

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No. 146-M/2022

Javed.....(Appellant)

vs

The State and another.....(Respondents)

Present: Mr. Sher Muhammad Khan, Advocate for the
appellant.

Mr. Saeed Ahmad, Asst:A.G for the State.

Date of hearing: 21.12.2022

JUDGMENT

Dr. Khurshid Iqbal, J.-

1. This appeal is directed against the judgment dated 19.05.2022 of the learned Additional Sessions Judge/Model Criminal Trial Court, Malakand at Batkhela, whereby he convicted the appellant/accused and sentenced him with benefit of section 382-B, Cr. P.C., as under:

- i. Under section 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, to undergo seven (07) years rigorous imprisonment along with fine of Rs. 10,00,000/- or in default thereof, he was ordered to undergo simple imprisonment of six (06) months;

2. On 27.09.2021, Muhammad Kamran, an IHC of Police Station Jehan Bakht Shaheed Pul Chowki, District Malakand (PW-3), received spy information that huge quantity of charas were going to


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be smuggled from Peshawar to Swat in a motorcar (VXR Alto), bearing registration No. LEA-139. Pursuant to such information, he, alongwith other police officials laid a barricade at Ronda road, Pul Chowki, near Riaz fish shop. At about 17:00, hours, the aforesaid motorcar coming from Peshawar side was signaled for the purpose of checking. The person sitting in the driver seat disclosed his name as Javed s/o Ajab Khan, a resident of Bara Jan Khan Kalay, District Khyber Agency. During search of the motorcar, the complainant recovered six packets of charas (total weighing 7320 grams) from its secret cavities. The complainant/seizing officer separated 10/10 grams charas from each packet for chemical examination, sealed it in parcels No. 1 to 6 and the remaining in parcel No. 7. He prepared a memo of the recovery, drafted the murasila and arrested the appellant/accused. He forwarded the murasila to the Police Station through driver Wahid Alam No. 5702 (PW-5) for registration of the case.

Wahid Alam

3. The complainant also conducted investigation of the case. During investigation, he prepared the site plan (Ex PB), obtained five days police custody of the appellant/accused and medically examined him. He also sent the parcels No. 1 to 6,

containing samples of charas, to the FSL through Nasar Khan DFC No. 5407 (PW-2) and placed on file a receipt thereof. He recorded statement of the appellant/accused u/s. 161, Cr. P.C. He produced the appellant/accused for recording his statement u/s. 164/364, Cr. P.C. but he refuted, due to which he was sent to judicial lock-up. He received the FSL report, (Ex PW 3/5) and placed the same on the case file. Attested copy of Register No. 19 (Ex PW 1/2) and attested copies of daily diaries (Ex PW 1/3 and Ex PW 1/4) were also placed by him on the record. He recorded statements of the witnesses u/s. 161 Cr. P.C.

 4. On completion of the investigation, final report (challan) was submitted before the learned trial Court. Copies were supplied to the appellant/accused in compliance with section 265-C, Cr. PC. Charge was framed against him, to which he pleaded not guilty and claimed trial.

5. The prosecution examined as many as five (05) PWs. Thereafter, statement of the appellant/accused u/s. 342, Cr. P.C., was also recorded, in which he was afforded an opportunity of evidence in defence and/or statement on oath but he did not avail it.

6. After hearing arguments of the learned Dy.P.P., for the State and learned counsel for the appellant/accused, the learned trial Judge vide the impugned judgment dated 19.05.2022, convicted the appellant/accused and sentenced him as mentioned in para-1 of this judgment.

7. I have heard arguments of learned counsel for the appellant, as well as the learned Assistant Advocate General, for the State and perused the record.

8. In order to bring home the charge, the prosecution was bound to prove the recovery of the contraband charas, its safe custody and transmission to the FSL and the report of the FSL. As regards, the recovery, the prosecution examined IHC Muhammad Kamran and IHC Iqbal Hussain (PWs 3 and 4). The evidence of these PWs precisely is that on 27/09/2021, the personnel of the Levy Check Post of the river Swat's bridge connecting Malakand and Dir Lower district (locally called Pull Sokai) received spy information that huge narcotics was going to be smuggled. Led by PW3, a contingent of the personnel included IHC Iqbal Hussain and driver Wahid Alam (PWs 4 and 5). They laid barricade there. At 1700 hours, an Alto VXR car bearing # LEA-139, coming from Peshawar was stopped across the main Peshawar-

Wahid Alam

Swat road, where, according to the site plan (ExPB), Riaz fish shop was situated at the North and Said Muhammad fish shop, at the South. The person disclosed his name as Javed son of Ajab Khan, a resident of Bara District Khyber (appellant). PW3 checked the car and found six packets of charas in a secret cavity behind the speed meter. He weighed each packet. Three of the packets were found to be of the same weight: 1250 grams. The other three were 1230, 1220 and 1120 grams each. The total stuff came out to be 7320 grams. PW3 prepared the memo of the recovery which was signed by PW4 and one Fazal Hadi No. 5419. After weighing the packets, he separated 10 grams from each packet as representative samples, put them and the remaining stuff in parcel # 7, putting on each parcel a seal bearing initials "NR". PW3 also recorded a report of the incident in the shape of a murasila. He sent the murasila to the Levy Post through PW5. MHC Javaid Khan (PW1) received the murasila in the Levy Post and registered the instant case. PWs 4 and 5 confirmed that they witnessed the recovery proceedings. PWs 3, 4 and 5 furnished direct evidence to the recovery proceedings with all the details referred to above; PW3 confirmed that he seized the contraband charas and PWs 4 and 5 verified



that recovery and PW4 further substantiated the recovery memo as its marginal witness.

