

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.A No. 361-P/2014.

JUDGMENT

Date of hearing.	08.10.2015
Appellants (Ijaz Khan etc)	By M/S Farhana Marwat & Khushmir Khattak Advocates
State.	By Mr. Muhammad Iqbal Mohmand, SPP for ANF.

QAISER RASHID KHAN, J. At a trial held by the learned Judge Special Court (CNS), Peshawar the appellants, on being found guilty under section 9 (c) CNS Act 1997, in case FIR No.03 dated 23.2.2013, Police Station ANF Kohat were convicted and sentenced to life imprisonment and a fine of Rs.100000/- (one lac rupees) each or in default to undergo further one year S.I each with benefit of section 382-B Cr.P.C extended to the appellants vide judgment dated 23.5.2014.

2. The prosecution case as per FIR is that on 23.2.2013 having received spy information that inter provincial smuggler namely, Farid, resident of Bara would smuggle huge quantity of narcotics from Peshawar through his agents to Karachi via Kohat through bus bearing registration No. JA-6851 Karachi, S.I Raja Shoaib Ahmad (PW-2) arranged a raiding party alongwith other ANF staff and held nakabandi at

the crime spot when at 19:40 hours the said bus coming from Dara Adamkhel side was signaled to stop for the purpose of checking. The bus was carrying 31 passengers and three crew members. The person sitting on the driving seat disclosed his name as Ijaz Khan s/o Meerdil while the person sitting alongwith him on the 'Tapa' disclosed his name as Meer Khatam and the person sitting on the VIP seat disclosed his name as Habib Khan s/o Gul Habib being 2nd driver of the bus. On cursory interrogation all the three accused separately disclosed and pointed out the presence of narcotics i.e. charas garda hidden in both sides of the bus. He prepared the pointation memo on the spot duly signed by the marginal witnesses. As a precautionary measure, the owner/ conductor of the bus namely, Meer Khatam, was asked to return the ticket fare and luggages of the passengers to them and the passengers were let free. The bus alongwith three accused were brought to the Police Station for thorough search. During search in the presence of the three accused and marginal witnesses both the sides of the bus were opened with different tools and on thorough search 79 packets of charas garda which was wrapped in white envelopes as well yellow solution tape were recovered which on weighment total turned out to be 94.800 Kgs. 10/10 grams from each packet of charas garda were separated for FSL examination while the remaining packets were sealed into four plastic sacks. From

personal search of accused, Ijaz Khan, his CNIC, mobile phone set alongwith sim, 2nd Q Mobile set alongwith Rs.3500/- were recovered and from the personal search of accused Meer Khatam his CNIC, mobile set alongwith sim, photocopy of the registration book of the bus alongwith stamp paper regarding purchase of the bus and Rs.9000/- were recovered. Similarly from the personal search of Habib Khan, 2nd driver, his CNIC, driving license, mobile phone alongwith sim and Rs.400/- were recovered. On further interrogation all the accused separately disclosed that the actual owner of the narcotics is one Farid r/o Bara Khyber Agency presently resident of Karkhano Market Hayatabad. The accused-appellants were arrested. The narcotics, the bus and personal belongings of the accused were taken into possession through recovery memo Ex.PW2/2 and the FIR ibid was registered against the accused.

3. Investigation commenced and at its conclusion, complete challan was submitted against the accused-appellants before the learned trial Judge who after holding a full dressed trial convicted and sentenced the appellants through the impugned judgment, hence the appeal.

4. In order to prove its case, the prosecution produced five witnesses in all.

PW-1 Syed Rahat Ali Shah AD ANF Lahore stated to be posted as Assistant Director PS ANF Kohat during the

relevant days on completion of investigation submitted complete challan (Ex.PW1/1) against the accused.

PW-2, Raja Shoaib S.I made the same narration as in the FIR. He further stated to have drafted the FIR No. 03 dated 23.2.2013 which correctly bore his signature as Ex.PW2/3, prepared the cards of arrest of the accused as Ex.PW2/4 to Ex.PW2/6, recorded statements of the PWs, after investigation handed over the parcels of samples, the recoveries from the personal search of the accused and his application to the FSL to the Moharrir of the PS for keeping the same in safe custody of PS Malkhana and directed him to send the parcels of samples to the FSL, prepared the rough sketch of the place of occurrence as Ex.PW2/7. He also drafted the application to the FSL for analysis of the samples which is Ex.PW2/8 and sent a letter to the concerned MRA through Assistant Director of the PS for verification of particulars of the bus which is Ex.PW2/9. He also sent a notice to one Iran Badshah co-accused which is Ex.PW2/10 and sent Parcha 12 of the two accused to PS Lathambar Karak and PS Gulberg Peshawar and both have disclosed that the accused are P.Os and involved in case FIR No. 555 dated 23.12.2010, PS Gulberg Peshawar under section 9 (c) CNSA. The reports are Ex.PW2/11 and Ex.PW2/12 respectively and in this respect the report and FIR were placed on record as Ex.PW2/13 and Ex.PW2/14 respectively and the proclamation

