

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

Cr.A.No.1169-P/2018.**J U D G M E N T**

Date of hearing ---- 25/11/2021.

Appellant by --- Ms.Zohra Durrani, Advocate.

State by --- Mr.Rab Nawaz Khan, A.A.G.

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LAL JAN KHATTAK, J:- This criminal appeal is directed against the judgment dated 14.12.2018 of the learned Additional Sessions Judge-IV/Judge Special Court, Peshawar delivered in case FIR No.1072 dated 13.12.2016 under section 9 (c) of the Control of Narcotic Substances Act, 1997 of police station Phandu, Peshawar whereby the appellant has been convicted and sentenced to imprisonment for life with fine of Rs.1,000, 000/- (ten lac) or in default whereof to further suffer simple imprisonment for 06 months with benefit under section 382-B Cr.P.C.



2. Brief facts of the case are that on 13.12.2016 complainant of the case

namely, Majid Khan, Inspector (PW-1) along with Squad of Excise & Taxation received spy information about trafficking of huge quantity of narcotics from Jamrud Khyber Agency via Ring Road to Lahore, Punjab through motorcar bearing Registration No.LW-4104/Lahore. In order to foil the bid, he arranged a *Nakabandi* on the spot when in the meantime the motorcar reached there which was signaled to stop. Driver of the vehicle disclosed his name as Suleman Khan. On search of the vehicle, 70 packets of *charas* were recovered lying in secret cavity made in rear bumper of the vehicle. On weighment, the charas turned out to be 84 Kg. From the recovered stuff 5/5, grams were separated for the purpose of FSL from each packet while the rest was sealed in separate parcel.

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3. On completion of investigation, challan was put in court which indicted the accused for the offence to which he pleaded not guilty. In order to prove its

case, prosecution examined 07 witnesses whereafter statement of the accused was recorded wherein he professed his innocence. After conclusion of the trial, the learned trial court found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above.

4. Arguments heard and record available gone through.

5. No doubt, according to the FIR (Ex.PA), total 84000 gram *charas* was recovered by Inspector Majid Khan (P.W-1) from the secret cavity prepared in the motorcar which at the relevant time was being driven by the appellant, however, pertinent aspect of the case is that the 70 representative samples taken from the recovered packets on 13.12.2016 were received at the FSL for their chemical analysis on 19.12.2016 i.e. after a delay of 06 days for which no reasonable explanation has been given by the prosecution. Not the above but

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another noticeable aspect of the case is that the representative samples were received by P.W-7 namely, F.C Habib Khan from P.W-3 Noor Muhammad on 14.12.2016 for their taking to the FSL, however, same were delivered at FSL on 19.12.2016 and no material is available on record of the case to show that in whose custody the samples had remained during those 06 days. Ibid aspect of the case has blurred the prosecution case as to its accuracy benefit of which must go to the accused as it has been held umpteenth times by the superior courts that in order to bring home guilt to an accused charged in narcotic cases, the prosecution must prove through very reliable evidence that the samples had remained in safe custody till their receipt at FSL which is not the case in hand. Besides, in the register 19, extract from which is available as Ex.P.W-3/1, there is no entry in the relevant column that the representative samples were deposited

Again


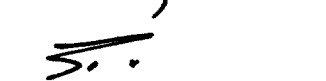
in the police *malkhana*. In addition to the above, the official namely constable Farhad who had taken the case *murasila* from the spot to the police station, who was also a witness to occurrence, too was not produced by the prosecution which aspect of the case has also caused cracks in the prosecution otherwise fragile case.

6. Thorough and careful examination of the case record would show that the prosecution has not proved its case against the appellant beyond any shadow of doubt and it is the cardinal principle of criminal law that in order to bring home guilt to an accused, the prosecution must establish its case through reliable and trustworthy evidence, which is not the case in hand for which the judgment of the learned trial court is not sustainable.

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7. For what has been discussed above, this appeal is allowed, the impugned judgment of conviction and sentence is set aside and consequently,

the appellant is acquitted of the charge leveled against him. He be set free forthwith, if not required in any other case.


JUDGE

JUDGE

Announced.
Dt.25/11/2021.

HON'BLE MR.JUSTICE LAL JAN KHATTAK &
HON'BLE MR.JUSTICE SYED ARSHAD ALI.

(A-K-KHAN Court Secretary)