

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

Cr.A No.397-B of 2016.

The State

Vs.

Imran

JUDGMENT

Date of hearing 05.05.2020.

Appellant Mr. Shahid Hameed Qureshi Addl: A.G

Respondent Nemo.

SAHIBZADA ASADULLAH, J.--- The State through Advocate-General, Khyber Pakhtunkhwa, assailed the judgment dated 29.06.2019, rendered by the learned Additional Sessions Judge-IV/ Judge Special Court, Lakki Marwat, whereby the accused/ respondent Imran involved in case F.I.R No. 167 dated 26.04.2014, charged under section 9 (C) CNSA, Police Station Pezu, district Lakki Marwat was acquitted of the charges.

2. Brief facts of the case as per F.I.R are that complainant Muhammad Javed Khan, ASI, received spy information regarding smuggling of huge quantity of narcotic through a motorcar, when he alongwith other police *nafri* was present on the picket at Indus Highway,

meanwhile a motorcar bearing No. PH/733 Islamabad, came from Bannu side, which was signaled to stop, but the driver accelerated the motorcar, which was chased. After covering some distance the motorcar was found parked near the mountain. One person boarded from the motorcar and make his escape good, while other person sitting in the motorcar was apprehended, who disclosed his name as Imran son of Muhammad Ayub r/o Karri Marwat Tank and the name of other person, who escaped as Naseer Muhammad son of Mumtaz r/o Umar Adda. On checking 18200 grams chars were recovered from a gas cylinder which was fixed in the dickey of said motorcar. Accused was arrested, *murasila* to this effect was drafted and sent to the Police Station through constable Alamgir No.603, where the contents of *murasila* were culminated into above mention F.I.R.

3. On completion of investigation complete challan was submitted against the accused before the learned trial Court, where after fulfilling codal formalities under section 265-C Cr.P.C formal charge was framed against the accused, to which he pleaded not guilty and claimed trial. The prosecution in order to prove guilt of accused/ respondent produced and examined five witnesses, on close of prosecution evidence, statement of accused/ respondent was recorded under section 342 Cr.P.C, wherein he professed innocence. The accused/ respondent neither wished to produce defence nor opted

to be examined on oath under section 340(2) Cr.P.C. Learned trial Court after hearing arguments of learned counsel for the parties, vide impugned judgment dated 29.06.2016, acquitted the accused/ respondent, hence, the instant appeal.

4. Accused/ respondent was summoned repeatedly, but as per report of process server, he has proceeded abroad. As, this appeal cannot be kept pending for an indefinite period, arguments of learned Addl: A.G representing the state heard and record perused.

5. Owing to spy information the complainant alongwith police *Nafri* laid picket on the Indus Highway, where they saw the motorcar bearing registration No. PH-733, Islamabad coming fast. It was signaled to stop, but the driver accelerated the speed and was chased, where after covering some distance it was found parked on the roadside, whereas a little ahead in the mountain the driver was running. The police *Nafri* chased the driver, but he could not be overpowered, so they approached back the motorcar and found a person sitting in the front seat. On inquiry the person sitting therein disclosed his name as Imran son of Muhammad Ayub r/o Kirri Marwat, District Tank and divulged that the ran away accused was Nasir Muhammad son of Mumtaz r/o Umar Adda, District Tank. The complainant searched the motorcar and found chars in the gas cylinder fitted in the dickey of the car, which on weighment came out to be 18200 grams. The

accused was arrested and on arrival of the Investigating Officer the site-plan was prepared at the instance of the complainant and eye-witnesses.

6. The complainant was examined as PW-03, who stated that after receiving information he alongwith six others reached to the spot a little early and found the car coming with enormous speed and after it was signaled to stop it went ahead with accelerated speed and was chased through his Alto/ Suzuki motorcar. The statement of the complainant is a little disturbing that how an Alto motorcar could accommodate seven police officials duly armed with weapons, including him and that when the motorcar was signaled to stop and it did not, how in the shortest span of time all the seven boarded the motorcar and chased the vehicle containing narcotics. This is astonishing that the distance between the place where the picket was laid and the place where the motorcar was parked when the driver deboarded and ran away was stated to be one kilometer. It troubles a little when the complainant stated that, when they reached they found the motorcar parked with the driver missing if this deposition of the complainant is accepted then there was ample opportunity for both the driver and the front seater / respondent to run away; and that why the accused / respondent could not get the benefits when allegedly the police *Nafri* was chasing the driver in the mountain. If we accept the testimony of the complainant to be correct then

we can presume that either the respondent was not present in the motorcar or he was not in the knowledge regarding the narcotics.