letter from Police Station Gulberg is Ex.PW2/15. Since all the accused disclosed that Iran Badshah and Abdullah Afridi were their accomplices in the transporting of narcotics, therefore, he searched for their accomplices but when they were not available, he applied for the issuance of warrant under section 204 Cr.P.C against them vide applications Ex.PW2/16 and Ex.PW2/17 respectively and thereafter applied for proclamation of proceedings under section 87 Cr.P.C vide applications Ex.PW2/18 and Ex.PW2/19 respectively. He received the positive FSL report as Ex.PW2/20 and after completion of investigation he handed over the file to AD Syed Rahat Ali Shah for submission of complete challan. Bus bearing registration No. JA-6851 Karachi was parked outside the court premises and exhibited as P-1, the remaining 4 sacks of charas garda were produced before the court as Ex.P-2 to P-5, personal belonging of the driver Ijaz Khan accused i.e. his CNIC as P-6, mobile phone set P-7, mobile phone set Q P-8, Rs. 3500/- P-9 and similarly the personal belonging of Meer Khatam owner/ conductor of the bus i.e. his CNIC P-10, mobile phone set P-11, photo copy of the registration book P-12, stamp paper P-13 and Rs.9000/- P-14 and also took into possession the personal belonging of Habib Khan i.e. CNIC P-15, driving license P-16, mobile phone set P-17 and Rs.400 P-18.

PW-3 Riaz Khan driver is marginal witness to the pointation memo Ex.PW2/1 and has fully supported the statement of PW-2.

PW-4 Mudassir Khan constable stated that on 25.2.2013 he was present on duty at Police Station ANF Kohat when Attaullah Jadoon ASI/ Moharrir handed him over 79 sealed parcels of samples each of 10 grams of charas garda having 2/2 seals of the monogram S.A of case FIR No.03 dated 23.2.2013 alongwith application of the I.O, English docket and route permit for taking the same to the FSL Rawalpindi and on return handed over the acknowledge receipt to the Moharrir.

PW-5 Attaullah Khan Jadoon S.I stated that on 23.2.2013 he was present in the Police Station on duty at the PS when the I.O on his return to the PS handed him over the case property of the case, parcels of samples and the bus in question for keeping them in safe custody and the I.O also directed him to send the parcels of samples to FSL Rawalpindi and on 25.2.2013, he handed over the sealed parcels, original application of the I.O to the FSL, English docket to constable Mudassir Khan who took the same to Rawalpindi and on return handed over acknowledgement receipt to him.

5. On closure of the prosecution evidence, the accused-appellants were examined under section 342 Cr.P.C wherein

they denied the allegations levelled against them. However, they neither opted to be examined on oath nor to produce defence.

Arguments heard and record perused with the valuable assistance of the learned counsel for the parties.

6. At the very outset, it was pointed out that Ijaz Khan convict-appellant has since left this mortal world for his eternal abode and thus the appeal to his extent abates.

7. In the present case, it was Raja Shoaib Ahmad S.I ANF (PW-2) who set the ball rolling when on receipt of spy information regarding smuggling of huge quantity of narcotics from Peshawar to Karachi via Kohat through bus bearing registration No. JA-6851 Karachi he acted promptly by arranging a raiding party and laid a barricade at the relevant spot and on the arrival of the concerned bus it was stopped. Ijaz Khan, convict-appellant (since deceased) occupied the driver's seat and by his side, which in local jargon is known as 'Tapa', convict-appellant Meer Khatam was sitting and the front seat commonly known as VIP seat was occupied by Habib Khan, being the second driver of the bus. On being quizzed cursorily, they separately disclosed and pointed out the presence of Charas Garda hidden in both sides of the bus. While appearing as PW-2, he recorded his pretty lengthy statement right from the receipt of spy information, laying of nakabandi, arrival of the bus at the spot, presence of the

