

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

[JUDICIAL DEPARTMENT]

Cr.A No. 955-P/2019 and Cr. A No. 916-P/2019.

Date of hearing:..... 02.9.2019

Appellants (Shabir Jan Afridi and Muhammad Yousaf) by M/S Mehboob Ali Khan and Muhammad Yusaf Orakzai, Advocates.

The State by Mr. Mujahid Ali Khan, AAG.

J U D G M E N T

MUHAMMAD NAEEM ANWAR, J.- On

30.9.2018, Imtiaz, SHO Police Station, Machnigate, (PW-6) received information regarding trafficking of huge quantity of chars by two youngsters in Mehran Motorcar bearing registration No. ACJ-852, via Canal Road. On such information, he alongwith other police contingent made a barricade near Sultan qila, when in the meanwhile, at 1500 hours, the motorcar already spotted emerged, which was stopped for the purpose of checking. The driver of the motorcar disclosed his name as Muhammad Yousaf, while his companion disclosed his name as Shabir Jan Afridi. On search of the vehicle, two packets charas pukhta were recovered from beneath the seat of Shabir Jan Afridi, while three packets charas pukhta

were recovered from the secret cavity made under the driver seat. On weighment, each packet was consisting of 1000 grams, total (05) k.gs, whereafter, five grams each were separated from the entire stuff (each packet), sealed into parcels, while the remaining quantity of chars was sealed into another parcel. On recovery of narcotics, arrest of the accused and seizure of the vehicle, the Seizing officer prepared the recovery memo, Ex. PW 6/1, recorded the murasilla as Ex. PA/1 and dispatched it to Police Station, Machnigate, where on the basis of which FIR No. 655 dated 30.9.2018 under section 9 (c) CNSA was registered against both the accused at Police Station Machnigate.

2. On completion of the investigation, complete challan was submitted against the accused to the Court of learned Additional Sessions Judge-XIII/Judge, Special Court, Peshawar, where at the commencement of trial, the prosecution produced as many as eight witnesses. On close of the prosecution evidence, accused were examined under section 342 Cr.P.C, wherein they denied the charges, professed innocence and stated to have falsely

been implicated in the case. They, however, wished to produce no defence nor to examine themselves on oath as required under section 342(2) Cr.P.C.

3. The learned trial Court, on conclusion of the trial, convicted both the accused under section 9 (C) CNSA and sentenced them to undergo five (05) years RI (each) with a fine of Rs. 50,000/- each or in default thereof to undergo six months SI further with benefit of section 382-B Cr.P.C, vide judgment recorded on 16.7.2019.

4. The appellants, Shabir Jan Afridi and Muhammad Yousaf, have questioned their conviction and sentences by filing two separate appeals bearing No. **955-P/2018 titled Shabir Jan Afridi Vs. the State and 916-P/2018 titled Muhammad Yousaf vs. the State.** Since both the appeals arise out of the single judgment, therefore, these are being disposed of by way of this single judgment.

5. Learned counsel for the appellants submitted that the appellants are innocent and have falsely been involved in the case. They argued that the evidence available on record is

full of contradictions as the prosecution witnesses have falsified each other on material points, therefore, the impugned judgment is based on mis-appreciation of evidence on record, hence, the conviction and sentences recorded by the learned trial court are liable to be set aside and the appellants deserve acquittal.

As against that, learned AAG representing the State argued that huge quantity of narcotics has been recorded from the motorcar and both the appellants were caught red-handed on the spot. He argued that there is no reason to falsely implicate the appellants by the police and prayed for dismissal of the appeals.

6. We have considered the submissions of learned counsel for the appellants and learned AAG and have gone through the available record.

7. It is the case of the prosecution that on the day of occurrence, there was information to the SHO of Police Station, Machnigate, regarding transportation of narcotics to be smuggled in a motorcar via Canal Road and, hence, in the backdrop, he fenced the crime venue and, accordingly, recovered chars,

weighing five k.gs, lying beneath the seats of both the appellants. When examined in the Court as PW-6, Imtiaz, the seizing officer, stated in his examination in chief that after the recovery of contraband, arrest of the accused and seizing the vehicle, he drafted the Murasilla and sent it to the Police Station concerned through constable Ijaz No.112 for registration of the FIR alongwith the case property (the vehicle and contraband) and accused, but his this statement is inconsonance with the statement of Fayaz Khan SI, who on receipt of murasilla has incorporated its contents into FIR, when appeared as PW-3. He stated in his cross examination that he received only murasilla, recovery memo and card of arrest sent by the complainant through Ijaz, however, the case property and accused were not handed over to him.

Again, it is in the cross examination of complainant Imtiaz (PW-6) that on the day of occurrence, he left the Police Station at 06.00 a.m. He further stated that he did not say as to whether the accused were having cell phone or not, while Ijaz Ahmad, PW-7, stated in his cross examination that they left the Police station at

about 01.00 p.m for patrolling on the day of occurrence and one mobile phone was also recovered from accused Yousaf. Likewise, there is also contradiction in the statements of complainant Imtiaz (PW-6) and Ijaz Ahmad, the marginal witness (PW-7). The former stated in his cross examination that after preparation of recovery memo, he drafted the murasilla while the latter stated that first of all murasilla was drafted by the SHO/complainant.

Another damaging aspect of the case is that during cross examination, on the request of defence counsel, the case property was de-sealed and the learned trial court recorded the following observations:-

“Five packets, each wrapped in plastic coating, were there in the parcel. Two packets were completely wrapped in plastic coating while the remaining three packets were in opened condition from one corner and symptoms of separation of some material from it were apparent.”

Above all, Murasilla Ex PA/1 reveals that it has been drafted at 16.20 hours, while the FIR has been chalked at 16.45 hours. Himayatullah Inspector, the investigating Officer of the case (PW-5) stated in his cross examination that he

received the copy of FIR at 17.15 hours and, thereafter, he proceeded to the spot. Ijaz Ahmad (PW-7), who was present with the complainant at the relevant time, stated in the first line of his cross examination that his statement was recorded by the I.O under section 161 Cr.P.C at 05.00 p.m, i.e, before the handing over copy of FIR to the I.O, while the complainant Imtiaz SI stated in his cross examination that he remained at the spot for about 1 ½ hours in respect of the whole proceedings. It may be added that no license or ownership document has been recovered from the accused Yousaf.

8. The discrepancies, as highlighted above, in the testimony of prosecution witnesses cannot be taken lightly. It is well settled principle of administration of criminal justice that an accused is entitled to get the benefit of slightest doubt whereas in the case in hand, material discrepancies and doubt are apparent on the face of the record but the learned trial Court while delivering the impugned judgment has failed to extend the benefit of such doubt in favour the appellants.

6. In view of the above discussion, we have no doubt in our mind that in the present case, the prosecution has not been able to prove its case

against the convict-appellants beyond reasonable doubt and, therefore, both the appeals are allowed, resultantly, the conviction and sentences recorded by the learned trial court are set aside and as a consequent thereof the appellants are acquitted of the charge levelled against them. They shall be released forthwith if not required in any other case.

Above are the reasons of our short order of even date

Announced

02.9.2019.

M.Zafra PS

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(DB of Hon'able Justice Ms Musarrat Hilali and Hon'able Mr. Justice Muhammad Naeem Anwar).