

## **JUDGMENT SHEET**

### **IN THE PESHAWAR HIGH COURT, PESHAWAR, [JUDICIAL DEPARTMENT]**

**Cr. Appeal No. .... 485-P/2020**

The State..... Appellant.

#### **Versus.**

Said Bahar..... Respondent.

For Appellant: - Mr. Rab Nawaz Khan, AAG.

For respondents:- Malik Nasruminallah, Advocate.

Date of hearing: 23.12.2020

## **J U D G M E N T**

**MUHAMMAD NAEEM ANWAR, J.-** This criminal appeal has been directed against the judgment/order dated 12.02.2020 passed by learned Judge, Special Court, Peshawar, whereby accused-respondent Said Bahar, involved in a case FIR No. 121, dated 05.02.2018, under section 9 ( c ) CNSA was acquitted of the charge.

2. As per prosecution story, Tariq Khan SI along with other police contingent, on 05.02.2018, was present on nakabandi laid at Karhano Check post when at 18.00 hours a motorcar bearing registration No. LEA-10/4366, was stopped for the purpose of checking. The driver of the motorcar disclosed his name as Said Bahar while the front seater disclosed his name as Rasool Khan. Search of the vehicle led to the recovery of 12000 grams chars and 4000 grams heroin, therefore, both the accused were arrested, resultantly, the above referred case FIR was registered against them. After

completion of investigation, complete challan was forwarded to the court where the accused Said Bahar faced the trial while accused Rasool khan absented himself, therefore, proceedings under section 512 Cr.P.C was initiated against him. After commencement of the trial, the prosecution produced eight witnesses. After closure of the prosecution evidence, accused was examined under section 342 Cr.P.C wherein he stated that he was, in fact, picked up by the local police from his house and implicated him in the instant case as he was having business dispute with different people. He in his defence also produced Hamayun Khan as DW-1, Bahar Gul as DW-2 and Hazbullah as DW-3. The learned trial Court after hearing the parties acquitted accused Said Bahar from the charges while accused Rasool khan was declared proclaimed offender vide judgment dated 12.02.2020, hence, the instant appeal by the State.

4. Arguments heard and record perused.

5. It is reflected from the record that the occurrence took place at 18.00 hours on 05.02.2018 while the instant FIR was registered on the same day at 19.10 hours. Muslim Taj, Head constable, the marginal witness to the recovery memo, Exh. PW 1/1, vide which the seizing officer recovered and took into possession the alleged stuff, when appeared as PW-2 in the first line of his cross examination stated that they left the Police Station at 08.40 P.M for the purpose of nakabandi and remained on the nakabandi point for about two hours and

thereafter the subject vehicle arrived, meaning thereby the subject vehicle was arrived at 10.40 p.m while the occurrence as per contents of FIR was taken place at 1800 hours (06.00 p.m), while the Seizing Officer (PW-8) in his cross examination totally belied the statement of the marginal witness by stating that they had not left the Police Station for Nakabandi rather the point of Nakabandi was a permanent point and they were present on the place of nakabandi since 09.00 a.m. Besides the above disagreement in the statements of Seizing officer and marginal witness of the recovery memo, it cannot be ruled out that the entire process has been completed by the police while sitting in the police station as obvious from the statements of the prosecution witnesses because Imtiaz Alam, the investigating officer, (PW-7) stated in his cross examination that investigation of the case was entrusted to him at 19.50 hours and he reached to the spot at 08.40 p.m while as per statement of the Seizing Officer he was present at the spot at the time of arrival of the I.O but his statement was not in line with the statement of Moharrir of the police Station namely, Muhammad Saeed (PW-6) who stated in his cross examination that the parcels were handed over to him by Tariq Khan at 08.00 p.m, meaning thereby the seizing officer at the time of arrival of the I.O to the spot was not present there rather he was in the Police Station. The perusal of evidence produced by the prosecution leads one to the conclusion that

the occurrence has not been taken place in the mode and manner as structured by the prosecution.

6. Moreover, Muhammad Saeed Moharrir as PW-6 stated that Tariq Khan SI handed over to him the sealed parcels on 05.02.2018 who further handed over the same to Rifaz constable on 06.02.2018 for onward transmission to the Laboratory while Rifaz No. 5915 (PW-4) stated that the samples were not handed over to him on 06.02.2018. Even application for sending the samples to the laboratory has not been drafted. Hon'able the Supreme Court of Pakistan in the case of **State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039)** has observed that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not established by the prosecution there it cannot be held that the prosecution had succeeded in establishing its case against the accused.

7. Apart from the safe custody and safe transmission of the samples, the FSL report does not bear the test protocols that were applied to carry out these tests and in this respect in the case titled **Khair-ul-Bashar v. the State (2019 SCMR 930)**, it was held by the apex Court as under:--

"10. In the present case examination of the report of the Government Analyst mentions the tests applied but does not provide their results except a concluding result, presumably of all the tests, which is not sufficient. The Report also does not signify the test protocols that were applied to carry out

these tests. Hence, the mandatory requirement of law provided under Rule 6 has not been complied with and, thus, it is not safe to rely on the Report of the Government Analyst dated 18-02-2016. As a conclusion, it is reiterated, that the Report of the Government Analyst must mention (i) all the tests and analysis of the alleged drug (ii) the result of the each test(s) carried out along with the consolidated result and (iii) the name of all the protocols applied to carry out these tests.

Reliance is also placed on the case titled **Qaiser Javed Khan vs. The State through Prosecutor General Punjab, Lahore and another, (PLD 2020 SC 57)** wherein it has been held by the Hon'able apex Court that:-

“8. The report of the Government Analyst in the instant case does not specify the protocols of the tests applied and thus does not meet the requirements of the law as interpreted by this Court in the cases of Amam Bakhsh and Khair ul Bashar (supra). The said Report cannot be relied upon for the conviction of the petitioner.”

8. The combined study of the evidence produced by the prosecution would reveal that the prosecution has not been able to prove its case against the respondent-accused beyond any shadow of doubt against the accused-respondent, thus, he has rightly been acquitted of the charge by the learned trial court by extending him with the benefit of doubt.

9. Above all, there is no cavil with the proposition that the scope of interference in appeal against acquittal is most narrow and limited because in case of acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence that an accused shall be presumed to be

innocent unless proved guilty. Simple is that the presumption of innocence is doubled and the courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, based in gross violation of law, suffering from the errors of grave mis-reading or non-reading of the evidence.

9. Having thus considered the background of the case and for the reasons discussed above, we do not feel inclined to draw a conclusion different from what the learned trial court has drawn and, hence, do not feel hesitant to uphold the acquittal of the respondent-accused, resultantly, the same is maintained and, accordingly, dismiss the appeal.

**Announced**  
**23.12.2020.**

\*M.Zafra PS\*

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(DB: Hon'able Mr. Justice Syed Muhammad Attique Shah &  
Hon'able Mr. Justice Muhammad Naeem Anwar)