

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr. A No. 592-P/2021.

Date of hearing: 02.12.2021.

Ms. Zohra Durrani, advocate for the appellant.

Mr. Muhammad Inam Yousafzai, Addl. AG for the State.

JUDGMENT

LAL JAN KHATTAK, J.- This appeal is directed against the judgment dated 25.06.2021 of the learned Additional Sessions Judge-III/Judge Special Court/ Model Criminal Trial Court, Nowshera delivered in case FIR No. 445 dated 25.08.2019 u/s 9 (c) of the Control of Narcotics Substances Act, 1997 of Police Station Risalpur, Nowshera whereby the appellant has been convicted and sentenced to life imprisonment with fine of Rs.2,00,000/- or in default whereof to further undergo one year Sl. Benefit u/s 382-B Cr.P.C. was extended to him.

Gain

2. Brief facts of the case are that on 25.08.2019 Ayub Khan SHO of Police Station Risalpur (PW-4) was on area patrolling alongwith constable Tahir and

LHC Waheedullah when he received a spy information to the effect that huge quantity of contraband will be smuggled to Punjab through Mazda vehicle bearing registration No.LOT-7527. In order to foil the bid of smuggling, he laid a barricade on the spot when in the meantime the spotted vehicle duly mentioned in the report arrived there which was stopped. On query, the driver disclosed his name as Shahid Nadeem son of Muhammad Waryam r/o Mian Chano district Khanewall. On search of the vehicle, two plastic sacks were found lying in its cabin. In one sack 5 packets of opium while 10 packets of *chars* in the other were found. When weighed, total opium containing in the 5 packets turned out to be 4915 grams and the *chars* as 9964 grams. From each packet, 5/5 grams of opium and *chars* were separated for the purpose of chemical analysis. On the basis of ibid recovery, complainant of the case drafted the *murasila* (Ex.PA/1) which later on was incorporated into the formal FIR Ex.PA.



3. After completion of investigation, the case was put in court for trial which indicted the accused for commission of the offence

to which he pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced and examined 7 witnesses in all, whereafter statement of the accused was recorded wherein he professed his innocence. The learned trial court, after conclusion of the trial, found him guilty of the charge and while recording his conviction sentenced him as mentioned above which he has impugned through the instant appeal.

4. Arguments heard and record gone through.

5. Though in the order to substantiate its case, prosecution produced and examined 07 witnesses but from the contradictions in the statements of the PWs, it appeared to this court that the prosecution's case against the appellant is not free from doubt. The major contradiction, which is not ignorable in nature, can be seen in the statements of the investigation officer (PW-1), the complainant (PW-4) and in the testimony of marginal witness to the recovery memo (PW-6). For example, investigation officer of the case has stated in his cross examination that the *murasila* was sent to the police station alongwith the accused and the case



property while contradicting him, the complainant has stated in his cross examination that only *murasila* was handed over to constable Waheedullah alongwith other documents for taking them to the police station while the case property, the vehicle and the accused were taken by him to the police station and same is statement of constable Waheedullah (PW-6). Furthermore, Investigation Officer of the case has admitted in his cross examination that the site plan and statements u/s 161 Cr.P.C. of the witnesses were recorded on his dictation by an ASI who was present with him on the spot but his name, he didn't remember whereas the complainant and marginal witness to the recovery memo Ex.PW-4/1 (PW-6) have stated in their depositions before the court that the Investigation Officer through his own hand writing had prepared the site plan and recorded the statements of the PWs on the spot.



6. Above-referred contradictions in the statements of the prosecution witnesses are neither minor in nature nor could be ignored and same suggests that the occurrence had

not taken place in the mode and manner narrated in the FIR and deposed by the prosecution witnesses before the court. It is well settled that in order to bring home guilt in narcotic cases, prosecution must bring reliable evidence in support of its charge and it has held umpteenth time by the superior courts that a single doubt in the case against an accused would be sufficient to acquit him instead of existence of series of contradictions. No doubt, huge quantity of contraband has been recovered in the case alongwith the mazda vehicle but recovery of huge quantity of narcotics is not the only criteria to convict the accused charged with trafficking of the contraband unless the indictment is proved by the prosecution beyond reasonable doubt through confidence inspiring and worth reliable evidence which is not the case in hand for the contradictions mentioned above.

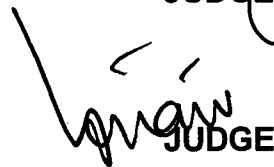
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7. Thorough and careful examination of the record would show that the learned trial court has not appreciated the case evidence in its true perspective and the conclusion drawn by it are not borne out from the case

record for which the impugned judgment cannot be upheld.

8. For what has been discussed above, this appeal is allowed, conviction and sentence recorded by the learned Additional Sessions Judge-III/Judge Special Court / Model Criminal Trial Court, Nowshera through the impugned judgment is set aside and consequently the appellant is acquitted of the charge levelled against him. He be set at liberty forthwith if not required to be detained in any other case.


JUDGE


JUDGE

Announced.
02.12.2021.

Tariq Jan PS (DB) Hon'ble Mr. Justice Lal Jan Khattak and Hon'ble Justice Musarrat Hilali).