9. The complainant further stated that on their arrival near the motorcar he recovered the narcotics from the gas cylinder fitted in the dickey. It adds a little to our worries that how without the pointation of the respondent the complainant went straightaway to the dickey and recovered the narcotics without searching rest of the motorcar. It was further stated that the gas cylinder was removed by all seven and was placed on the ground where after with the help of instruments i.e. screw driver it was opened and the recoveries were effected. Ayub Khan SI was examined as PW-05, who stated that when he reached near the motorcar he found the gas cylinder intact in the dickey and without dislodging it the recovery was effected. The complainant stated that the weighment was made with the help of a digital scale lying in his motorcar, whereas the Investigating Officer stated that he himself made the weighment with the help of a manual scale by using different bots.

8. The prosecution case runs with abnormalities that despite the fact the police officials were armed with sophisticated weapons but they did not resort even to areal firing to compel the decamping accused to stop and apprehend and we are surprised that why an open opportunity was extended to him to leave the scene. The

witnesses ran with glaring contradictions and improvements and they never remained consistent on material points of the case. In this respect reference can be made to PW-04 Kaleemullah who on every step went to improve the prosecution story when was confronted thoroughly with his 161 Cr.P.C statement. PW-04 stated that he disclosed the details of the quantity of each packet to the Investigating Officer and that he also stated in his statement that it was he who informed the Investigating Officer that the *murasila* was taken by one Alamgir from the spot to the Police Station. He went on to say that the Investigating Officer prepared the site-plan at his instance but when his 161 Cr.P.C statement was taken into consideration nothing of these details were found therein. The witnesses went on conscious improvements with the sole purpose to connect the respondent with the narcotics by all means. The seizing officer stated that he made the recoveries on his own and not on the pointation of the respondent meaning thereby that the respondent was not in the knowledge of the narcotics in the motorcar and his conscious knowledge could not be established.

In case titled Muhammad Mansha Vs. The State (2018 SCMR 772), it was held that:-

"Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his

case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses".

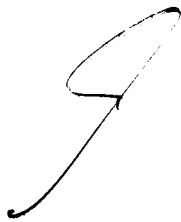
9. This was left unresolved as to whose ownership the motorcar was, the Investigating Officer did not collect anything on record which could tell of the background of the motorcar and its owner. The Investigating Officer when came to the witness box stated that when the respondent was investigated, he divulged that the chars belonged to one Naseer Muhammad, Asghar and Yousaf, but the Investigating Officer despite these information did not array them as accused nor the case was investigated on these lines. The witnesses went on telling nothing but lie as the complainant stated that at the time of recovery he photographed the motorcar and the process of recovery, but when the Investigating Officer was asked regarding this particular aspect of the case, he blatantly refused to have been provided with any photographs. The lack of interest of the Investigating Officer can be gathered from the fact that he did not try to consult the concerned Excise and Taxation Office, so that to know that who was its original owner. One of the devastating aspect of the case is that neither the motorcar

nor the gas cylinder wherefrom the recoveries were effected was exhibited.

10. The narcotics was recovered on 26.04.2014 and so the application was addressed to the Director Forensic Sciences Laboratory but the test samples were received to the laboratory on 06.05.2014 i.e. after a considerable delay of 10-days. The Investigating Officer was questioned time and again regarding the remaining case property and its safe custody, who initially stated that he did not know that where was it lying but later on stated that it was lying in the custody of the Moharrir of the concerned Police Station. This is admitted on record that neither the statement of the Moharrir was recorded nor an abstract from register No.19 was collected and placed on the record. The official who was deputed to take the test samples to the laboratory was not examined when so the recovery, its safe custody and its smooth transmission to the Forensic Sciences Laboratory could not be established beyond reasonable doubt and this piece of evidence loses its worth and cannot be taken into consideration, as a reliable piece of evidence against the respondent. We are convinced that dispatch of the of the test samples from the Police Station to the Forensic Sciences Laboratory has not been established in the way and in the manner as is commanded by the law, hence, the FSL report so collected cannot be accepted and relied upon.

