

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.A.No.19-D/2022

Hazrat Wali

Versus

The State

JUDGMENT

For appellant: Muhammad Ilyas Marwat
Advocate.

For State: Mr. Rahmatullah, Asstt: A.G.

Date of hearing: **24.11.2022.**

SHAHID KHAN, J.- The appellant namely,

Hazrat Wali was booked in case FIR No.01, dated

07.01.2021, under Section 9(d) of K.P CNSA, 2019

& 11-N of Anti-Terrorism Act, 1997, of Police

Station C.T.D, D.I.Khan. He faced trial and on

conclusion of it, vide judgment, dated, 31.5.2022,

of learned Additional Sessions Judge-II/Judge

Special Court, D.I.Khan, convicted him under

Section 9(d) of K.P CNSA, 2019, and sentenced to

rigorous imprisonment for life with a fine of

Rs.10,00,000/- (Rupees ten hundred thousand) or

in default thereof to further undergo S.I for six

months. However, benefit of Section 382-B Cr.PC

was extended to him. Thus, through the subject



criminal appeal, the appellant has assailed the judgment of conviction, dated, 31.5.2022.

2. The prosecution's case, as set forth in the crime report, is that the local police received a spy information, to the effect that international smugglers, financed the terrorist organizations, based on trafficking of narcotics and the funds so generated is shared with the terrorists. Such an organization intended a bid from Zhob to the province of Punjab. To encash the same, complainant Noor Aslam Khan ASHO alongwith his team, on the fateful date, day & time (07.01.2021 at 1600 hours), installed an improvise barricade at Zhob-Dera Highway Road. In the meanwhile, a single cabin Datsun pick-up bearing registration No.C-6483/Bannu arrived at the spot. It was intercepted on the pointation of informer. The driver disclosed his name as Muhammad Iqbal and the front seaters introduced themselves as Muhammad Khan and Hazrat Wali (appellant). Due search of the vehicle led to the recovery of narcotics as charas, consists of 75 packets, and on weighment, it was found as 90,000 grams. On cursory interrogation, the appellant disclosed that the narcotics belongs to one Sardar son of Nawab



Khan who financially support the terrorists and recovered narcotics as charas was being smuggled to district Khoshab. The event was reduced into writing in the shape of murasila followed by formal arrest of the accused and transmitted to the police station for the registration of the event through FIR.



3. It is highlighted that on completion of investigation, challan was submitted against the appellant and his co-accomplices Muhammad Iqbal & Muhammad Khan in the Anti-Terrorism Court, D.I.Khan. However, Sections 11-N & 7 ATA were deleted and the case was transferred to the learned Sessions Judge, D.I.Khan. It was entrusted to the Court of learned Additional Sessions Judge-II/ Judge Special Court, D.I.Khan for disposal. The appellant being juvenile, his case was separated from the co-accused Muhammad Iqbal & Muhammad Khan and challan under Juvenile Justice System Act, 2018 was submitted against him.

4. On commencement of trial, copies of the evidence (oral and documentary) were delivered to the appellant within the meaning of

Section 265-C Cr.PC, followed by, confronted with the set of allegations through a formal charge. The appellant denied the subject allegations, pleaded not guilty and claimed trial.

5. The prosecution, to bring home charge against the appellant, produced ten (10) witnesses to substantiate its version. At the closure of the prosecution's account, the appellant was confronted with the evidence so furnished through formal questionnaires within the meaning of Section 342 Cr.PC, to which he professed innocence and claimed to have been falsely implicated in the case. However, neither he wished to be examined on Oath as required under Section 340(2) Cr.PC nor intended to produce evidence in the defence. On conclusion of trial, scanning of record with due assistance of learned defence counsel and learned prosecutor, the learned trial Court, vide judgment, dated 31.5.2022, convicted and sentenced the appellant as mentioned above, hence, he filed this appeal.

6. Arguments heard and record perused.

7. Close perusal of the impugned judgment of the learned trial Court coupled with

the analysis of the evidence so recorded would transpire that after the exercise of the seizure and arrest of the appellant, exercise of required documentation was carried, on the spot and the murasila was transmitted to the police station for the registration of the event. The alleged occurrence of recovery of narcotics as charas, intended to be transmitted to the desired destination, took place on 07.01.2021. The record speaks loud and clear that the bid in question was intended in a single cabin Datsun pick-up bearing registration No.C-6483/ Bannu (red in colour) and on its arrival to the barricade, it was signalled to stop, the driver introduced himself as Muhammad Iqbal, whereas, the front seaters were Muhammad Khan and Hazrat Wali. Search of the subject vehicle led to the recovery of 75 packets of narcotics as charas, kept in three plastic sacks (gattu) and concealed in the quilts/blankets. Each sack (gattu) contained 25 packets. On weighment each packet was found to be 1200 grams, net weighing 90,000 grams.

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8. The I.O (PW-4) disclosed that he separated 5/5 grams charas from each packet as samples of 5/5 for chemical analysis, prepared

