

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
PESHAWAR.

JUDICIAL DEPARTMENT

Criminal Appeal No.1253-P of 2019

Shakeel Ahmad..Vs..The State

JUDGMENT

Date of hearing: 06.10.2022.

Mr. Muhammad Jehangir Khan Mohmand, Advocate, for the  
appellant.

Mr. Muhammad Tariq Kakar, Special Prosecutor, for the State.



ISHTIAQ IBRAHIM, J:- This criminal appeal filed by Shakeel Ahmad, convict/appellant, is directed against the judgment/order dated 17.09.2019 of learned Judge Special Court (CNS) Peshawar, whereby, the appellant was convicted under section 9 (c) 14/15 CNSA, 1997, and sentenced him to life imprisonment with fine of Rs.1,000,000/- (One Million) and in default of payment of fine, he shall further undergo for a period of one year S.I; with benefit of section 382-B Cr.P.C; in case registered against the accused/appellant vide F.I.R No.57 dated 23.05.2016 under Section 9 (c) 14/15 CNSA, Police

Station ANF Peshawar. It was ordered by the learned trial Court that in case of default of payment of fine the sentences shall run consecutive to the main sentence.

2. It is the case of prosecution that ANF high-ups received information about trafficking of huge quantity of narcotics by drug peddler Muhammad Zeb son of Jehanzeb and Liaqat Afridi through their Agent Shakeel Ahmed through motorcar Honda Civil bearing registration No.HB-778/Islamabad from Peshawar to the Province of Punjab. Upon the information, complainant/IO alongwith his team laid a barricade on the spot, meanwhile, the said motorcar arrived from Peshawar which was stopped for the purpose of checking. The driver of the motorcar was de-boarded who disclosed his name as Shakeel Ahmad and upon query, he accepted the presence/concealment of narcotics in secrete cavity made in the floor of the *diggi* of the motorcar. Upon the pointation of accused/driver Shakeel Ahmad, the secrete cavity was opened on the spot and 44 packets, containing 29 packets of *chars* and 15 packets of *opium* (in the shape of *tikkies*/pieces) were recovered by the complainant/IO in the presence of witnesses.

The complainant/IO weighed the contraband and each packet came out to be 1200/1200 grams each and thus total 34.800 kilograms *chars* and 18 kilograms *opium*. The complainant/IO separated 10/10 grams *chars* from each packet and also separated small quantity from each *tikki* of *opium* making 10/10 grams *opium* from each packet for the purpose of FSL. The separated samples as well as the remaining narcotics were sealed into separate parcels with SRK monogram on each. After his arrest, accused Shakeel Ahmed disclosed that the vehicle containing the contraband was handed over to him by one Amjad Khan, who is the partner of Muhammad Zeb and Liaqat Afridi, owner of the narcotics. The complainant/IO (PW-2) prepared the recovery memo Ex.PW2/1, drafted the *murasila* Ex.PW2/2 and sent the same to the PS for registration of the case through HC Shafi Ullah/driver. The complainant/PW-2 has also conducted investigation in the case. Hence the case was registered against the accused.


3. During trial, the prosecution examined as many as five (05) witnesses in the case. Statements of the accused were recorded under section 342 Cr.P.C, wherein, they neither wished to be examined on oath

nor desired to produce evidence in their defense. After hearing learned counsels for the accused and learned Special Prosecutor for the State, the learned Judge Special Court (CNS) Peshawar, rendered the impugned judgment dated 17.09.2019, thereby, convicting the accused/appellant as mentioned above.

4. Arguments heard and record of the case was perused.

5. The complainant/Investigation Officer Saif-ur-Rehman appeared before the learned trial Court and examined as PW-2. In the start of his cross examination he has stated that *"Now-a-days I am not in service because I have been dismissed from service. It is correct that I was dismissed from service by my department because I had asked illegal gratification from the accused of some other case. Volunteered that I was trapping in the SOS of the case of 34/16 of PS ANF Peshawar but sadly I was involved in a false case. It is correct that a month or two ago I was arrested by the FIA for receiving illegal gratification. Volunteered that I was dismissed already by the ANF from service."*


From the above deposition of this PW it is abundantly clear that he has been dismissed from



service once on the allegations of asking for illegal gratification then again a month or two prior to his examination before the Court he was again arrested in another case by the F.I.A for receiving illegal gratification. If this is the state of credibility of the prime witness of prosecution on which they expects this Court to impose capital punishment or for that matter life imprisonment, indeed the Court will strive for some strong independent corroboration. In cases of narcotics conviction is based on the testimony of police officials and police officials are considered to be as good witnesses as any other witness. The reason is that they being member of the respectable law enforcing agencies the Court rely on their testimony and award capital punishment to the accused most particularly in cases wherein they have recovered considerable quantity of narcotic which of course is a manic for the society but on the other hand Courts being custodian of the constitutional rights and under obligation to administer justice according to law and the well settled norms of the criminal justice, when a witness having such a dubious record how the prosecution could expect the Court to consider his testimony and award sentence

to the accused. The narcotic laws has given ample powers to the police officials and even safeguard under section 103 Cr.P.C has been taken away by section 25 Control of Narcotic Substances, Act 1997, which reads as under;

*“25. Mode of making searches and arrest.—  
The provision of the Code of Criminal Procedure, 1898; except those of Section 103, shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these sections.”*



6. Prosecution in such circumstances and most particularly ANF is expected to conduct fair and impartial investigation through efficient and honest officials. When, if any doubt arises with regard to the credibility of the PWs then the Court is left with no other choice but to discard that evidence produce by the prosecution. Even then we would look for some strong independent corroboration but the same is not available. Admittedly the recovery has been effected near M-1 Toll Plaza Peshawar but the CCTV footage has not been taken into possession. Even photographs at the time of arrest have not been placed on the file which could have corroborated the testimony of

A.N.F officials most particularly the statement of complainant/ Investigation Officer (PW-2). By considering the facts and circumstances of the present case it was incumbent upon the prosecution to have brought some corroborative piece of evidence in addition to the evidence referred above.

