

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Cr.A No: 111-A of 2013

JUDGMENT

Date of hearing.....

Appellant(s)/Petitioner (s).....

Respondent (s).....

QALANDAR ALI KHAN,J:- Sharafat Khan, appellant in the instant Criminal Appeal, was tried for the offence under Section 9 (C) CNSA, and convicted and sentenced to life imprisonment and fine of Rs.200000/- or in default of payment of fine to six months S.I, with benefit of Section 382-B Cr.P.C, by the learned Judge Special Court/Additional Sessions Judge-V, Mansehra, vide impugned judgment dated 26.07.2013.

2. The case set up by the prosecution against the convict/appellant vide FIR No.1 dated 01.01.2013 under Section 9 (C) CNSA P.S City, Mansehra, was that while on routine *gusht* duty in official pick up along with other police officials on Mansehra-Abbottabad road, Amjad Khan, Inspector/SHO P.S City Mansehra, complainant, reached near Fauji Foundation Hospital at 1600 hours on 01.01.2013, and spotted a person carrying a light green colour sack on his head coming from Karakorum Side towards Mansehra and tried to enter the nearby street on the sight of police mobile but he was stopped on suspicion and search of the sack led to recovery of 25 packets containing 'chars' out of which five packets were in yellow colour while the rest of 20 packets were in green-black colour and each packet weighing 1000/1000 grams contained 14/14 slabs, total 'chars' weighing 25000 grams. According to the FIR, the complainant SHO separated 5/5 grams sample from each

packet with a knife and sealed them in parcels No.1 to 25 for chemical analysis in the FSL after separately sealing them, while the remaining 'chars' weighing 24875 grams was sealed in another parcel No.26. The person from whom the recovery of 'chars' was made disclosed his name as Sharafat Khan son of Lal Khan resident of Sheikhul Bandi, Abbottabad. He was arrested and case was registered against him vide the FIR on the basis of *murasila* drafted by the complainant/SHO.

3. The complainant/SHO also prepared the recovery memo wherein the slabs were shown closely attached with each other. The samples in parcel No.1 to 25, five grams (each) sealed in parcels on the spot immediately after recovery on 01.01.2013 were sent to the Forensic Science Laboratory (FSL), and received in the FSL on 03.01.2013, and were also subjected to chemical analysis, and report of the chemical examiner confirmed that it was 'chars' in

parcels No.1 to 25. After recording statements of the PWs and completion of investigation, complete challan was submitted against the convict/appellant to the trial Court, which took cognizance, and charged the convict/appellant under Section 9 (C) CNSA. During trial, the prosecution produced six PWs, including, Muhammad Salim (PW.1), who took the parcels to the FSL and handed over the same to the concerned officer in the FSL; Bashir Khan ASI (PW.2), marginal witness to the recovery memo EXPW2/1 whereby 25 packets of 'chars' were recovered from the possession of the convict/appellant and samples each weighing 5/5 grams were separated and sealed in parcels No.1 to 25 for chemical analysis and the remaining contraband 'chars' weighing 24875 grams also separately sealed in a separate parcel No.26 in his presence; Amjad Khan Inspector/SH P.S City Mansehra (PW.3), the complainant/SHO who recovered the contraband 'chars', arrested

the convict/appellant, drafted *murasila* and separated samples and separately sealed the samples as well as the remaining 'chars'; Muhammad Iltaf Inspector (PW4) registered FIR on the basis of the *murasila*; Gul Muhammad SI/OII P.S City Mansehra (PW.5), conducted investigation; and Liaqat Hussain Shah MHC (PW.6), was entrusted parcels No.1 to 25 and he sent the same through road certificate dated 03.01.2013 for chemical analysis.

4. After the prosecution closed its evidence, statement of the convict/appellant was recorded under Section 342 Cr.PC wherein he refuted the allegations of the prosecution, but declined to be examined on oath as his own witness within the meaning of Section 340(2) Cr.P.C or produce defence evidence. On conclusion of trial and after hearing arguments of learned defence counsel as well as learned DPP and perusal of record, the learned trial Court/ASJ-V, Mansehra, found case of the prosecution

proved against the convict/appellant without any shadow of doubt, therefore, convicted the appellant/accused under Section 9 (C) CNSA and sentenced him to imprisonment for life and also fine of Rs.200000/- or in default to six months S.I, as quantity of the recovered 'chars' exceeded ten kgs. The learned trial Court also extended benefit of Section 382-B Cr.P.C to the appellant/accused, vide judgment dated 26.07.2013; hence the instant appeal by the convict/appellant against his conviction and sentence vide the impugned judgment.

