

Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

J.Cr.A No.109-B of 2022

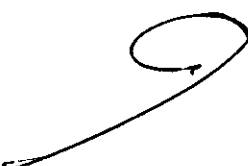
Ghulam Jan
Vs
The State

JUDGMENT

For Appellant: **Mr. Sawal Nazir Khan Advocate**

For State: **Sardar Muhammad Asif, Asstt: A.G.**

Date of hearing: **29.11.2022**



SAHIBZADA ASADULLAH, J--- Appellant Ghulam Jan was tried by the learned Additional Sessions Judge-III / Judge Special Court, District Bannu for the offence under section 9(d) of Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 in case FIR No.17 dated 19.03.2020 registered with Police Station Sub-Division, Wazir, District Bannu and vide judgment dated 30.05.2022, the appellant was convicted under section 9(d) ibid and sentenced to rigorous imprisonment for life alongwith fine of Rs.5,00,000/- (Rupees Five Lac) or in default thereof, to undergo 06 months S.I. Benefit under section 382-B Cr.P.C was extended to the appellant / convict. Being aggrieved, the appellant through the instant appeal has

questioned the legality of the impugned judgment and the awarded sentence.

2. The transient facts ending in filing of the instant criminal appeal are that on 19.03.2020, complainant Hafeez-ur-Rehman SHO (PW-02) alongwith police contingent was on patrol duty under the supervision of Sher Akbar Khan, Circle Officer, in the limits of Baran Dam, when at about 17:30, he received spy information regarding transportation of huge quantity of narcotics through Mazda Truck bearing Registration No.W-3133/Peshawar, in response to which, he made barricade at Bannu – Miran Shah Road; meanwhile, at about 18:20 hours, the truck rushed there, which was stopped and its driver was deboarded. Upon query, the driver disclosed his name as Ghulam Jan whose physical search went in vain, however, search of the truck led to recovery of 440 packets of Charas wrapped in yellow solution tape, from its secret cavities, beneath its floor. All the 44 packets were weighed separately and the total quantity came out 55893 grams and from each of these packets, samples of 10 / 10 grams of Charas were separated for the purpose of chemical analysis at Forensic Science Laboratory, while the remaining quantity of 55453 grams was packed and sealed in parcel No.45. The truck alongwith charas were taken into possession vide recovery

memo Ex.PC. The accused was accordingly arrested vide his arrest card of even date and murasila report Ex.PB was drafted and sent to the Police Station through constable Aziz-ur-Rehman No.76 for registration of the case, hence, the *ibid* FIR.

3. After completion of investigation, prosecution submitted complete challan, where at the commencement of trial, the prosecution produced and examined as many as 05 witnesses. On close of prosecution evidence, statement of appellant / accused was recorded under section 342 Cr.P.C, wherein he professed innocence and false implication, however, neither he opted to be examined on oath as provided under section 340(2) Cr.P.C nor wished to produce defence evidence. After hearing arguments, the learned trial Court vide the impugned judgment dated 30.05.2022, convicted and sentenced the appellant as mentioned above. Hence, the instant appeal against the judgment of conviction.

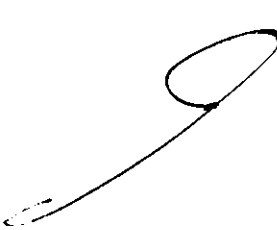
4. We have heard at length the learned counsel for the appellant as well as learned Assistant Advocate General representing the State and gone through the record, with their valuable assistance.

5. The appellant after having been booked in the instant case was arrested, the trial commenced and on conclusion of the trial, the learned trial court was pleased to convict him vide the

impugned judgment for the offence charged. The learned trial court applied its judicial mind to the collected evidence on file and after assessing the recorded statements before it, passed the impugned judgment. This Court is to see as to whether the learned trial court appreciated the evidence on file and as to whether the impugned judgment is the outcome of application of judicial mind, to the facts and circumstances of the case. There is no denial of the fact that under the Act, for commission of the offence, stringent punishment is provided and that when the punishment is severe then the prosecution is equally burdened with the liability to prove the charges against the accused to the hilt. In the present case, the prosecution examined as many as 05 witnesses and to ascertain as to whether the learned trial judge was justified to convict the appellant, we feel it essential to revisit and re-appreciate the evidence, once appreciated, so that miscarriage of justice could be avoided.