In case titled Kamran Shah and others Vs.

The State and others (2019 SCMR 1217), it was held that:




It is not disputed that the narcotic substance recovered in this case had been recovered from some secret cavities of a vehicle in which the present appellants were travelling at the relevant time as passengers and the said vehicle was being driven by Saeed Ahmed co-convict. It was, thus, incumbent upon the prosecution to establish conscious possession of the contraband substance on the part of the present appellants but no evidence worth its name had been brought on the record in that respect. The record of the case shows that safe custody of the recovered substance at the local Police Station had not been established by the prosecution during the trial. Muhammad Afzal, Moharrir (PW3) had been produced by the prosecution before the trial Court but he had said nothing about receipt of the case-property or its safe custody by him. Even safe transmission of the samples of the recovered substance from the local Police Station to the office of the Chemical Examiner had not been proved by the prosecution.

11. The Control of Narcotic Substances Act, 1997 has provided stringent punishment for those involved and also the law enforcing agencies have been put under a heavy responsibility to bring solid and material evidence against the accused and even the laboratories concerned have been provided a mechanism which they are to follow while analyzing the test samples. The law as well as the apex Court time and again emphasized that while dealing with the test samples and preparing the reports on its strength, the concerned laboratories are under heavy obligation to adhere to the

procedure in this respect and especially to specify the protocols of the test applied and this is the duty of the trial Courts to examine the contents of report and to assess its evidentiary value.

In case titled ***Ikramullah and others Vs.***

The State (2015 SCMR 1002), it was held that:-



"We have particularly noticed that the report submitted by the Chemical Examiner (Exhibit-P.W.2/5) completely failed to mention the basis upon which the Chemical Examiner had come to a conclusion that the samples sent to him for examination contained charas. According to Rules 5 and 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001 a complete mechanism is to be adopted by the Chemical Examiner upon receipt of samples and a report is then to be submitted by him referring to the necessary protocols and mentioning the tests applied and their results but in the case in hand we note that no protocol whatsoever was mentioned in the report submitted by the Chemical Examiner and no test was referred to on the basis of which the Chemical Examiner had concluded that the samples sent to him for examination contained charas".

12. It is turning to be a common practice with the Investigating 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 Investigating Officer will lose the courage to manipulate the cases in police stations. In the present case, when the Investigating Officer 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 this lack of seriousness tells nothing but to stamp him as an interested witness and his testimony cannot wholeheartedly be relied upon.

In case titled Pir Noroz Ali Shah Vs. The State (2019 P.Cr. L.J. 457 [Peshawar (Abbottabad Bench)], it was held that:

In order to establish the movement of police officials 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.

13. The recovery so effected could not get support from both i.e. the complainant and the Investigating Officer as they stated that the recovered narcotics was consisting of slabs and that it was chars *pukhta* but when the case property was produced before the trial Court, on request of the learned counsel for the

respondent it was opened, where on one hand some of the seals were found broken, whereas on the other it was in pieces, this contradiction further disputes the veracity of the witnesses on one hand and the identity of the recovered narcotics on the other, when such was the state of affairs then it was hard for the learned trial Court to convict the respondent.

14. Besides the above, generally the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is, that, if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is casted upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether the accused committed the offence or not. The principle to be followed by this Court considering the appeal against the judgment of acquittal is, to interfere only when there are compelling and

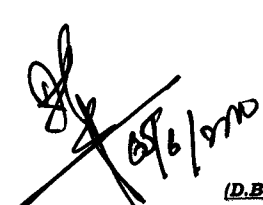
substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.

15. For the reasons mentioned hereinabove, this appeal being without merit and substance is hereby dismissed.

Announced.
05.05.2020


JUDGE


JUDGE


10/6/2020

(D.B) Ms. Justice Musarrat Hilali and Mr. Justice Sahibzada Asadullah