

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr. A No. 104-A/2014.

Date of hearing 04.10.2022.

***Appellant/s (The State) by Sardar Ali
Raza, AAG.***

Respondent absent.

FAZAL SUBHAN, J. Appellant (*The State*)

has filed the instant appeal under section 417
Cr. P. C against judgment and order dated:
17.03.2014 passed by learned Sessions
Judge, Haripur, in case FIR No. 13 dated:
17.01.2013 registered under section 9-C of
Control of Narcotics Substances Act, Police
Station, *Kot Najibullah*, District, Haripur,
whereby, accused/respondent was acquitted
from the charges levelled against him.

2. On spy information regarding
presence of proclaimed offender namely
Zamurad Khan, complainant/SHO on
07.01.2013 at 21:00 hours barricaded at
Koklian Sako. In the meanwhile, a person
having a plastic bag came from Bhedian side
on foot, who on seeing the police party tried
to decamp from the spot, but was

overpowered. Search of sack was conducted, which resulted into recovery of six packets of charras (total six kilogram) as well as four packets of opium (total four kilogram). 5/5 gram samples were separated from recovered charras and opium for sending them to FSL for chemical analysis, while the remaining case property was sealed into another parcel. Murasila was prepared at the spot and sent to the police station for registration of case. Hence, the instant FIR.

3. After completion of investigation, complete challan was put in Court. Provision of section 265 (c) Cr. P.C were complied with, thereafter, charge was framed against the accused. In order prove its case against respondent, prosecution examined as many as five witnesses. After recording of prosecution evidence, statement of accused was recorded under section 342 Cr. P.C. Learned trial Court after hearing of arguments vide impugned judgment dated: 17.03.2014 acquitted the accused/respondent from the charges levelled against him. Appellant/The State being aggrieved from

the acquittal of accused, approached this Court by filing instant appeal.

4. Learned Additional Advocate General heard and record perused.

5. Prosecution in order to prove its case examined five witnesses, who were required to be consistent and coherent on material aspects of the case, however, on thorough appraisal of evidence, we found major discrepancies in the evidence. The alleged recovery of 6 kg charras and 4 kg opium was made on 07.01.2013 at 21:00 hours but FIR was registered at 22:50 hours. PW-1 Shafaqat Khan ASI, in his cross examination admitted the receipt of murasila at 11:00 PM and chalking of FIR within 10 minutes but surprisingly time of registration is 22:45 hours, which does not coincide with the time mentioned in the FIR.

6. PW-2 constable Wali-ur-Rehman took the sample parcels to FSL and in his cross examination he replied that all the parcels were containing 5/5 grams

charras. Though prosecution produced this witness as carrier of the sample parcels to FSL but statements of PW-4 Abdul Waheed SI/OII and PW-5 Habib Ullah clearly show that parcels were handed over to Muhammad Wali and not to Wali-ur-Rehman, hence, there is serious ambiguity as to who took the sample parcels to the laboratory.

7. PW-3 Jehangir Khan SHO and PW-5 Habib Ullah ASI beign the eye witnesses of the occurrence, were supposed to be consistent in respect of material aspects of the case. PW jehangir Khan in cross examination answered that at the time of patrolling he was accompanied by PW Habib Ullah and other police officials but in cross examination he admitted that he do not remember their names. He further replied that after recovery of narcotics he used only one batt of 1 kg for weighment. PW Habib Ullah on the other hand replied in cross examination that he was not

accompanying the SHO for patrolling at that time, and at 8:15 PM he only called him and that they made *nakabandi* to overpower the accused. That the SHO used batts of 5 grams, 500 grams and 1 kg for weighment of contraband charras and opium. Thus, from these statements, it is doubtful, whether at the relevant PW Habib Ullah was present with the SHO/complainant Jehangir Khan and witnessed the whole occurrence coupled with preparation of parcels and recovery memo. The mentioning of different kinds of batts by PW Habib Ullah fully established that he was not present at the time of alleged recovery and hence, was not supporting the statement of PW Jehangir Khan about the proceedings on the spot.

9. Another aspect of the case is that though PW Jehangir Khan mentioned the recovery of 6 packets charras and 4 packets opium, each weighing 1 kg, but on the request of defence counsel, the

case property was opened, and it was observed by the trial Court that no sample of 5 grams were separated from charras and on weighment the charras were found 945 or 950 grams and opium 650, 995, 860 and 870 grams. Moreover, opium was a mixture of Jaggery (کڑ). Thus, neither the quantity of each packet was according to the reported quantity nor the opium was proved to be narcotic substance. At the same time, it is noticed that no sample was separated from the charras as all the alleged packets were intact, hence, strong presumption arises that a fake and fabricated case was foisted against the accused.

9. Besides, the above anomalies and contradictions, it is also noticeable that the FSL authorities received sample parcels after unexplained delay of 5 days, the name of FC who took the sample parcels to FSL is not mentioned and no receipt was issued regarding receipt of sample parcels. At the same time,

signature of the chemical examiner is missing from the report, which gives the impression of a dubious report and rendered the same totally unreliable.

10. For all these reasons, it is held that the learned trial Court after correctly appreciating record has rightly discarded the prosecution story and acquitted the accused, which findings are unexceptionable, hence, this appeal, being meritless is dismissed.

Announced.

04.10.2022.

Tahir PS

J U D G E

J U D G E

Hon'ble Justice Wiqar Ahmad & Hon'ble Justice Fazal Subhan.