

Judgment Sheet
**IN THE PESHAWAR HIGH COURT, ABBOTTABAD
BENCH
JUDICIAL DEPARTMENT**

Cr.A No. 16-A/2011

JUDGMENT

Date of hearing.....**23.06.2020**.....

Appellant (State) By Raja Muhammad Zubair, Advocate.

Respondents. (Javed Iqbal) By Fazal-e-Haq Abbasi, Advocate.

SHAKEEL AHMAD, J.- The State being aggrieved by judgment dated 22.04.2010 of the learned Judge Special Court, Abbottabad constituted under Control of Narcotics Substances Act, 1997, in criminal case No. 41/III of 2009 by which Javed Iqbal was acquitted of the charge under Section 9 (c) CNSA, has filed this acquittal appeal through Advocate General Khyber Pakhtunkhwa, Peshawar.

2. The prosecution story as narrated in crime No. 42 dated 18.01.2008 registered at Police Station Mirpur, Abbottabad Ex.PA lodged by Abdul Hafeez ASI (PW-4) is to the effect that one Javed Iqbal owner of Lasani Guest House, Mirpur is involved in with the business of charas. On the day of occurrence informer informed him that Javed Iqbal would go to his Guest House from Mir Alam Town

alongwith huge quantity of contraband. On this information, complainant alongwith other police officials rushed to the pointed place of the informer and arranged barricade. A person having shopping bag in his hand came there, he was stopped, on query, he disclosed his name to be Javed Iqbal. The shopping bag which the said Javed Iqbal was holding in his hand was searched, which contained chars wrapped in the newspaper, consisting of five packets. Each packet contained 13 slabs. The recovered chars was weighed on the spot which was found to be 5200 grams, 4/4 grams chars was separated from each packet for chemical analysis while remaining 5180 grams was sealed into separate parcel. From the personal search of accused one mobile phone Nokia 1600, photocopy of CNIC, phone diary, keys, visiting cards and Rs.830/- were also recovered. Accused was formally arrested and murasila was sent to the police station for registration of the case against the accused. Nasir Ahmad Moharrir PW-1, after receipt of murasila Ex.PA/1 incorporated it into FIR Ex.PA. After registration of FIR, Gulzar Khan SI (PW-2) then post as ASI at Police Station

Mirpur District Abbottabad investigated the case, produced the accused before the Ilaqa Magistrate for obtaining one day police custody through application Ex.PW-2/1, recorded statement of PWs under Section 161 Cr.P.C, on receipt of chemical examination report Ex.PW-2/2 placed it on judicial record, after completion of investigation, submitted complete challan against the accused. Shamrez constable (PW-3) is one of the marginal witness of the recovery memo Ex.Pw-3/1 through which seizing officer took into possession charas weighing 5180 grams alongwith other recovered items / articles. Abdul Hafeez ASI PW-4 is the seizing officer / recovery officer, who deposed that during relevant day and time he alongwith police officials was on gasht within the vicinity of Mir Alam Town, there he received a spy information to the effect that the accused is coming from Mir Alam Town having contraband and is proceeding towards his guest house, held Nakabandi, alongwith police officials, apprehended the accused, effected recovery of contraband from personal possession of the accused, which was being

carried by him in a shopping bag, the packets were five (05) in number, each packet contained thirteen (13) slabs, he extracted four (04) grams chars from each packet for the purpose of chemical examination, kept it in parcel No. 1 to 5, while remaining stuff was kept in parcel No.6, he also took into possession personal belongings of the accused and kept in parcel No. 1 to 6, prepared recovery memo Ex.PW-3/1, in presence of its marginal witnesses, affixed monogram in the name of WK, drafted murasila Ex.PA/1 prepared recovery sketch as Ex.PW-4/1 with foot note Ex.PW-4/2, drafted application Ex.PW-4/3 for sending the samples to FSL, sent the case property and murasila to police station through constable Nasir for registration of FIR, produced chars weighing 5181 grams Ex.P-1 and shopping bags Ex.P-2, Newspaper Ex.P-3 before the learned trial court. Asif constable Pw-5 took the sample to FSL through receipt Ex.Pw-5/1, after delivery of same, returned the receipt to Moharrir of police station Mirpur. After completion of investigation the accused was put to trail. After closure of prosecution witnesses, the accused

was examined under Section 342 Cr.P.C wherein he denied the allegations put forth by the prosecution and pleaded false implication, however, he neither produced defence nor wished to be examined on oath.

