

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 607-P of 2014.

JUDGMENT

Date of hearing..... 18.10.2017.....

Appellant: (Imran Dilawar) by Mr.Noor Alam Khan,
Advocate.

Respondents/State: (ANF) by Mr. Muhammad Tariq Kakar,
Advocate.



QALANDAR ALI KHAN, J:-This criminal appeal by the convict/appellant, Imran Dilawar, pertains to case FIR No.05 registered in Police Station, ANF, Peshawar under Section 9 (c)14/15 CNSA, 1997, on

11.01.2014, on the report of Inspector, Mushtaq Ahmed P.S ANF, Peshawar, (complainant), who had allegedly, received information through high ups about smuggling of narcotics by notorious drug smugglers, namely, Azgar son of Zamin Khan Shinwari, and Usman son of Yar Muhammad Shinwari, residents of Landi-Kotal through the appellant/accused in Motorcar No.VV-155/Islamabad from tribal territory to Punjab; therefore, he along with other police officials mentioned in the FIR laid a barricade near Kacha Garhi, Jamrud road, Peshawar, and stopped the aforementioned car coming from *Karkhano* market, and after 'overpowering' driver of the motorcar, who disclosed his name as Imran Dilawar son of Dilawar Masih, resident of Hayatabad, Peshawar, also revealed, during interrogation, presence of narcotics in the secret cavity of dish-board of the car. According to the complainant/Inspector, keeping in view the prevailing security situation, the motorcar

along with the narcotics and the accused/appellant were shifted to P.S ANF, where search of the car led to recovery of 7 packets containing *tikkis* of opium and four packets chars *Garda* wrapped in yellow adhesive tape, which on weighment were found 1 x 1 kilogram each, total 7 kilograms opium, and four kilograms chars *Garda*. After recovery, the complainant separated 10/10 grams samples from each of 7 packets of opium and 4 packets of chars *Garda* for chemical analysis in FSL, and sealed them separately; while the remaining contraband were also sealed separately. The complainant/Inspector also recovered cash amount of Rs.7000/-, photo copy of registration of the motorcar in the name of Noor-ul-Amin son of Muhammad Amin resident of Harno Thandapani, Islamabad, receipt of Madina Rent –A-car, press card, smart card, CNIC of the accused/appellant, keys, receipt of license, Nokia cell phone set and Sims as a result of personal search of the

accused/appellant; and also took into possession the vehicle used in the commission of the offence.

2. The samples separated from the recovered opium and chars by the complainant/Inspector were sent to the FSL, Peshawar, and result there-from was received in the affirmative, confirming the samples to be that of opium and chars, respectively. The remaining two co-accused, named in the FIR as Azgar and Usman remained at large, therefore, were proceeded against under Sections 204 and 87 Cr.PC, and on completion of investigation, challan was submitted against them under Section 512 Cr.PC, while complete challan was submitted against the appellant/accused to the learned trial Court/Judge, Special Court (CNS), Peshawar.

3. The learned Trial Court/Judge, Special Court (CNS), Peshawar, formally charged the accused/appellant under Section 9 (c) read

with Sections 14/15 CNSA, 1997, to which the accused/appellant pleaded not guilty and claimed trial. In order to substantiate charges against the accused/appellant, the prosecution produced Mehmood-ul-Hassan, Inspector/SHO P.S ANF Peshawar (PW1); Constable Zaheer Ahmed P.S ANF Peshawar(PW.2); Bashir Khan ASI P.S ANF Peshawar (PW.3); Mushtaq Ahmed, Inspector P.S, ANF Sialkot (PW.4) and Mushtaq Ahmed HC PS ANF Sialkot (PW5). After prosecution closed its evidence, statement of the appellant/accused was recorded under Section 342 Cr.PC, wherein, he refuted allegation of recovery of narcotics from his possession levelled against him by the prosecution; but declined to be examined on oath or produce defence evidence. Having heard the learned Special Prosecutor and learned counsel for the accused, the learned Judge, Special Court (CNS), Peshawar, rendered the impugned judgment dated 25.10.2014, thereby convicting the

accused/appellant under Section 9 (c) CNSA 1997, and awarding him the punishment of imprisonment for life with fine of Rs.200000/- and in case of failure to pay the fine to further one year S.I; while extending benefit of Section 382-B Cr.PC to the appellant/accused; hence the instant appeal by the appellant/accused against his conviction and sentences awarded to him by the learned Judge, Special Court (CNS), Peshawar.

