

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A.No.738-P of 2018.

Date of hearing: 20.05.2021.

M/s Ms.Zohra Durrani and Muhammad Qazzafi, advocates for the appellant.

Mr.Nisar Ahmad, AAG for the State.

JUDGMENT

LAL JAN KHATTAK, J.- This criminal appeal is directed against the judgment dated 09.08.2018 of the learned Sessions Judge/Judge Special Court, Swabi delivered in case FIR No.162 dated 26.05.2017 under section 9 (c) of the Control of Narcotics Substances Act, 1997 of Police Station Topi District Swabi, whereby the appellant has been convicted and sentenced to three years RI with fine of Rs.5,000/- or in default whereof to undergo further two months SI with benefit under section 382-B Cr.P.C.

2. Brief facts of the case are that on 26.05.2017 complainant of the case, namely, Iltaf Khan, SHO (PW-1) alongwith other police contingent was on gusht when received information regarding selling of chars by the appellant in the graveyard of

village Kotha, hence he rushed to the spot and arrested the appellant having a black shopper in his possession wherein there were found three packets of chars, each of 1068, 955 and 977 grams, respectively. The seizing officer separated 05/05 grams chars from each packet for the purpose of chemical analysis whereas rest of the chars was sealed in a separate parcel. On the basis of ibid recovery, case FIR Ex.PA was registered.

3. On completion of investigation, the case was put in court which indicted the accused for commission of the offence to which he pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced and examined 3 witnesses in all whereafter statement of the accused was recorded wherein he professed his innocence. The learned trial court, on conclusion of the trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above which he has impugned through the instant appeal.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that the very chain of events starting from the crime spot to the Police Station regarding the dispatch and safe custody in the police *malkhana* of the representative samples has not been proved which deficiency has dented the prosecution case. The case *murasila* PA/1 was handed over to constable Sher Zada No.345 wherein there is no mention that the case property and the representative samples were delivered to him for their handing over to Moharrir of the Police Station. Likewise, moharrir of the police station has not been produced as a witness to depose that he had kept the representatives samples in safe custody before their dispatch to FSL. Similarly the official who took the samples to FSL for their chemical analysis too did not appear for the prosecution as its witness. Thus, safe custody of the case property and the representative samples has not been proved by the prosecution. Furthermore, according to PW-1, the FIR was chalked out by Rashid Khan, ASI on receipt of *murasila* from constable Sher Zada No.345 but neither Rashid Khan, ASI nor Sher Zada

have been produced by the prosecution in support of its case. Besides there are other contradictions in the statements of PWs which were not taken into consideration by the learned trial court while arriving at the impugned conclusions.

6. Thorough and careful examination of the case record would show that the prosecution has not proved its case against the appellant through any cogent and reliable evidence and the learned trial court has not appreciated the case evidence in its true perspective for which the impugned judgment cannot be upheld. It is cardinal principle of criminal law that in order to connect an accused with the commission of an offence, the prosecution must produce concrete and confidence inspiring evidence connecting his neck with the alleged crime, which is not the case in hand as on no count it could be said that the prosecution has proved its case against the appellant beyond any shadow of doubt.

7. For what has been discussed above, this appeal is allowed, the conviction and sentence recorded by learned Sessions Judge/Judge Special Court, Swabi vide

impugned judgment dated 09.08.2018 is set aside and consequently the appellant is acquitted of the charge levelled against him. He is on bail and his sureties are discharged from the liability of bail bonds.

JUDGE

JUDGE

Announced.

20.05.2021.

Sadiq Shah CS (DB) (Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Ijaz Anwar)