

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
PESHAWAR

**JUDICIAL DEPARTMENT**

**Cr.A No. 378-P of 2017.**

**JUDGMENT**

Date of hearing.....20.10.2017.....

Appellant(s)...(Syed Zahir Hussain and Wajahat Ali ): By Syed Muzahir Hussain, Advocate.

Respondent(s)/State: By Mian Arshad Jan, AAG.....



**QALANDAR ALI KHAN, J:-** This criminal appeal under Section 410 Cr.P.C by Syed Zahir Hussain son of Syed Gul Shah Hussain and Wajahat Ali son of Sabit Ali residents of Bosi Tang Khadi Zai, District Kohat, appellants, is directed against the judgment/order dated 14.06.2017 of learned Sessions Judge/Judge, Special Court, Kohat, whereby, the appellants were convicted under Section 9 ( c ) CNSA and sentenced to imprisonment for three years R.I and fine of

Rs.100000/- or in default of payment of fine to further four months S.I, while extending benefit of Section 382-B Cr.P.C to the appellants.

2. According to FIR No.231 dated 17.08.2016 under Section 9 ( c ) CNSA registered in Police Station KDA, Kohat, Zardad Khan SHO along with constables Waqas Jamal No.931, Inamullah No.79, Excise & Taxation Officer Inspector Tariq Afridi, S.I Israr Khan and other staff members was present on checking duty at main road near Habib Shah Hujra when, in the meantime, white colour Suzuki No.3484/PR came there. The driver of the Suzuki disclosed his name as Wajahat son of Sabit Ali resident of Bosi Tang, Khadi Zai, while the person sitting on the front seat of the Suzuki also disclosed his name as Syed Zahir Hussain son of Syed Gul Shah Hussain resident of Khadi Zai Mitta Khan Khel, Orakzai Agency, and during checking of the Suzuki, a plastic carton was found in the body of the

Suzuki under the seat on left side, wherefrom five packets chars *Garda*, each packet weighing 1200/1200 grams, total 6000 grams, were recovered, and from each packet, samples weighing 5/5 grams were separated for analysis in the FSL and the remaining 5975 grams chars *Garda* was separately sealed and taken into possession by the complainant/SHO. The vehicle was also taken into possession, and both the accused/appellants were arrested. The complainant/SHO drafted *murasila*, and sent the same to the P.S, where case was registered against both the appellants/accused.

3. During investigation, the Investigating Officer prepared the site plan, and also dispatched the samples to the FSL for report of the chemical examiner, and report therefrom was received in the affirmative. After completion of investigation, complete challan was submitted in the case against the accused/appellants to the learned trial Court.

4. The learned trial Court framed formal charge under Section 9 ( c ) CNSA against the accused/appellants, to which they pleaded not guilty and claimed trial. In support of its case the prosecution examined seven PWs, including, Razi Gul SI (PW.1); Zardad Khan SI (PW2); Tariq Khan Afridi Inspector Excise and Taxation Office, Kohat (PW.3); Javed Iqbal IHC (PW.4); Youaf Jamal FC No.83 (PW.5); Ashfaq Khan SI (PW.6); and Muhammad Asif LHC (PW.7). After prosecution closed its evidence, statements of the accused were recorded under Section 342 Cr.P.C. They disputed allegations of the prosecution, but declined to be examined on oath or produce defence evidence. Following arguments on behalf of both the sides, the learned trial Court/Sessions Judge/Judge, Special Court, Kohat convicted both the accused/appellants under Section 9 ( c ) CNSA and awarded sentences of imprisonment for three years with fine of Rs.100000/- each or in default to further four months S.I, vide impugned

judgment/order dated 14.06.2017; hence the instant appeal by both the appellants.

5. Arguments of learned counsel for the appellants and learned AAG heard; and record perused.

6. The prosecution case, briefly stated, is that chars *Garda* weighing 6000 grams in five packets, each packet weighing 1200 grams, was found and recovered in a plastic carton underneath left seat of body of white Suzuki No.3484/PR being driven by appellant/accused Wajahat Ali and appellant/accused Syed Zahir Hussain occupying front seat of the vehicle.

7. It may be pointed out, at the very outset, that the prosecution failed to prove either ownership of the Suzuki or appellant/accused Wajahat Ali its driver. On the other hand, not only this fact has been established on the record that the vehicle was a passenger Suzuki but appellant/accused Syed Zahir Hussain was also a Constable in FC Hangu Platoon No.360, besides the fact

that nothing was available on the record to suggest previous involvement of the appellant/accused in such like cases. Admittedly, the contraband was not recovered from personal possession of either of the two appellants/accused. Even the plastic carton, where-from the five packets of chars *Garda* were allegedly recovered was not taken into possession; and, as such, not produced in the Court.

8. There are also material contradictions in the evidence adduced by the prosecution in support of its case, as the complainant SHO Zardad Khan (PW.2) stated that the *murasila* was neither in his hand writing nor in the hand writing of Tariq Inspector, rather the same was written on his dictation by his Constable, but he did not remember name of the said Constable, and that similar was the case of recovery memo EXPW2/1 and card of arrest. The complainant SHO was, however, negated not only by Tariq Khan Afridi Inspector Excise & Taxation, Kohat (PW.3) but also by the I.O,

Ashfaq Khan SI (PW.6), because the former categorically stated that the *murasila* was drafted by Zardad SHO, whereas the latter was positive in recalling “that the recovery memo, *murasila* and card of arrest were in the hand writing of seizing officer having his signatures”. The Investigating Officer (PW.6) admitted in his statement before the Court “that Tariq Khan Inspector called the SHO that he had apprehended the person and on that the SHO went there”, thus creating serious doubt about version of the prosecution that it was the complainant/SHO who apprehended the appellants/accused and made the alleged recovery of narcotics from the Suzuki of the appellants/accused.

9. The alleged recovery was shown that of chars *Garda*, but the report of chemical examiner showed physical appearance as ‘brown solid’, and the complainant Inspector (PW2) and the marginal witness Tariq Khan Afridi, Inspector Excise and Taxation Kohat (PW.3) ‘accordingly’ ‘adjusted’ their

statements by showing the recovered chars in the shape of slabs and half backed chars *Garda*, contrary to the description of recovered chars shown in the FIR only as chars *Garda* which is, admittedly in soft form as against chars *Pukhta* which is in baked shape.

10. Apart from non production, rather non-existence, of daily diary of the P.S showing departure and arrival of the complainant SHO, the complainant/SHO did not remember as to how he separated samples from each packet. Besides, the I.O (PW.6) admitted this fact that the samples were lying with him for two days, and were sent to the FSL on third day of the alleged recovery i.e. on 19.08.2016, without any proof with regard to safe custody of the samples in these three days. The retaining of samples by the I.O for three days without any reason, let alone justifiable reason, would certainly cast shadow of doubt on the opinion/report of the chemical examiner and



also on recovery of narcotics from the appellant/accused.

11. In view of the above stated discrepancies/contradictions in the case of prosecution, there was hardly any material before the learned trial Court to award the sentence of rigorous imprisonment for three years and fine of Rs.100000/- each to the appellants/accused. Therefore, the appeal is accepted, and while setting aside the impugned judgment along with conviction and sentences awarded to the appellants, they are acquitted of the charges levelled against them by the prosecution; and be set free, forthwith, if not required in any other case.

Announced.  
20.10.2017.

**J U D G E**

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*\*Ayub\**

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak.*  
*Hon'ble Mr. Justice Qalandar Ali Khan.*