

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

Criminal Appeal No. 15-P/2016.

The State through AG Vs. Safir Ullah

For appellant: - Mr. Tariq Khan Kakar, Special
Prosecutor for ANF.

For accused/respdt: Nemo

Date of hearing: 12.03.2020

J U D G M E N T

MUHAMMAD NAEEM ANWAR, J.- The State through Advocate General filed this criminal appeal against the judgment and order dated 12.12.2015 of learned Judge, Special Court (CNS), Peshawar, whereby accused-respondent Safir Ullah, involved in a case registered against him, vide FIR No. 06 dated 31.01.2015 under section 9 (c) of the Control of Narcotic Substances Act, 1997, at Police Station, ANF, Peshawar, was acquitted.

2. The story of prosecution, as reflected from the FIR, is that on 31.01.2015 (PW-3) along with other police contingent had made ,nakabandi, near Bagh-e-Naran Chowk, Hayatabad, as there was prior information to the high-ups that narcotics were to be smuggled to Punjab from tribal territory in a vehicle bearing registration No. RPT/ 1550. At 1770 hours, the spotted vehicle came, which was stopped and its driver was overpowered with the help of his companion. The driver disclosed his name as Safirullah. On cursory interrogation, he disclosed presence of chars in the rear

portion. The secret cavities were opened through tools, which led to the recovery of sixty packets containing chars, total 72 k. gs. He separated 10/10 grams from each packet, sealed into parcels, while the remaining quantity of chars was sealed into another parcel. On recovery of narcotics and arrest of the accused, he drafted murasilla, Exh. PW 3/2, which was dispatched to Police Station, ANF, where on the basis of which the above referred FIR was registered against the accused-respondent.

3. After completion of investigation, complete challan was submitted against the respondent-accused to the Court of learned Judge, Special Court (CNS) Peshawar, where at the commencement of trial, the prosecution produced four witnesses. On close of the prosecution evidence, the accused-respondent was examined under section 342 Cr.P.C, wherein he denied the charges, professed innocence and stated to have falsely been implicated in the case. He also recorded his stated on oath within the meaning of Section 340(2) Cr.P.C, besides producing one witness, namely, Abdul Qayyum, as DW-1 in his defence. The learned trial court, on conclusion of the trial, acquitted the respondent-accused, vide judgment herein impugned.

4. Learned AAG appearing on behalf of the State submitted that the local police recovered colossal quantity of chars from the vehicle which at the relevant

time was driving by the appellant and he was also arrested on the spot. According to him, the prosecution produced sufficient evidence which established the guilt of the appellant but the learned trial Court due to misappreciation of evidence on record on its perspective acquitted him, therefore, the impugned judgment is liable to be set aside the accused-respondent be convicted and sentenced in accordance with law.

5. The accused-respondent was summoned time and again but he did not appear before the Court, therefore, we have heard learned AAG and perused the record with his valuable assistance.

6. On scanning the record, we found material contradictions in the statements of prosecution witnesses which create reasonable doubt, which has rightly been extended by the learned trial court in favour of the respondent-accused. Assad Abbas SI (PW-3) is the complainant of the present case, who in cross examination stated that murasilla was handed over to Riaz Gul at 2000 hours after stopping of the vehicle in question, whereas as per murasilla at 2000 hours the occurrence took place. The complainant further stated that the narcotic in question were taken to Police Station in official vehicle which was driven by Zubair, while PW-4 Riaz Gul, who was present with the I.O, stated in his cross examination that the Zubair drove the official vehicle back to the Police station

and in the same breath stated the case property car was also driven by Zubair from spot to the Police which is not appealable to the prudent mind because one person cannot drive two vehicles simultaneously. Again, the complainant stated in his cross examination that during this time no local police arrived to the spot but his statement was entirely negated by Fida Muhammad SI, who during those days was posted at Police Station, Hayatabad. He appeared as CW-1 and stated that he was on routine gasht along with other officials, when reached Bagh-e-Naran chowk, they found narcotic police headed by SI Amir Abbas, who have taken into custody a Datsun pick up RPT/ 550 which was having inside 60 packets chars garda which was recovered and taken into custody by narcotic staff. He further stated that the driver was escaped from the spot, meanwhile SHO of the Police Station also reached the spot and the incident was communicated to higher officers. The narcotic staff took the pickup alongwith chars while they came to the Police Station and entered DD No. 08 dated 31.01.2015, which is marked as Exh. CW 1/1.

7. As against that, the accused-respondent in reply to question No.1 in his statement under section 342 Cr.P.C stated in the following words:-

“It is false allegation. I am contractor by profession and was coming to site of work from my house in Shahkas in my Vitz Car No. BC 9204 Peshawar when reached near Breaker at Bagh-e-Naran at

about 1445 hours on 13.1.2015, one person in grey cloth aimed pistol from front on me and as such I was stopped. The person dragged me from the vehicle and brought me out. I saw another person on the side standing with a black colour car, who has covered his mouth but I recognize him to be Jabbar serving in Khasadar force. When I resisted not to board their car using my chadar for the purpose. Meanwhile traffic sergeant also attracted to the spot but I do not know as to what happened in between them. My face was muffled and my hands were tied and were taken to a room where demand for payment of ten lacks for my release was made to me. At evening time, ANF Datsun came and took me to ANF Police Station at Town. On next day at deegarvella, I was taken to the court. Neither I was having any mazda Dalla with me nor any narcotic was recovered. I am innocent falsely implicated.”

He recorded his statement on oath under section 340 (2) Cr.P.C wherein he narrated the same story. He also produced one Abdul Qayyum in his defence, who also supported the stance of the respondent.

When placed the evidence of prosecution in juxtaposition to the defence stance coupled with statement of CW-1, one could draw an inference that possibility of false implication of the respondent-accused in the case could not be ruled out.

8. Apart from the above, the report of FSL Exh. PW 3/12 is, no doubt, in affirmative, but the alarming point for the judicial mind is the short of necessary protocol. Neither any protocol was mentioned in the report nor any test was referred to on the basis whereof the Chemical Expert has concluded that the samples sent for

examination contained Chars. While holding this view we are fortified from the dictum laid down by the Hon'ble Supreme Court of Pakistan in the case titled as **Khair-ul-Bashar v. the State (2019 SCMR 930)**, wherein it was held 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 unreported judgment dated 18.12.2019 in a 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."

9. When this being the state of thing, we do not suggest to draw a conclusion different from what the learned trial Court has drawn and, hence, we do not feel hesitant to maintain the acquittal of the respondent-accused, resultantly, the same is maintained and, accordingly, dismiss the appeal.

Announced

12.03.2020

M.Zafra P.S.

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(DB Hon'able Mr. Justice Ikramullah Khan, J and
Hon'able Mr. Justice Muhammad Naeem Anwar).