9. They were awesomely cross-examined, most notably from the perspective of existence of different restaurants near around the place of the incident. PW3 couldn't say that on the road from Swat, Sheen Ghar Hotel is situated towards the West of the place of the incident and that the same road till the Malakand Inn Hotel, is lying North-South. He admitted that near around the Said Muhammad fish shop, there are other shops. He could not state that near Said Muhammad fish shop there is also a butcher shop. The spot is the main junction at which roads to Swat, Dir, Chitral and Malakand separate at the end of the Swat-Peshawar-Islamabad motorway. Quite near to the junction, the river Swat runs in the North. There are many shops and restaurants. A police official could not be expected to know in greater detail the restaurants and shops there. The main issue was their presence on the spot; which was not successfully shattered. He admitted that he didn't check other vehicles, explaining that the spy information was about the car of the appellant/accused only. It appears from the cross-examinations of the PWs that private persons were not associated with the recovery proceedings.

10. I shall now come to the issue of safe custody and transmission of the contraband charas. Evidence shows that the contraband charas was taken to the Levy Post by PW3, the seizing officer/complainant. PW1 received murasila only from the hand of PW5. A couple of points seem to be in order in this regard. First, PW3 who also conducted investigation stayed on the spot. The DDs of his departure from and arrival back in the Levy Post, shows that PW3 stayed on the spot of the incident for 03 hours. So, when back to the Levy Post, he took it with himself. PW3 was not cross-examined to the effect that he might have manipulated the quantity of the contraband charas. Second, PW1 received the contraband charas in sealed condition, entered the parcels in Register # 19 and then, handed over the samples to DFC Nasir Khan for its transmission to the FSL. DFC Nasir Khan (PW2) furnished evidence of the fact that he received the samples for their transmission to the FSL. The report of the FSL reflects his belt number as 5427, instead of 5407. This obviously appears to be an accidental mistake. On return from the FSL, his statement was recorded by PW3. Thirdly, the samples were sent to the FSL on 28/09/2021, the next day of the incident within the

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prescribed period. Fourthly, the report of the FSL is in positive.

11 The conclusion of the above discussion is that the prosecution has successfully proved recovery of the contraband charas against the appellant/accused. The prosecution witnesses straightforwardly substantiated the recovery of the contraband charas from the car he was driving at the time the Levy contingent apprehended him. During their lengthy cross-examinations, they remained unfaltering. No mala fide or false implication was pleaded on their part. It is pertinent to refer relevant case law.

11. In the case of Faisal Shahzad vs. The State reported as 2022 SCMR 905 [Supreme Court of Pakistan], it was held:

“All these witnesses have narrated the prosecution story in natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the petitioner to falsely implicate him in the present case.”

12. In Liaquat Ali and another vs. The State reported as 2022 SCMR 1097 [Supreme Court of Pakistan], the august Court observed:

“This Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the

accused. However, no such thing could be brought on record by the petitioners in this case. This Court has time and again held that reluctance of general public to become witnesses in such like case has become judicially recognized fact and there is no way out to consider statement of official as good witnesses, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remains un-shattered during cross-examination.”

13. Similarly, in Rehmat Gul vs. The State 2022 P.Cr.L.J 10 [Peshawar], the honourable Court was of the view that:

“No doubt, the PWs are police officials but nothing in black & white is available on file to show their ill-will or enmity with the appellant to falsely implicate him in case.”

14. Another relevant case is of Muhammad Faisal vs. The State reported as 2022 YLR 1163 [Sindh]. Its relevant paras read:

“13. [...]

(a) That the arrest and recovery was made on the spot and the appellant was caught red handed with the narcotics by the police whose evidence fully corroborates each other in all material aspects as well as the prosecution case. It is well-settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any of the police PW's and as such the police had no reason to falsely implicate the appellant in a false case. Thus we believe the police evidence which is corroborative in all material aspects. In this reliance is placed on Ijaz Ahmed v. The State (2009 SCMR 99). [...]

(h) That although no Independent mashir was associated with the arrest and recovery of the appellant it has come in evidence that no

private person was prepared to become an independent mushir at the time of arrest and recovery despite being asked. Even otherwise section 103, Cr.P.C. is excluded for offenses falling under the Control of Narcotics Substances Act, 1997 by virtue of section 25 of that Act. In this respect reliance is placed on the case of Muhammad Hanif v. The State (2003 SCMR 1237).”

15. In light of the above re-appraisal of the evidence of the prosecution and the legal principles laid down in the case law, I uphold the conviction and sentence passed by the learned Additional Sessions Judge/Model Criminal Trial Court, Malakand at Batkhela, against the appellant/accused. Hence, the instant appeal is dismissed.

Announced
Dt: 21.12.2022


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