3. The learned trial court taking into consideration, the evidence adduced before it, acquitted the respondent named above by the impugned judgment and consequently the State has filed the acquittal appeal on the grounds mentioned in the memorandum of the appeal. Having admitted appeal for hearing on 16.03.2011 on the ground that the evidence required reappraisal, bailable warrant in the sum of Rs. 50,000/- was issued against the respondent. Consequently, we are concerned with State appeal No. 16 of 2010 against the accused / respondent, namely Javed Iqbal.

4. We have heard arguments of the learned AAG representing the State and learned counsel for the respondent at length and scanned the record with their valuable assistance.

5. Before we discuss the merits of the case, brief reference to the principles which are always taken into consideration while

dealing with acquittal appeal, appears necessary. In that respect it will be useful to refer to the observations made in the case reported as ***State Vs Amir Ali & others PLD 1967 Karachi 440***, wherein it was held as under:-

“We must keep in mind the basic doctrine of the privy council reported in AIR 1934 PC 227 (2) in this connection, this findings has been followed with approval by our Supreme Court, thereafter, in deciding an appeal against acquittal what is to be borne in mind is:

- i. The views of the trial judge as to the credibility of the witnesses.*
- ii. The presumption of innocence in favour of an accused, a presumption certainly weakened by the fact that he has been acquitted at his trial.*
- iii. The slowness of the appellate court in disturbing the findings of fact arrived at trial by a judge who had the advantage of seeing the witnesses.*

6. In setting aside an acquittal in a case, which rested wholly on direct evidence of witness as much importance is to be given as in any other case, to the rule which runs through the criminal jurisprudence of our country as a golden thread that benefit of every doubt must go to the accused person.

Of course, a view of facts or the conclusion therein formed by the trial court is not binding on the court of appeal. Equally, a conclusion by a judge may be fairly and has formulated grounds of doubts, which are not perverse or wholly illogical or unreasonable, there is clear risk of departure from this rule of benefit of the doubt in reversing his findings. In this context, reference may be made to the cases reported as ***Abdul Majid Vs Superintendent Remembrance of Legal Affairs, Government of Pakistan PLD 1964 SC 422. State Vs Anwar Saifullah Khan PLD 2016 SC 276*** and ***Ghulam Sikandar and another Vs Mamrez Khan and another PLD 1985 SC 11***, wherein it was observed as under:

“However, notwithstanding the diversity of facts and circumstances of each case, amongst others, some of the important and consistently followed principles can be clearly visualized from the cited and other cases law on the question of setting aside an acquittal by this Court. They are as follows:

(1) In an appeal against acquittal the Supreme Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different than

that in an appeal against conviction when leave is granted only for the re-appraisal of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions : One initial, that, till found guilty, the accused is innocent ; and Two that again after the trial a Court below confirmed the assumption of innocence.

(2) The acquitted will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below:

*(a) Disregarded material evidence;
(b) misread such evidence;
(c) Received such evidence illegally.*

(3) In either case the well-known principles of re-appraisal of evidence will have to be kept in view when examining the strength of the views expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observances of some higher

principle as noted above and for no other reason.

(4) The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion ; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.

7. Having dealt with the general principles of law applicable to the 417 Cr.P.C, we may now take up for consideration the evidence to connect the accused with the commission of offence.