5. Arguments of the learned counsel for the convict/appellant and State Counsel heard, and record perused.

6. It is in the evidence that a huge quantity of 25000 grams 'chars' was recovered from the possession of the convict/appellant; which was confirmed as such in his report by the chemical examiner after chemical analysis of the samples separated from the bulk. The prosecution not

only placed on record report of the chemical examiner (EXPW5/4) but also produced witnesses (PW1 and PW6) besides the complainant and marginal witness to the recovery memo in order to prove taking of samples from each packet by the complainant/SHO, their sealing in separate parcels on the spot immediately after the recovery, and their safe custody till they were received in the FSL on 3rd day of its recovery without being tampered with during this period. The positive report of the FSL confirmed recovery of 'chars', and thus substantiated version of the prosecution.

7. The learned counsel for the convict/appellant vehemently argued that though each packet was shown containing 14/14 slabs, but samples of 5/5 grams were taken from 25 packets and not from each of 14/14 slabs in the packet, thus rendering the report of FSL relevant only to the extent of 125 grams, and not to the entire 25000 grams contained in 25 packets, allegedly,

recovered from the possession of the convict/appellant by the police. The learned counsel further argued that non association of witnesses from the general public would also cast doubt on the prosecution case against the convict/appellant. The learned counsel particularly referred to the plea of the convict/appellant that the 'chars' was in fact recovered from room of one Hafiz Ullah situated adjacent to his room in the same Shajee Hotel on Abbottabad road, who was also taken into custody by the police, but was let off after receiving illegal gratification from him, and that he was involved in the case at his instance. According to the learned counsel for the convict/appellant, it was proved on record that the convict/appellant was running a marble shop and was made a scapegoat in order to save the said Hafiz Ullah.

8. Apart from the fact the complainant/SHO recorded a note on the recovery memo (EXPW2/1) to the effect that

the place of occurrence was a busy road but despite his efforts no one from the public volunteered to become a witness to the recovery memo. Needless to say that this is not an unusual phenomenon now-a-days. It is equally well established that police officials are as good witnesses as any other witnesses unless malice can be established against them. The convict/appellant, despite claim of his involvement in the case by the police at the behest of one Hafiz Ullah, could not discharge the burden of proving malice on the part of either the said Hafiz Ullah or local police. He was afforded the opportunity of both recording his statement on oath as his own witness and producing defence, but he failed to avail the opportunity and prove his version, and declined to be examined on oath as his own witness and produce defence evidence. On the other hand, it is something beyond imagination that the police would stoop so low to substitute an innocent person for the real culprit and implicate him in a

case of recovery of such a huge quantity of contraband 'chars' when there was nothing on record to impute the devilish role of implication of the convict/appellant by the police in such a concocted case, that too, at the behest of a person namely Hafiz Ullah, whose very nexus with the case was not established on record, let alone recovery of 'chars' from him and his rescuing himself after greasing palms of the police. The learned counsel for the convict/appellant vainly tried to prove defence version from the lengthy cross examination of defence on the PWs but miserably failed to show on record that the plea taken in this regard by the convict/appellant was established on record through independent and convincing evidence.

9. In order to arrive at a just decision, we took the extra ordinary step to open the sack and also the packets, but the exercise further reaffirmed the fact that the complainant/SHO had taken samples

from a corner of each slab in the packet, thus falsifying the assertion of the defence that samples were not taken from each of the slabs in the 25 packets.

10 Besides, there appears no contradiction in this respect in the statements of PWs despite the fact they were subjected to lengthy and searching cross examination by the defence. Their testimony remained consistent and coherent regarding material facts of the case, thus proving recovery of huge quantity of 25000 grams from the possession of the convict/appellant, making him liable to the punishment of not less than imprisonment for life under Section 9 (C) CNSA.

11. In the circumstances, the conviction of the appellant and award of sentence of imprisonment for life to him with fine of Rs.200000/- or in default to six months S.I with benefit of Section 382-B Cr.PC by the learned trial Court vide impugned judgment dated 26.07.2013 are

not open to exception, which are hereby upheld; and appeal of the convict/appellant dismissed, accordingly.

Announced:
10.02.2016

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