

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A No. 466-P/2014.

JUDGMENT

Date of hearing. 30.9.2015

Appellant (Abdul Hameed) By Ms. Farhana Marwat, Advocate.

State. By Mian Arshad Jan, AAG.

QAISER RASHID KHAN, J. At a trial held by the

learned Judge Special Court/ Additional Sessions Judge-III,
Kohat the appellant, Abdul Hameed, on being found guilty
under section 9 (c) CNS Act, in case FIR No.298 dated
26.3.2013, Police Station MRS, Kohat was convicted and
sentenced to seven years R.I and to pay a fine of Rs.50000/-
(fifty thousand) or in default to undergo further six months S.I
with benefit of section 382-B Cr.P.C extended to him vide
judgment dated 15.7.2014.

2. The prosecution case as per FIR is that on 26.3.2013
upon receipt of information about the smuggling of huge
quantity of Charas via Highway, the complainant Wali Bat

Khan IHC alongwith other police officials laid a picket at Highway Check Post when, in the meanwhile, motorcar bearing Registration No. PL-2355 coming from Dara Adamkhel side and driven by the appellant, Abdul Hameed, was stopped for the purpose of checking. From his body search nothing incriminating was recovered. However, search of the motorcar led to the recovery of 8 packets of Charas Gardah concealed in the secret cavities made in the floor of the car which on weighment turned out to be 10,000 grams and from each of the packets 5/5 grams were separated for FSL while the rest were sealed in a separate parcel. The accused-appellant was arrested on the spot and the motorcar alongwith registration book was also taken into possession, hence the FIR *ibid*.

3. Investigation commenced and on its conclusion, complete challan was submitted against the accused-appellant before the learned trial Judge who after holding a full dressed trial convicted and sentenced the appellant through the impugned judgment, hence the appeal.

4. In order to prove its case the prosecution produced seven witnesses in all. PW-1 Mazhar Jahan Khan is the I.O. He prepared the site plan (Ex.PB) at the instance of the complainant and also recorded the statements of PWs under section 161 Cr.P.C. He obtained custody of the accused vide application (Ex.PW1/1), interrogated him, recorded his statement under section 161 Cr.P.C and on expiry of the police custody, the accused was sent to judicial lockup. After completion of investigation, he handed over the case file to the SHO for submission of challan before the learned trial court.

PW-2 Wali Bat Khan IHC, is complainant of the case. He narrated the same facts which were mentioned by him in his murasila (Ex.PA). He stated that on the eventful day he got information about smuggling of narcotics through motorcar and on such information he alongwith other police contingents held nakabandi at the crime spot when in the meanwhile motorcar bearing No.PL-2355 of grey colour coming from Dara Adam Khel was signaled to stop. He deboarded the accused from the motorcar but from his

personal search nothing was recovered. However, on search of the motorcar he recovered 8 packets of charas gardah from the secret cavities made in the floor of the said motorcar.

PW-3 Gulab Din FC is marginal witness to the recovery memo (Ex.PW2/1) vide which in his presence the complainant recovered 8 packets of charas gardah total weighing 10 KGs from the secret cavities made in the floor of the motorcar. From each packet 5/5 grams were separated for FSL examination and sealed into parcel No. 1 to 8 while the remaining stuff was sealed into parcel No. 9.

PW-4 Iftikhar Ali LHC took parcels No. 1 to 8 to the FSL vide road certificate copy whereof is Ex.PW4/1, deposited the same with the concerned official and brought the receipt back.

PW-5 Javed Hussain SHO PS Teeri on completion of investigation submitted complete challan against the accused which bears his signature.

PW-6 Shaukat Salim ASHO PS MRS Kohat on receipt of murasila registered the case FIR (Ex.PA/1) which bears his signature.

PW-7 Gulzar Hussain LHC PS Usterzai took the murasila to the PS and handed over the same to the Moharrir of the P.S.

5. On closure of the prosecution evidence, the accused-appellant was examined under section 342 Cr.P.C wherein he denied the allegations levelled against him, pleaded innocence and false implication. However, he neither opted to be examined on oath nor to produce defence.

Arguments heard and record perused.

6. It was the complainant Wali Bat Khan IHC who, on receipt of spy information regarding the smuggling of Charas by the appellant held a nakabandi at the crime spot when in the meanwhile motorcar bearing registration No. PL-2355 driven by the accused-appellant appeared which was stopped and search of the motorcar led to the recovery of 8 packets of Charas Gardah total weighing 10 KGs concealed in the secret cavities made in the floor beneath the doors of the motorcar. His ocular testimony was subjected to extensive cross-examination by the appellant but he stuck to his stance regarding the arrest of the appellant and the recovery of the

contraband Charas from the secret cavities made in the floor of the motorcar which was in exclusive possession of the appellant.

