

H C J D A 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.11595 of 2019

Riaz Ahmad Vs. The State & another

J U D G M E N T

Date of hearing.	12.10.2020.
Appellant by:	Mr. Saleem Ullah Khan Balouch Advocate.
State by:	Mr. Waqas Anwar, Deputy Prosecutor General.

Malik Shahzad Ahmad Khan, J:- This appeal is directed against judgment dated 30.11.2018, passed by the learned Additional Sessions Judge, Pindi Bhattian, whereby, in case F.I.R No.135 dated 02.03.2017, registered at Police Station Jalalpur Bhattian under section 9(c) of the Control of Narcotic Substances Act, 1997, the learned trial Court convicted Riaz Ahmad, appellant and sentenced him as under:

***Under Section 9(c) of Control of
Narcotic Substances Act 1997** to four
years R.I with fine of Rs.8,000/- and in
default of payment thereof the appellant
was directed to further undergo S.I for
four months and fifteen days.*

*The benefit of section 382-B, Cr.P.C.
was also extended to the appellant.*

2. Briefly, the accusation levelled in the FIR against the appellant is that on 02.03.2017 at 3:50 P.M., Muhammad Yaqoob, SI (complainant/PW-1), along with other police officials, on spy information, conducted a raid and apprehended Riaz Ahmad (appellant). During search of the appellant opium weighing 1110-grams was recovered from the shopper bag caught by the

appellant in his right hand. The above mentioned recovered opium was sealed into a separate parcel and the same was sent for Chemical Analysis. The appellant was interrogated and *challaned* to face the trial. The charge was framed against the appellant on 31.03.2017, to which he pleaded not guilty so the prosecution was directed to produce its evidence. The prosecution produced six witnesses to prove its case. The learned Additional Sessions Judge, Pindi Bhattian, after recording the statement of the appellant under section 342 Cr.P.C and hearing the arguments, passed the impugned judgment, whereby, the appellant was convicted and sentenced as mentioned and detailed above.

3. Feeling aggrieved of the impugned judgment, the instant appeal has been preferred by the appellant.

4. Learned counsel for the appellant in support of this appeal contends that full protocols were not mentioned by the office of Punjab Forensic Science Agency while preparing the report (Ex.PD); that the prosecution has miserably failed to prove its case against the appellant beyond the shadow of doubt, therefore, the appellant may be acquitted from the charge while setting aside the impugned judgment.

5. On the other hand, the learned Deputy Prosecutor General has supported the impugned judgment of the learned trial Court by contending that the prosecution has proved its case against the appellant beyond the shadow of any doubt, therefore, the appellant was rightly convicted and sentenced by the learned trial Court; that the appellant cannot be acquitted on the sole ground that full protocols have not been mentioned in the report of Punjab Forensic Science Agency; that there is no substance in the present appeal, therefore, the same may be dismissed.

6. Arguments heard. Record perused.

7. It is by now well settled that since the provisions of The Control of Narcotic Substances Act, 1997, provide stringent punishments, therefore, their proof has to be construed strictly and the benefit of any doubt in the prosecution case must be extended to the accused. Reference in this respect may be made to the case of “Muhammad Hashim V. The State” (PLD 2004 Supreme Court 856). Dealing with the same proposition, the Hon’ble Supreme Court of Pakistan held in the case of “Ameer Zeb V. The State” (PLD 2012 Supreme Court 380) that harder the sentence, stricter the standard of proof. Seeking guidance from the above mentioned judgments of the august Supreme Court of Pakistan, we proceed to decide the instant case. We have observed that the report of Punjab Forensic Science Agency (Ex.PE), tendered in evidence by the prosecution in this case does not give the details of the full protocols and the test applied at the time of analysis of sample of narcotics allegedly recovered from the possession of the appellant.

Relevant/operative part of the report of the Punjab Forensic Science Agency tendered in evidence by the prosecution as (Ex.PE), reads as under:-

Item No. Description of Evidence

01. One sealed parcel containing approximately 1110 gram(s) of suspected Opium.

Tests Performed on Received Item(s) of Evidence

1. Top-Load Balance was used for weighing.
2. Chemical Spot Tests were used for Presumptive Testing.
3. Gas Chromatograph-Mass spectrometry was used for confirmation.

Results and Conclusion:-

Item # 01 **1115.6 gram(s)** of blackish brown resinous material in sealed parcel contains **Opium**.

