

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

Cr. Appeal No. 140-A/2020

JUDGMENT

Date of hearing.....**22.06.2022**.....

Appellant (Zafar Ali) By Ms. Farhana Naz Marwat, Advocate.

Respondent (State) By Sardar Ali Raza, AAG.

KAMRAN HAYAT MIANKHEL, J.- Through this single judgment we propose to decide the instant and connected criminal appeal bearing No.141-A/2020, arising out of one and the same judgment dated 07.08.2020 passed by the learned trial court, whereby the appellants were convicted under section 9-C CNSA and sentenced them to undergo imprisonment for life with fine of Rs.2,00,000/- each. In default thereof they were ordered to further undergo simple imprisonment for six months each and benefit of section 382-B Cr.P.C was also extended to them.

2. Brief facts of the case are that on 15.11.2018 at about 1100 hours, complainant of the case namely, Atif Qayyum Inspector Excise & Taxation and Narcotics Control Department Haraz Division alongwith other police party were present at GT road Bara Mour Salhad

in connection of Nakabandi on spy information. In the meanwhile, one XLI motorcar bearing registration No.LED-08-9980 came from Havelian side, which was stopped by the complainant with the help of his companions. Two persons were sitting in the said vehicle. The driver disclosed his name as Shoaib while person sitting on front seat disclosed his name as Zafar Ali. Since the complainant has received spy information in respect of the said vehicle that narcotics is being smuggled in it, therefore, the vehicle was checked. During the search of secret cavities made in the floor and behind the rear seat 80 slabs of chars wrapped in yellow plastic was recovered. 20/20 slabs of chars sealed into separate shoppers. Thereafter, the said four shoppers were weighed at the spot. Shopper No.1 was containing 22848 grams chars, shopper No.2 containing 22771 grams chars, shopper No.3 containing 21839 chars whereas shopper No.4 was containing 23028 grams chars, thus total weight of recovered contraband was 90486 grams of 80 slabs. From 20 slabs of chars contained in shopper No.1, 5/5 grams were separated for the purpose of FSL and sealed into parcel No.1 to 20, from 20 slabs of chars contained in shopper No.2, 5/5 grams were separated from corner of each slabs for FSL and sealed into parcel No.21 to 40, from 20 slabs of chars contained in shopper No.3, 5/5 grams were separated in parcel No.41 to 60 and also from 20 slabs of chars contained in shopper No.4, 5/5 grams were

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line and a small flourish.

separated into parcel No.61 to 80 while remaining chars contained in shopper No.1 consisting of 20 slabs weighing 22748 grams was sealed into parcel No.81, chars contained in shopper No.2 consisting of 20 slabs weighing 22671 grams was sealed into parcel No.82, chars contained in shopper No.3 consisting of 20 slabs weighing 21739 grams was sealed into parcel No.83 and chars contained in shopper No.4 consisting of 20 slabs weighing 22928 grams was sealed into parcel No.84. All the above mentioned parcels were taken into possession through recovery memo whereas the above-mentioned vehicle was also taken into possession through the said recovery memo on the direction of Director Excise & Taxation under Seizure and Disposal Rules. Complainant prepared recovery memo Ex:PW1/1, drafted murasila Ex:PA and sent the same to the police station for registration of FIR through constable Raja Aftab while case property and accused were sent to police station through constable Fayyaz under the supervision of Naseem Khan SI through official vehicle No.A-9862-Peshawar which was driven by driver Mustajab and on the basis of which case FIR No.1296 dated 15.11.2018 under section 9-C CNSA was registered at police station, Cantt: Abbottabad against the accused.

3. After completion of investigation complete challan was submitted against the accused as well as absconding co-accused namely Aamir Shahzad under

section 512 Cr.P.C. After compliance of section 265 (C) Cr.P.C charge was framed against the accused on 13.06.2019 to which they pleaded not guilty and claimed trial. In order to prove its case against the accused prosecution has produced as many as seven witnesses. After conclusion of trial, the learned trial court found the appellants guilty of the charge and while recording their conviction and sentenced them as mentioned above

4. Arguments heard and record perused.

5. The scanning of the record reveals that the prosecution case hinges on the testimony of complainant, alleged eye witnesses, Investigation Officer and transmission of the case property from the spot to police station and from police station to laboratory for chemical examination and its positive FSL report.

6. Perusal of the case record would show that as per Murasila Ex:PA reflects that on 15.11.2018, complainant of the case namely, Atif Qayyum Inspector Hazara Division Excise Taxation & Narcotics Control Department (PW-1) alongwith other police party were on routine patrolling, received spy information about the coming of vehicle bearing registration No.LEB-08-9980 from Havelian side having narcotics in it. On this information he alongwith his companions proceeded to Salhad and made barricade. At about 1100 hours they stopped the vehicle and on search of the said vehicle chars from secret cavity was recovered in shape of four slabs total weighing 90486 grams was made. The complainant



separated of 5/5 grams chars from each slab and sealed into separate parcels for the purpose of chemical analysis, whereas the remaining chars was sealed into separate parcels. The accused namely Zafar Ali and Shoaib were arrested on the spot.

