contradiction in the evidence suggesting a slight doubt in the prosecution case arising in favour of appellant and consequently, we would not take any exception to the judgment of High Court.*

17. For the reasons discussed above, this appeal stands dismissed.

Announced.  
17.11.2015  
\*Azam/P.S\*

**J U D G E**

**J U D G E**