6. It was on 19.03.2020 that on spy information, the complainant alongwith police officials made barricade at the place of incident and after some time, the truck in question approached to the spot, which was signaled to stop and the driver was deboarded therefrom. The truck was searched, which led to the recovery of 44 packets of charas from its secret

cavities. The accused was arrested and copy of *murasila* was sent to the Police Station, which was incorporated in the present F.I.R. The Investigating Officer visited the spot and on pointation of the complainant, prepared the site plan. After completion of the proceedings on the spot, the case property was handed over by the complainant to the Investigating Officer.



7. In support of its claim, the prosecution, among others, examined the complainant as PW-02, who stated that on the day of incident, while on patrol duty, he received information from an informer that a Mazda Truck bearing Registration No.W3133/Peshawar is trafficking huge quantity of narcotics; that after receiving the information, he made barricade on the spot and waited for arrival of the vehicle; when the vehicle reached to the spot, it was signaled to stop, which was accordingly stopped; the driver upon query disclosed his name as Ghulam Jan; on search of the vehicle, 44 packets of Charas constituting a quantity of 55893 grams in toto were recovered from its secret cavities. This witness was cross-examined by the defense, but nothing detrimental to the prosecution case could be extracted from his mouth. The witness was examined regarding his arrival on the spot, the manner in which the vehicle was signaled to stop and the mode of recovery from the

vehicle. In order to know as to whether the complainant was telling the whole truth and as to whether the incident occurred in the mode, manner and the stated time, we feel it essential to go through the statement of Aziz-ur-Rahman No.76 (PW-04), who accompanied the complainant from the Police Station to the spot and that in his presence, the recoveries were effected from the vehicle. This witness was cross-examined on material aspects of the case, but he remained consistent to what the complainant stated. The manner in which the complainant left the Police Station is fully supported by the marginal witness and even the manner in which the recoveries were effected from the vehicle.

8. The investigating officer was examined as PW-05, who, *inter alia*, stated that on receiving copy of the F.I.R, he visited the spot; that on reaching to the spot, he was handed over by the complainant sealed parcels No.1 to 44 each containing 10 grams charas for the purpose of chemical analysis by the Forensic Science Laboratory and parcel No.45 containing 55453 grams of charas recovered from the accused / appellant; that he took into possession the same alongwith the truck vide recovery memo ExPW-5/1 duly attested by marginal witnesses; that he prepared site plan at the instance of the complainant and the statements of the witnesses were recorded. The

investigating officer was cross examined on material aspects of the case, but nothing detrimental could be brought on record to shatter the prosecution case. Muharrir of the police station was examined as PW-01 on 29.09.2020 followed by his re-examination as RPW-01 on 15.01.2022. The witness categorically stated that it was he who incorporated the contents of murasila into FIR Ex:PW-1/1 after receiving the murasila from SHO Hafeez-ur-Rehman through constable Aziz-ur-Rehman No.76; that he thereafter handed over copy of the FIR to BBI staff for investigation and that on arrival of investigating officer to the police station after completion of investigation, he was handed over by the investigating officer parcels No.1 to 44 each containing 10 grams of Charas and parcel No.45 containing 55453 grams of charas alongwith application for transmitting the parcels to Forensic Science Laboratory for chemical analysis which he kept in safe custody of the Malkhana; that he handed over the sample parcels, 44 in number, alongwith application and route certificate No.21/21 to constable Nabiullah No.27/LHC for taking the same to the laboratory which he did and on return, he was handed over by him receipts / route certificate. Similarly, constable Nabiullah No.27 was examined as PW-03, who stated that it was on 24.03.2020, when the Muharrir of the PS handed him over 44

sample parcels each containing 10 / 10 grams of Charas alongwith route certificate; that he took the same to the forensic science laboratory, where he handed it over to the office concerned and brought the receipts back to the PS, which he handed over to the Muharrir. Both these witnesses were subjected to lengthy cross examination, but they remained in harmony with each other as far as the date, time and mode & manner of transmission and handing over of the parcels are concerned and nothing detrimental could be brought out from their mouth. It is pertinent to mention that in the like cases, it is for the prosecution to prove on record the safe custody of the recovered substances, as right from its recovery till its sending to the Police Station, is established on record and that both the witnesses i.e. PW-01 and PW-03 were examined for this particular purpose, but no inconsistency could be found within their statements. Not only the prosecution succeeded in proving the safe custody of the contraband in the Police Station, but also PW-03, who took the test samples to the office of the Chemical Examiner explained the minute details of his departure to the office of the Chemical Examiner. It was contended with vehemence that the sample parcels were dispatched to the forensic science laboratory beyond 72 hours of its seizure and as such, Rule-4 of the Control of Narcotic