Undisputedly, it is settled by now that any report failing to describe in it, the details of the full protocols and the tests applied will be inconclusive, unreliable suspicious and untrustworthy and will not meet the evidentiary presumption attached to a Report of the Government Analyst under section 36(2) of the Act *ibid*. In the report Ex.PE, it is simply mentioned that certain tests were conducted and contraband material recovered in this case was found to be ***Opium*** instead of mentioning the details of tests applied on the samples and their protocols as required by law. The evidentiary value of above said report has been evaluated by us in the light of Control of Narcotic Substances (Government Analysts) Rules, 2001. Rule 6 of the said Rules makes it imperative on an analyst to mention result of material analyzed with full protocols applied thereon along with other details in the report issued for test/Analysis by the Laboratory.

8. We also find that the report (Ex.PE), of the Punjab Forensic Science Agency, Lahore is not in line with the principles enunciated by the august Supreme Court of Pakistan in the case of “The State through Regional Director ANF Vs. Imam Bakhsh and others” (2018 SCMR 2039). The relevant portion of the said judgment is reproduced as under:-

16. Non-compliance of Rule 6 can frustrate the purpose and object of the Act, i.e., control of production, processing and trafficking of narcotic drugs and psychotropic substances, as conviction cannot be sustained on a Report that is inconclusive or unreliable. The evidentiary assumption attached to a Report of the Government Analyst under section 36(2) of the Act underlines the statutory significance of the Report, therefore, details of the test and analysis in the shape of the protocols applied for the test become fundamental and go to the root of the statutory scheme. Rule 6 is, therefore, in the public interest and safeguards the rights of the parties. Any report (Form-II) failing to give details of the full protocols of the test applied will be inconclusive, unreliable, suspicious and untrustworthy and will not meet the evidentiary assumption attached to a Report of the Government Analyst under section 36(2).

Resultantly, it will hopelessly fail to support conviction of the accused. This Court has already emphasized the importance of protocols in Ikramullah's case (supra)".

The above said view has been further fortified in the recent case law titled as "Khair-ul-Bashar Vs. The State" (2019 SCMR 930). We have also requisitioned the attested copy of FIR in case of "Khair-ul-Basher" (supra) i.e., FIR No.18, dated 15.01.2016, offence under section 9(c) of the Control of Narcotic Substances Act, 1997, registered at Police Station Westridge, District Rawalpindi, as well as, attested copy of the report of the Punjab Forensic Science Agency, Lahore, exhibited as Ex.PH, in the said case before the concerned trial Court. The report of the Punjab Forensic Science Agency, Lahore, produced in evidence as Ex.PH, in the case of "Khair-ul-Basher" (supra) is identical with the report of the Punjab Forensic Science Agency, Lahore, produced in the evidence of the present case before the learned trial Court as Ex.PE. As identical report in the case of "Khair-ul-Basher" (supra) has not been relied upon by the august Supreme Court of Pakistan, therefore, report of the Punjab Forensic Science Agency produced in evidence of this case by the prosecution as Ex.PE, is also not worthy of reliance.

9. Learned Deputy Prosecutor General has argued that the appellant cannot be acquitted on the above mentioned sole ground of non-mentioning of protocols/full details of test applied, in the report of the Punjab Forensic Science Agency, Lahore but we have noted that the august Supreme Court of Pakistan in the case of "Khair-ul-Bashar" (supra), acquitted the accused of the said case on the abovementioned sole ground of non-mentioning of protocols/full details of the tests applied in the report of the Punjab Forensic Science Agency, Lahore. Even otherwise, it is by now well settled that a single circumstance creating reasonable doubt would be sufficient to cast doubt about the veracity of prosecution case and the benefit of said doubt has to be extended

in favour of the accused not as a matter of grace or concession but as a matter of right. Reliance in this regard is placed upon the cases of “Tariq Pervez Vs. The State” (1995 SCMR 1345), “Akhtar Ali and others Vs. The State” (2008 SCMR 06) and “Muhammad Zaman Vs. The State and others” (2014 SCMR 749).

10. In the light of above discussion, the instant appeal (**Crl. Appeal No.11595 of 2019**), is allowed, impugned judgment dated 30.11.2018, passed by the learned Additional Sessions Judge, Pindi Bhattian is hereby set aside and Riaz Ahmad (appellant) is acquitted of the charge by extending him the benefit of doubt. The appellant is in custody, he be released forthwith, if not required in any other case.

(Ch. Mushtaq Ahmad)
Judge

(Malik Shahzad Ahmad Khan)
Judge

Approved for Reporting

(Ch. Mushtaq Ahmad)
Judge

(Malik Shahzad Ahmad Khan)
Judge