

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Cr.A No: 84-A of 2015

JUDGMENT

Date of hearing..... 29-10-2015

Appellant(s)/Petitioner (s)..... Muhammad Akbar by
Malik Wahid Akhlaq / Adli.

Respondent (s)..... State by Mr. Muhammad Nadeem
Mahabi: - AAG

QALANDAR ALI KHAN, J:- This criminal appeal by Muhammad Akbar, appellant, calls in question his conviction under Section 9-C Control of Narcotics Substances Act (CNSA) 1997 and sentence of R.I for six months and fine of Rs.5000/- or in default of payment of fine to simple imprisonment for a period of one month with benefit of Section 382-B Cr.PC in case vide FIR No.508 dated 30.10.2011 of Police Station City, Abbottabad, by the learned Additional Sessions Judge-III Abbottabad vide judgment/order dated 17.06.2015.

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2. The case was registered on the report of Ashiq Hussain, SHO Police Station City, who, reportedly, spotted the convict/appellant making attempt to flee the spot on the sight of police party on petrol duty at Panj-peer Chowk, Abbottabad, at 11.30 hours on 30.10.2011, and after overpowering the convict/appellant, recovered 28 'tokens' heroin and a plastic shopping bag also containing heroin, total weighing 215 grams, as well as two slabs of 'chars' weighing 1010 grams from the Waist-coat and side pockets of the convict/appellant. The convict/appellant was arrested, case was registered against him and after completion of investigation, complete challan was submitted to the trial Court.

3. During trial, the prosecution examined as many as five prosecution witnesses (PWs), where-after evidence of the prosecution was closed; and the accused was examined under Section 342 Cr.PC, wherein,

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he refuted allegations of the prosecution, but

declined to be examined on oath or produce defence.

4. Arguments of learned counsel for the convict/appellant and learned State counsel heard, and record perused.

5. The stance of the complainant/SHO that it was closed holiday on the eventful day, notwithstanding, the venue shown in the site plan is, indeed, a busy *chowk* wherefrom roads lead to *bazaar* (markets) and Police Lines, which are even more overcrowded on closed holidays. It betrays common sense that what to speak of an 'experienced' person like the convict/appellant who has, allegedly, been indulging in such like activities in the past, according to the police/prosecution, even an 'inexperienced' first offender would not dare to openly sell narcotics in day light at peak rush hours in the public glare and presence of traffic police, normally present in the busiest *chowk* of the city.

6. After the SHO P.S City combined in himself all the three imported roles of

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complainant, investigating officer at the crucial initial stage and conducting almost entire investigation in the case and exercising authority to submit complete challan against the convict/appellant, the demand of justice and good conscious was to view evidence comprising testimony of the police officers, including the SHO and his subordinates cited as marginal witness to the recovery memo, with greater degree of scepticism. The above referred reason for not citing witnesses from the general public furnished by the SHO, too, appear far-fetched in view of location of the spot.

7. The learned counsel for the convict/appellant focused his arguments on the samples of one gram from heroin recovered from 28 'tokens' and a plastic shopping bag and 5/5 grams from the recovered 'chars' in two slabs weighing 1010 grams. The learned counsel contended that samples of one gram from 28 'tokens' and a plastic shopping bag and 5/5 grams from a

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total of 1010 grams could not represent the exact nature of the recovered bulk, thus making report of the chemical examiner about the samples received in the FSL on the 4th day of its dispatch doubtful and not worthy of reliance. The learned counsel also referred to contradictions in the statements of the complainants/SHO (PW.4) and marginal witness Amjad (PW.3) with regard to the colour of the recovered heroin and 'chars', the former describing colour of the heroin as off- white and that of 'chars' as blackish while the latter showing colour of heroin as white; and, likewise, in the FSL report physical appearance of the samples shown as 'brown powder' and 'brown solid'.

8. Be that as it may, the fact remains that conviction of a 74/75 years old person cannot be sustained merely on the basis of testimony of police officers, who were found to have unleashed onslaught of cases of such like nature against the convict/appellant, invariably ending in his acquittal, as

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conviction of the convict/appellant not even in a single case, having been sustained, was brought to the notice of the Court.

9. In the circumstances, the conviction of the appellant and sentence awarded to him in the case by the learned trial Court are not sustainable and therefore, set aside, with the result, the appellant is acquitted of the charges. He is on bail, and his sureties shall stand discharged.

Announced:
29.10.2015

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JUDGE

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Justice Lal Jan Khattak.
Justice Qalandar Ali Khan.