Substances (Government Analysts) Rules, 2001 has been blatantly violated, which, in turn, not only overshadows its safe custody, but also impairs and vitiates the conclusions and reliability of the report of the Government Analyst, thus, rendering it incapable of sustaining conviction. This limb of the arguments of learned counsel for the appellant has no force, as on one hand, the Muharrir (PW-01) while recording his statement has plausibly explained the delay to the effect that he received the sample parcels after the investigating officer arrived at the Police Station and that there were holidays on 21st, 22nd and 23rd of March, 2020, so he handed over the same to PW-03, on 24.03.2020, whereas, on the other, the said Rules are directory in nature and not mandatory and any lapse in compliance thereof does not automatically discard the whole prosecution case, particularly when safe custody is otherwise proved as in the instant case. In this regard, reliance could be placed on 2022 SCMR 1097 "Liaquat Ali and another Vs The State" wherein the Apex Court has held that:

So far as the argument of the learned counsel for the petitioner that the contraband charas, its safe custody and safe transmission is not established is concerned, the learned High Court has very ably dealt with this issue in paragraphs 18 and 19 of the impugned

judgment while holding that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure. These Rules are *stricto sensu* directory and not mandatory in any manner. It does not spell out that if there is any lapse and the time is consumed beyond 72 hours, it would automatically become instrumental to discard the prosecution case in all manners. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997. These Rules cannot in any manner frustrate the salient features of the prosecution case which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. If the series of acts which ultimately resulted into

recovery of contraband narcotic are juxtaposed with the violation of the Rules due to one reason or the other as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features. The transportation of drugs either inside the country or sending it abroad has become a menace against morality, decency, public order, law and order situation which indirectly intrudes upon the sovereignty of the country. If this practice is allowed to continue it will squarely hamper the very purpose of the law on the subject and would squarely bring bad name for the country in the eyes of international community."

9. All the witnesses have narrated the episode in a straightforward manner and remained consistent as far as mode & manner in which the vehicle was stopped, process of search and seizure that was carried out, weighment of contraband and separation of samples from each packet coupled with its sealing, arrival of investigating officer to the spot and the proceedings he conducted. Similarly, it has also been established that the parcels on arrival of investigating officer to the spot were handed over to the Muharrir of the police station, who kept the same in safe custody of Malkhana and thereafter,

handed the same over to PW-03, who took the same to the forensic science laboratory and on return, handed over receipts and route certificate to the Muharrir (PW-01). In this view of the matter, we lurk no doubt in mind that the prosecution has fully succeeded in proving not only the recovery, but also the safe custody of the recovered contraband and its transmission to the Forensic Science Laboratory, where the report Ex.PK was received in positive and as such, it has further strengthened the case of the prosecution.

10. Learned counsel for the appellant referred to some minor discrepancies in the statements of the witnesses, but they are not of such a nature, which can be pressed into service, to dislodge the trustworthy eye witness account of the witnesses on one hand and the inherent worth of the collected material, on the other. The defense could not bring on record that what *mala fide* either the complainant or the investigating officer or even any other police official had against the appellant to charge him for commission of the offence and to plant such a huge quantity of narcotics against him. We cannot ignore that the recovery was effected way back in 2020, whereas, the witnesses faced the test of cross examination after an extensive length of time, in 2021, so the minor contradictions with regard to the timings as to when the information was received, when the

investigating officer reached to the spot and when they left the same were bound to occur, as the police officials were and are conducting the like proceedings on day to day basis and it would be unnatural to expect them to answer with exactitude the timings, without any difference as to minutes. Even minor contradictions with regard to timings suggest that the police officials were having no animosity with the accused charged or interest in his prosecution with *mala fide*, as had it been so, the minor contradictions of timings would not have happened, rather the witnesses would have enabled themselves to reply with exactitude as we experience in some other criminal cases. The Apex Court in the case of **"Shamsher Ahmad and another Vs The State and others"** (2022 SCMR 1931) has held that:

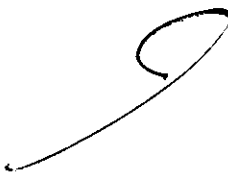
"While appreciating the evidence, the court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction."