8. The prosecution case as set forth in the crime report is that the complainant Abdul Hafeez ASI (PW-4) received an information that the accused Javed Iqbal, owner of Lasani Guest House is engaged in narcotic business. He was kept under surveillance, on 18th January, 2008, during patrolling, he received a spy information that the accused namely Javed Iqbal would take the huge quantity of chars to his guest house for the purpose of sale, on receipt of this credible information, he alongwith police officials, Imtiaz, Fazil, Nasir and Shamrez, who were in plain dresses, reached at the pointed place, laid Nakabandi there. At 12:20 PM, the accused who was having a white colour plastic shopping bag in his right, came there, he was stopped, who disclosed his name as Javed Iqbal, on search of the shopping bag, the police party recovered five packets of chars, each packet contained thirteen (13) cabs / cakes, in presence of marginal witnesses of recovery memo Ex.PW-3/1, four (04) grams of chars was taken from each packet for chemical analysis.

9. From perusal of the record it was found that only four (04) grams of chars was taken from the five (05) packets of chars. It transpires from statement of PW-4 (seizing officer) that the samples were not taken from each slab / rod / cake and piece of recovered substance for chemical analysis. This creates doubts in our mind, regarding quantity collected from each slab, cake and pieces. It is also an admitted fact that recovery of contraband was made on 18.01.2008, the application for sending the samples to chemical examiner was drawn and handed over to Asif constable (PW-5) on the same day as admitted by him in his cross examination, however, it was taken by hand in Forensic Science Laboratory, Peshawar on 23.01.2008, no reason what so ever was given by the said prosecution witness for retaining the samples with him for a period of five (05) days, therefore, the delay in taking the sample to the laboratory is another important defect in the prosecution case and there is nothing on record to show that the samples of chars remained in safe custody during intervening period. (i.e. 18.01.2008 to 23.01.2008) which

makes the FSL report highly doubtful and any doubt arises in the links of the chain of prosecution story, the benefit of the same must go to the accused.

10. It was mentioned in the crime report that during patrolling the complainant received credible information that the accused would go to his guest house with huge quantity of chars for the purpose of sale in bulk in pursuance thereof Nakabandi was laid on the pointed place of informer, however, it is a matter of record that prosecution in support of its case has not produced copy of Roznamcha entry of leaving the police station for patrolling, which defect is sufficient to knock down the entire prosecution story as the base of the prosecution story for proceedings for patrolling is not supported by the documentary evidence. In this context reliance can well be placed on the judgment reported ***Qalandro alias Nazro Vs State 1997 MLD 1632***, wherein it was observed that non-production of roznamcha / DD report, showing departure of the police party from police station creates serious doubts in relation to the genuineness of the prosecution story.

11. The above dicta was followed in the case reported as ***Aijaz Ali Vs State 2001 YLR 1493***. The production of entry of the Daily Diary report in the instant case was more essential to establish the case as the entry in the Roznamcha was for specific purpose of patrolling in pursuance thereof Nakabandi was laid and accused was apprehended alongwith contraband.

12 We have also noted the most important factor of the case, which compounded all those doubts and raised a big question mark upon the veracity of the prosecution's case against the appellant was that after allegedly recovering the chars from possession of the accused the parcels of the recovered substance were sealed with a monogram reading as WK, which is neither the abbreviation of the name of seizing officer/ recovery officer nor investigating officer. PWs had not been able to advance any explanation whatsoever as to why recovery officer namely Abdul Hafeez (PW-4) had not put his own monogram on the seals of the parcels prepared by him and as to why he had used the monogram of some other officer, whose

posting was even not shown at police station at the relevant time.

13. Keeping in view the evidence and the law on the point, we are of the view that the prosecution has miserably failed to prove to our satisfaction that the acquitted accused before us guilty of the commission of the offence. It may also be necessary to state that the prosecution has not been able to show us that the grounds on which the trial court had based acquittal of the present accused were unreasonable, perverse, unsound or manifestly wrong, calling for interference.

14. In result of the above discussion, we do not find any force in the appeal filed by the State against Javed Iqbal acquitted accused, therefore, the same is hereby dismissed.

Announced:

23.06.2020

/Arshad Iqbal/

J U D G E

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Justices Shakeel Ahmad and Ahmad Ali