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docket for the chemical analysis of the parcels and on completion of proceedings on the spot, returned to the police station and handed over the case property in shape of parcels to the Moharrir of the police station for safe custody. It is transparent from the account of the I.O (PW-4) the non availability of Malkhana in the police station as he conceded in his examination-in-cross that there is no separate Malkhana of police station C.T.D. and volunteered that recovered articles are used to be kept in District Malkhana as a routine. He further stated that he did not make his departure entry in the daily diary of the P.S. He also stated that he drafted application for sending the samples to the FSL and admitted that in routine, a copy of application for dispatching the parcels to the FSL, is placed on judicial file, however, the same is not available on the file at all. He further admitted that Umar Khitab Moharrir of P.S C.T.D was not examined by him till 14.01.2021. He admitted that samples were received to the FSL on 21.01.2021 with the delay of 14 days. Umar Khitab S.I (PW-9) stated that the I.O handed over to him the case property which he entered in the relevant register and on the same day the relevant parcels No.1 to 75

were handed over to the Constable Muhammad Asghar No.1299 for chemical analysis. However, stated in his examination-in-cross that there is Malkhana of P.S. C.T.D. the parcels No.1 to 75 were not handed over to the Constable Muhammad Asghar No.1299 on the same date. Samples were handed over to Muhammad Asghar on 21.01.2021. He further stated that Muhammad Asghar had handed over the route certificate on 21.01.2021. Muhammad Asghar FC No.1299 stated in his statement that on 21.01.2021 he was handed over parcel No.1 to 75 by the Moharrir of P.S. C.T.D, D.I.Khan, which he took to FSL Peshawar for analysis. The FSL report reveals that the samples of narcotics as charas were received therein on 21.01.2021 i.e. after the delay of 14 days delay. In depth perusal of the record would transpire that a plausible excuse is neither part and parcel of the investigation nor trial as none of the prosecution witness either the seizure officer or the Investigation Officer could justify the subject delay. Irrespective of the fact that the samples and the stuff might be in the safe hands and question of replacement or otherwise may not strike the prudent mind but it shall not skip the attention of

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the Court that the subject irregularity and illegality is not curable at all and it touches the very roots of the prosecution's case for the simple reason that replacement, substitution or otherwise could no way be ruled out.



9. The record is silent regarding the protocols of drawl of samples followed by its safe custody and in time transmission to the FSL for analysis, the very inception of the case of the prosecution is tainted with doubts. It is indeed settled that the prosecution is under obligation to establish the safe custody of the samples strictly in accordance with law. The august Apex Court in case titled, "*Mst. Sakina Ramzan Vs. The State*" reported in (2021 SCMR 451), held that:-

"The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures

that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.”



Reliance is also placed on the judgment of august Apex Court titled “*Ishaq Vs.*

The State” (2022 SCMR 1422), wherein it is held

that:-

(b) Control of Narcotic Substances Act (XXV of 1997)---

---S.9--- Possession of narcotics--- Prosecution failing to establish safe custody and safe transmission of samples from the police to the Forensic Science Laboratory---In a case containing the said defect on the part of the prosecution it cannot be held with any degree of certainty the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.”

10. It was alleged by the prosecution that the appellant was a front seater and on cursory interrogation, he disclosed that the narcotics belongs to one Sardar son of Nawab Khan, he financially support the terrorists and recovered

narcotics as charas was being smuggled to district Khoshab. But during the investigation an iota of evidence has not been collected in respect of the subject proposition. Likewise, none of the prosecution's witness on his turn could be able to speak in this regard. Nothing as such had been said by any of the prosecution witness about the appellant having the knowledge about availability of narcotic substance in the vehicle. As a matter of fact no evidence worth its name had been brought on the record to establish that the appellant had conscious about availability of narcotic substance in the vehicle in which he was travelling along with its driver. The law is settled by now that if the prosecution fails to establish conscious possession or knowledge of the accused, in that regard then the person cannot be convicted solely on the basis of his availability inside a vehicle at the relevant time.



11. In view of the above, it can be safely held that the prosecution could not discharge the burden of proof and unable to establish the guilt of the appellant and the learned trial Court has not taken into consideration the above facts and circumstances of the case in its letter & spirit,

therefore, by convicting the appellant has fallen into error.

12. It is cardinal principle of Criminal Justice that every individual is presumed to be innocent, unless proved guilty through strong, cogent & worth reliable evidence. It is the bounden duty of the prosecution to prove its case beyond any shadow of doubt and if any reasonable dent or doubt is found in prosecution case, the benefit of the same is to be extended to the accused, not as a matter of grace or concession but as a matter of right. The cardinal principle of criminal administration of justice is based on the concept of justice in Islam which is to be observed more consciously and carefully. Benefit of doubt of features appearing in the case invariably, are required to be given full effect while deciding the ancillary matters in a criminal case. Benefit of doubt, if any favourable to the accused cannot be withheld in the exercise of discretion of the Court.

13. The prosecution is duty bound to prove its case beyond any reasonable doubt and if any single or slightest doubt is created, benefit of the same must be extended to the accused and it would be sufficient to discredit the prosecution

story. It is well embedded principle of criminal justice that there is no need of multiple doubts in the prosecution's case, rather a single but reasonable doubt arising out of the prosecution's evidence, pricking the judicial mind is sufficient enough for acquittal of the accused. Reliance is placed on a case law "*Tariq Parvez Vs. The State*" (1995 S C M R 1345). The same principle has been reiterated by the Hon'ble Supreme Court in case of "*Muhammad Akram Vs. The State*" (2009 S C M R 230).



14. There is no second opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of the innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt, if, found reasonable would be sufficient to record acquittal of the accused, giving him/them benefit of doubt because bundle of doubts are not required at all to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme

Court in the case of "Riaz Masih alias Mithoo Vs.
State (NLR 1995 Cr.SC 694).

15. For the afore-stated reasons, the subject appeal is accepted, the impugned judgment & conviction, dated, 31.5.2022, of learned trial Court is set aside and the appellant Hazrat Wali is acquitted of the charges levelled against him by extending the benefit of doubt. He be set free forthwith, if not required, in any other case.

16. By our short order of even date, we had accepted the appeal of the appellant Hazrat Ali and acquitted him of the charges levelled against him. Hereinabove are reasons for the same.

Announced.
Dt: 24.11.2022.
Imran/*



JUDGE



JUDGE

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(D.B)
Hon'ble Mr. Justice Muhammad Faheem Wali
Hon'ble Mr. Justice Shahid Khan