11. As at the time of arrest, it was the appellant who was driving the vehicle and that no other person was present therein, so no ambiguity is left to hold that the appellant was in full control of the vehicle and that he had the conscious knowledge and possession of the recovered substance, more particularly, when the same was recovered from its secret cavities. It is also evident from the record that right from the day first till conclusion of the trial, none could appear to claim ownership of the vehicle, which aspect further confirms our belief that the vehicle was possessed at the crucial time by no other person, but the appellant and it was he who was attempting to transport the contraband after concealing the same in its secret cavities. The Apex Court in case titled "Kashif Amir Vs the State" (PLD 2010 Supreme Court 1052) was pleased to hold that:

"Further, when a person is driving the vehicle, he is Incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor v. The State (2010 SCMR 927). Similarly, in the case of Nadir Khan v. State (1988

SCMR 1899) this court has observed that knowledge and awareness would be attributed to the Incharge of the vehicle.”

12. In another case, reported as “Syed Karam Hussain Shah and others Vs The State and others” (2019 MLD 1445), it was held that:



“...in this case the contraband was concealed in front doors of the vehicle, therefore, onus is upon the appellants to prove in terms of Article 122 of the Qanun-e-Shahadat Order, 1984 as to how the contraband was concealed in the car and as such, the appellants have not explained the circumstances. At last, the Apex Court has also laid down heavy burden of proof upon the driver of vehicle, against whom the prosecution has discharged its onus and the driver of the vehicle is to be declared responsible person for transportation of narcotics as no condition or qualifications are made in Section 9(c) of CNSA, 1997.”

13. We may observe that the menace of narcotics is increasing day by day and more and more young people are becoming addicted to narcotics these days. It is more alarming that even children are known addicts and the prevalence of this harmful addiction knows no boundaries and ultimately, the youngsters are bound to lose their health and will suffer from chronic diseases in the years to come, if they are not salvaged. Keeping in mind the consequences of the increasing tendency of the menace of narcotics, the legislative strictness in the form of Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 was brought about in the province, so the offenders must be combated strictly in accordance with the intent and purpose of the Legislature.

14. Turning to the quantum of sentence being awarded to the appellant, it has been established on the record that he was arrested red handed while trafficking huge quantity of Charas weighing 55893 grams, which has crossed the threshold provided in proviso to section 9(d) CNSA. Clause (d) of section 9 CNSA and the proviso thereto are reproduced hereunder for ready reference:

“(d) death, imprisonment for life or imprisonment for a term which may extend to fourteen years and with fine which may extend be up to rupees one million and not less than five lacs, if the quantity of narcotic substance

exceeds the limits of one kilogram:

Provided that if the quantity exceeds ten kilograms, the punishment shall not be less than imprisonment for life in any case."

15. As the prosecution has successfully proved the charges against appellant, so keeping in view the mandate of section 9(d) CNSA, the learned trial court has rightly awarded him life imprisonment.

16. The cumulative effect of what has been stated above leads this Court nowhere, but to hold that the prosecution has fully succeeded in bringing home the guilt against the appellant and that the impugned judgment suffers from no illegality or irregularity which calls for no interference. The instant criminal appeal being bereft of merit is hereby dismissed.

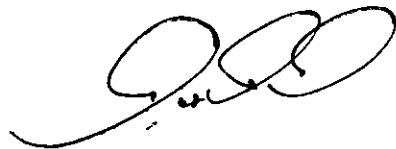
Announced

29.11.2022

(Ghafoor Zaman/Steno)

Signed on:

12.01.2023



JUDGE



JUDGE

(D.B)

Hon'ble Mr. Justice Sahibzada Asadullah

Hon'ble Mr. Justice Muhammad Faheem Wali

16 JAN 2023

Handwritten signature and date
14/01/2023