7. Coming to the statement of Shafi Ullah/PW-3, marginal witnesses to the recovery memo. He was subordinate to complainant/Investigation Officer/PW-2 and he was supposed to toe the line of complainant and his statement is alone is not sufficient for maintaining life imprisonment of the appellant.

8. Besides the above, complainant/investigation officer (PW-2) in his cross examination stated that they made their departure and arrival back in the Police Station, extract of daily diary is not available on the record. Complainant/IO/PW-2 in his cross examination admitted correct that he has not placed on file the extract of the said daily diary regarding his departure and arrival back to the PS in the present case. It is revolving common practice with the investigation officers that they are lacking their interest to collect the material evidence in the cases

and even no heed is paid to collect the daily diaries from the police stations regarding the arrival and departure of all concerned with the investigation of a particular case, as these are the documents which can correctly explain the status of the witnesses, their presence at the spot, the time they consume in reaching to the spot and the names of police officials who accompany. If these documents are brought on record, the Investigation Officer will lose the courage to manipulate the cases in police stations. In the present case, when the complainant/Investigation Officer (PW-2) was questioned regarding the arrival and departure from the police station to spot, he blatantly answered that he did not place on record the daily diary in this respect. His lack of seriousness tells nothing but to stamp him as an interested witness and his testimony cannot wholeheartedly be relied upon. Reliance is placed on the case titled **"Pir Noroz Ali Shah v. The State"** {2019 PCr.LJ 457 (Peshawar Abbottabad Bench)} wherein it is held that;

*"In order to establish the movement of police official through confidence inspiring evidence, the production of daily diary of the police station showing the departure, constitution of raiding team, its members and*



*subsequent arrival, was a material piece of evidence in favour of prosecution. Indeed the daily diaries are maintained under the erstwhile Police Rules 1934. Under Rule 28.48 it is mandatory for every police official to make entry of his departure, arrival and all proceedings conducted between the intervening period of departure and arrival. Non-production of the daily diary has caused serious doubts in the prosecution case regarding the mode and manner of raid"*

9. Likewise there is no extract of Register-19 and Register-21 on the record. Ishfaq Hussain Muharrir/PW-5 has stated that on return of the IO to the PS he handed over to him the case property and that he made its entry in Register-19. In his cross examination he admitted correct that he has not brought register 19 or register 21 in support of his contention before the Court. Similarly Receipt *Rahdari* and acknowledgement receipt are also not available on the file. The prosecution did not produce the Register No. 19 of the Police Station so as to prove that the case property was ever kept in *Malkhana* of the police station. In this way, the prosecution, has wasted the best evidence available with it to have been established the safe custody of recovered contraband. It is also on record that one

of the PW, namely, Imtiaz Khan constable, who was the 2nd marginal witness to the recovery memo was abandoned by the prosecution for reasons best known to them. So, in the situation, not only adverse inference under Article 129(g) of Qanun-e-Shahadat Order 1984 can be safely drawn, but the legal inference could also be drawn that if the said witnesses had entered into the witness box then they would not have supported the prosecution case. In this regard wisdom can be safely derived from case law reported in NLR 2015 SCJ 121 and PLD 2016 SC 17.

10. According to the FIR, the recovery was effected near Motorway Toll Plaza Peshawar and near the place of occurrence there is permanent check post of the local police station which is admitted in his cross examination by complainant/Investigation Officer (PW-2). Volunteered, that the customs and Excise departments are also laid down *nakabandis* for specific period. They were not private witnesses. They were the police official of local Police Station and the alleged recovery was effected near the said check post. At least to extent of their arrival to the spot, recovery and arrest of the accused someone of

the officials of the police post should have been examined by the prosecution to authenticate the recovery proceedings. PW-2 in his cross examination has admitted correct that he neither informed the local police nor has associated them with the recovery proceedings, despite the fact that the local police were present near the spot. Volunteered, that he has the jurisdiction and the powers to conduct his case without involving any other force in his case. Moreover, the occurrence had taken place at 09:15 hours while complainant/PW-2 in his cross examination has stated that he handed over the *murasila* to HC Shafi Ullah at 1215 hours whereas the time of report is also 1215 hours. In view of above, it seems that the occurrence had not taken place in the mode and manner as alleged by the prosecution.

11. The crux of the above discussion is that the prosecution case is pregnant with shortcomings, doubts and dents. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.

12. For what has been discussed above, we hold that the impugned judgment dated 17.09.2019 rendered by the learned Judge Special Court (CNS) Peshawar, is suffering from misreading and non-reading of the evidence available on the record, hence not sustainable. As such, this appeal is allowed and the appellant is acquitted of the charge leveled against him. He be set free forthwith, if not required in any other case.

13. The above are the reasons of our short order of even date.

**Announced.**  
**06.10.2022**

  
JUDGE

  
JUDGE

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Ishtiaq Ibrahim.*

(M. Iqbal, SSS)