7. PW-3 also testified to the effect that the recovery of the Charas was effected in his presence vide recovery memo (Ex.PW2/1) and that the same correctly bore his signature. An attempt was made by the defence counsel to make some dent in his version but to no avail to the appellant. He firmly supported the prosecution's stance regarding the recovery of Charas from the motorcar driven by the appellant. Similarly, PW-1 namely, Mazhar Jehan Khan SHO, who conducted the investigation in the case also faced the test of cross-examination but no questions as such were asked from him whereby his investigation could be brought under the shadow of any doubt.

8. During the course of arguments, the learned counsel for the appellant lambasted the FSL report and contended that the same puts to naught the prosecution version according to which the recovered contraband was gardah but in the FSL report, its physical appearance has been shown to be '***brown***

solid'. We do not subscribe to this argument of the learned counsel for the appellant. Lately an impression has been created that '**Gardah**' as the very name connotes means "**powder**" and that is how the defence takes benefit of the same when during evidence in such like recoveries, PWs in all earnest and fairness while recording their statements call the recovered narcotics to be in solid or semi solid form. "**Charas Gardah**" by no means can be equated with its literal translation to be powder. "**Charas Gardah**" for all practical purposes is in solid but, of course, raw form. In common jargon this solid raw form is known as "**Gardah**". This misnomer by our estimate is safely pressed into service by the accused as his defence during trial. This is but an endeavour on our part to clarify or rather allay the misconception about the phrase "**Charas Gardah**". The overleaf of FSL report (Ex.PZ) shows that not only the recovered contraband was of "**brown solid**" form but when subjected to chemical examination, it tested positive during "**Duquenois Test**" as well as in "**Thinlayer Chromatography**" which are the tests conducted in order to ascertain as to whether certain

contraband item is Charas or otherwise. The **‘Test Report’** has been duly signed by the Chemical Expert FSL Peshawar as well as the Assistant Chemical Examiner FSL, KPK, Peshawar.

9. Another argument advanced before us is that as against the complainant, Wali Bat Khan, who during cross-examination termed the recovered contraband Charas to be of **‘Khar’** colour, PW3 in his cross-examination stated it to be of **‘blackish colour’** and in the FSL report its physical appearance has been shown to be **‘brown solid’**. We are rather amused with such contention. **‘Khar’** is the Pashto translation of the word **‘brown’**. By the same corollary, **‘Khar’, ‘brown’ and ‘blackish colour’** convey the same meaning and certainly depends upon the understanding and appreciation of different individuals of various colours.

10. The other argument strongly advanced by the learned counsel for the appellant is that the car from whose secret cavities Charas was recovered was not produced before the learned trial court. In order to fully appreciate this argument of the learned counsel for the appellant, we again went

through the entire evidence. As against the statements of PWs who vouched about the recovery of the contraband from the secret cavities made in the floor of the car, not a single question was asked from them about the non-production of the vehicle or that such cavities could not have been made in its floor. Even when the questions in respect of the vehicle were asked from the complainant Wali Bat Khan, they pertained to its ownership, registration book and its model and it would be more apt to reproduce the replies of the complainant to such questions:

- i) "Motorcar was shifted to PS through constable."
- ii) "I do not remember the name of the constable who brought the vehicle to PS."
- iii) "I have not observed the registration book about the ownership."

13. It needs no reiteration that CNS Act, 1997 is a special law and it has been specifically provided under section 29 of the Act that presumption of recovery of the contraband item is always deemed to be from the accused unless is proved to the contrary. In the present case, barring minor and negligible contradictions which, of course, do not strike at the roots of

the prosecution case, otherwise the PWs are unanimous about the recovery of the contraband item from the vehicle driven by the appellant. Being the driver, the appellant was the overall Incharge of the vehicle and thus cannot plead or feign ignorance about the contraband charas hidden in the secret cavities of the vehicle. The responsibility and liability of the driver has been resolved by the august apex court in case titled “*Muhammad Noor and others vs. The State*” (2010 SCMR 927). Moreover, the PWs were not at all questioned about any previous ill-will or animus with the appellant whereby he could have been falsely nabbed and charged for the possession of the contraband Charas. Not only the recovery of the Charas from the motorcar which was in the exclusive possession of the accused-appellant stood proved but also the separation of the samples, its sending to the FSL and the affirmative report later on vide Ex.PZ. Though the appellant has denied the prosecution allegations in his statement under section 342 Cr.P.C, but mere denial of charge and pleading innocence without substantiating the same through cogent evidence would not be sufficient to earn him

acquittal. Moreover, the appellant has neither appeared as his own witness under section 340 (2) Cr.P.C nor has produced any evidence in rebuttal to the prosecution evidence or for that matter in support of his plea of defence. The same per se suggests that the appellant had nothing in his defence.

14. In view of the fact that the prosecution case stood fully proved against the appellant to the hilt, the learned trial Judge recorded a well reasoned judgment after proper application of mind. As such the impugned judgment does not suffer from any illegality, misreading or non-reading of evidence which would in turn call for interference through the instant appeal.

Resultantly, this appeal being bereft of any merits stands dismissed.

Announced:
30.9.2015.

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