7. The prosecution in order to establish its case against the appellants produced as many as seven witnesses. PW-1 is the statement of Atif Qayyum, who is the complainant of the case reiterated the same facts as narrated in the Murasila Ex:PA. PW-2 is the statement of Naseem Khan, SI Hazara Division Excise Taxation & Narcotics Control Department, who is marginal witness of recovery memo Ex:PW1/1. PW-3 is the statement of Nazir Khan SI, who is investigating officer of the case stated that he through application Ex:PW3/2 produced both the accused before Magistrate for obtaining their custody and vide application Ex:PW3/3 produced the accused for recording their confessional statements, through application Ex:PW3/4 he applied for warrant under section 204 Cr.P.C and through application Ex:PW3/7 applied for proceedings under section 87 Cr.P.C, he also placed on file FSL report, departure and return entries with record Ex:PW3/11 to Ex:PW3/17, he prepared card of arrest of both the accused Ex:PW3/18 and Ex:PW3/19 and recorded statement of PWs under section 161 Cr.P.C. PW-4 is the statement of Shahid Ali No.1231, who stated that on 16.11.2018 vide road certificate No.308 Ex:PW4/1 Maded Muharrir of the



police station handed over parcels No.1 to 80 of the instant case for onward transmission to FSL and deposited the said parcels in the FSL on the same day. PW-5 Muhammad Rafaqat MHC, who on receipt of murasila chalked out FIR Ex:PA. PW-6 Sardar M.Rafique SHO, who submitted complete challan against the accused Ex:PW6/1 and PW-7 constable Mushtaq No.121 who stated that he was entrusted with warrant under section 204 Ex:PW3/5 and proclamation under section 87 already Ex:PW3/8.

8. Scanning of prosecution evidence shows that complainant stated in his examination in chief that he sent the case property alongwith accused under the escort of constable Fayyaz and under the supervision of Naseem Khan ASI in the official vehicle driven by Mustajab. Naseem Khan ASI when appeared as PW-2 stated in examination in chief that he is marginal witness of recovery memo Ex:PW1/1 vide which complainant during the course of gasht recovered chars from secret cavities of vehicle bearing No.LB-08-9980. This witness simply stated in his cross examination that they took the documents, case property and accused in the official pick-up having No.9862 and does not depose about the handing over the case property to Maded Moharrir. More-so, Shahid Ali No.1231 stated in his statement that on 16.11.2018 vide road certificate No.308/21 (Ex:PW4/1) Madded Muharrir of the police station handed over parcels No.1 to 80 of the instant case for



onward transmission to FSL Peshawar but the prosecution has not produced and examined, neither constable Fayaz to whom parcels No.1 to 80, containing samples for FSL, were entrusted for submission to Moharrir for safe custody from spot to police station nor Moharrir was produced as witness. The non-production of above witnesses leads us to only one corollary that chain of safe custody has not been proved by the prosecution. The prosecution also by not producing as witness the Madded Moharrir, who handed over the samples to constable Shahid Ali No.1231 put a serious dent in the prosecution case about safe custody of contraband. The safe custody and its transmission to police station and latter its transmission to FSL laboratory is of utmost and paramount importance and in case of failure the whole super structure built on the recovery of contraband will fall to the ground. Reliance in this regard is placed on Criminal Appeal No. 184 to 2020 decided on 06th January 2021 reported as **2021 SCMR 451**, which held as under;

“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 reparation of representative samples of the seized narcotic drug, storage of the representative samples and the narcotics drug with the law enforcement agency and then dispatch of the representative samples of the narcotics drugs to the office chemical examination for examination and testing. This chain of custody must be safe and secure. This is because, the report of the chemical examination enjoys critical importance under CNSA and the chain of custody ensure 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 on the report of chemical examiner”.

9. Further reliance is placed on the case of **Imam Baksh’s case (2018 SCMR 2039)**, **Zubair Khan V. The State (2021 SCMR 492)**, **Mst Razia Sulana V. The State (2019 SCMR 1300)**.

10. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence in its true perspective. It has been held, time and again by the superior courts, that a reasonable doubt found in the prosecution case is sufficient to acquit an accused. For extending the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance, creating reasonable doubt in the prudent mind about the guilt of accused, makes him entitled to its benefit, not as a matter of grace or concession, but as a matter of right. Reliance could be placed on **2009 SCMR 230**, **2011 SCMR 664**, **2011 SCMR 646**, **PLD 1984 SC 433**, **2012 MLD 1358**, **2007 SCMR 1825**, **2008 PCr.LJ 376**, **PLD 1994 Peshawar 114**, **PLD 2012 Peshawar 01**, **1999 PCr.LJ 1087**, **1997 SCMR 449**, **2011 SCMR 820** and **2006 PCr.LJ SC 1002(sic)**. The conclusions drawn by the learned trial Court are not borne out of the case



2006 PCr.LJ SC 1002(sic). The conclusions drawn by the learned trial Court are not borne out of the case evidence, therefore, the impugned judgment is not sustainable.

11. For what has been discussed above, we hold that prosecution have not been able to prove their case beyond reasonable doubts, therefore, the impugned judgment warrants interference. As such this appeal is allowed and the appellants are acquitted from the charges leveled against them by extending them benefit of doubt. They be released forthwith from Jail, if not required in any other case.

These are the detailed reasons of the order of even date.

Announced:
22.06.2022.


JUDGE

JUDGE

Aftab PS/*

Hon'ble Mr. Justice Syed Arshad Ali
Hon'ble Mr. Justice Kamran Hayat Miankhel