4. Arguments of learned counsel for the appellant and learned Standing counsel on behalf of the ANF heard; and record perused.

5. Notwithstanding contentions of learned counsel for the appellant with regard to the alleged recovery of 7 kgs opium and 4 kgs chars *Garda*, total 11 kilograms narcotics, from the secret cavity in the dish-board of the motorcar inside the police station and not at the place where the motorcar was found, allegedly, having the narcotics, the undisputed

presence of the appellant/accused in the motorcar wherefrom the recovery of narcotics was made, coupled with his statement under section 342 Cr.P.C to the effect that he was seated on the rear seat of the motorcar being servant of Azgar who was driving the car at the relevant time whereas Usman was seated on the front seat of the car, and further that both the accused were let free by the I.O with ulterior motives, whereas he “being poor servant of Azgar was substituted for them”, together with recovery of receipt of Madina Rent-A-car showing him hiring the car on self driving basis from 08.01.2014 to 22.01.2014, not only proves his presence on the driving seat of the car, at the relevant time, but also belie his assertion that he was not driving the car and was present in the car only as a servant of the absconding co-accused.

6. The possession of narcotics having been proved against the appellant/accused, the next question for determination was

quantum of punishment, as the appellant/accused was awarded punishment of imprisonment for life for having in his possession 11 kilograms of narcotics i.e. 7 kilograms opium and 4 kilograms chars *Garda*. The learned counsel for the appellant/accused, therefore, questioned taking of samples from entire opium of 7 kilograms, in view of each of the 7 packets of opium containing 4 *tikkis* (slabs). In view of admission on the part of the PWs that samples were not separated from each *tikki* (slab) of the opium and that samples were taken from the packets containing *tikkis* (slabs), the case property was requisitioned and opened in the Court. On opening the packets of opium, 4 *tikkis* (slabs) were found in each one packet of opium and sample was also found separated by cutting one corner of the *tikkis* (slabs). In view of the fact that seven samples were, admittedly, not separated from each of the four *tikkis* (slabs) in a packet; and, thus, 10 grams sample separated from the

packet cannot be considered representing the entire one kg opium in a packet; and, in the same manner, opinion of the chemical examiner would also be with respect to only 10 grams opium from a packet, total 70 grams from seven packets of opium. There was, however, nothing on the record to suggest that chars in four packets was also in the shape of *tikkis* (slabs), therefore, 10 grams sample obtained from each of four packets of chars; and, likewise, report of the chemical examiner in respect thereof is to be considered representing four kgs chars in four packets; and, thus, bringing down quantity of narcotics from 11 kgs to 4 kgs chars and 70 grams opium, total 4070 grams narcotics; and accordingly making the accused/appellant liable to lesser punishment in the light of judgment of the apex Court dated 06.05.2015 in Cr.A No.14-P of 2015 titled Muhammad Mustafa Versus the State.

7. In view of the forgoing discussion, the appeal is partially accepted and while maintaining conviction of the appellant/accused under Section 9 (c) CNSA; the punishment awarded to the appellant is reduced from life imprisonment to five years R.I, with benefit of Section 382-B Cr.P.C; and also to the reduced fine of Rs.50, 000/- and in default of payment of fine to further two months S.I, instead of sentence of fine of Rs.200000/- awarded to the appellant by the learned trial Court/ Judge, Special Court (CNS), Peshawar. The appeal is accordingly disposed of in the terms noted hereinabove.

Announced.
18.10.2017.

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*(D.B) Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Qalandar Ali Khan.*