accused-appellants in the bus alongwith passengers and the separate pointations made by the accused regarding the presence of narcotics and the subsequent recovery of huge quantity of narcotics weighing 94.800 KGs from the doors of the bus. His detailed statement has been reproduced above. He was subjected to a matching and of course, lengthy, taxing and searching cross-examination on behalf of the appellants and in the process every effort was made to bring his evidence under some shadow of doubt, but PW-2 remained unruffled and stuck to his stance. Rather, he made further disclosures about certain facts which only came to limelight during his investigation. In reply to a question, he “admitted as correct that according to my investigation the bus in question was purchased by Iran Badshah and Meer Khatam accused.” The record reveals that both Iran Badshah and Meer Khatam are the sons of one Shah Jehan and hail from Karak. An attempt was made to pass on the ownership of the bus and the narcotics hidden therein to Iran Badshah, Abdullah and Farid as the appellants stated themselves to be the ordinary passengers in the bus. However, they were neither found to be in possession of the tickets while travelling to Karachi nor the appellant Meer Khatam could give an explanation as to why he made payment of the fare amount to the passengers on the instructions of the ANF authorities after the bus was stopped

and taken to the Police Station in order to retrieve the huge quantity of narcotics hidden in its doors.

8. PW-3 namely, Riaz Khan, who had accompanied the raiding party also gave an account of the proceedings right from nakabandi at Toll Plaza Indus Highway Kohat at 1840 hours, arrival of the bus from Dara Adamkhel, the presence of 31 passengers and the three appellants being the crew of the bus, the respective disclosure of their names by the appellants as well as the presence of narcotics in the bus. He also witnessed the pointation memo (Ex.PW2/1) and the recovery memo (Ex.PW2/2) whereby the I.O took into possession the narcotics, bus and recoveries from the personal searches of the accused-appellants. The entire case property including the bus were very much present before the court during evidence. He was also subjected to sufficient cross-examination, but he remained steadfast and nothing favourable to the appellants could be extracted from his mouth.

Similarly, Mudassir Khan Constable as PW-4 stated to have taken the 79 sealed parcels of charas garda of 10 grams each alongwith application of the I.O to the FSL at Rawalpindi and thereafter brought the acknowledgement receipt to the Moharrir. PW-5 namely, Attaullah Khan Jadoon, vouched about the delivery of the case property to him by the I.O on 23.2.2013 whereafter he kept the same in

the Malkhana of the PS and on 25.2.2013 sent the samples through constable Mudassir Khan to FSL Rawalpindi.

9. During the course of arguments, the learned counsel for the appellants launched a frontal attack on the prosecution version and contended that though the appellants were on board the bus at the relevant time but as passengers and not as crew members as alleged in the FIR. She contended that the appellants had nothing to do with the recovery so effected from the hidden cavities in the bus as the actual crew of the bus namely, Farid, Abdullah and Iran Badshah were let free and the appellants were substituted in their place as accused. She contended that even the bus belongs to Iran Badshah as evident from the sale deed dated 10.1.2013 and the I.O in the case also failed to perform his duty in order to lay his hands upon the real culprits being owners of the bus as well as narcotics.

We are afraid the arguments of the learned counsel for the appellants hold no water. The presence of the appellants in the bus at their positions mentioned above, stands amply established. The complainant had only information about the smuggling of narcotics by inter provincial smuggler namely, Farid, through his agents but it was the appellants who during cursory investigation separately pointed out the presence of the narcotics stashed in the vehicle. During personal search of appellant Meer Khatam, not only the registration book of the

bus was recovered but also a stamp paper regarding purchase of the bus. Moreover, it was Meer Khatam who returned the ticket fares to the 31 passengers on board the bus. The sale deed (Ex.P-13) shows the sale of the bus in favour of Iran Badshah s/o Shah Jehan resident of Rehmat Abad Karak who is in turn the real brother of Meer Khatam s/o Shah Jehan resident of Karak. As such it is not available to appellant Meer Khatam to cry hoarse about the conduct of the raiding party.

10. During the course of evidence, the separation of samples of 10 grams from each of the 79 packets, its handing over by the complainant to Attaullah Jadoon (PW5), its safe custody in the Malkhana and its onward delivery to constable Mudassir Khan to be taken to FSL Rawalpindi did not come under challenge from the appellants. The positive FSL report in the shape of Ex.PW2/20 puts a final seal on the recovered contraband to be Charas Garda.

11. In a situation where the presence of the appellants in the vehicle stood fully established and the PWs in one voice stated about the recovery of huge quantity of narcotics weighing 94.800 KGs from the bus whose value runs into millions of rupees at the local level and much much higher internationally, then the appellants appear to have been tempted to make quick buck in one go. It was probably with such a situation in mind when a poet in a satirical and parodical mood said

12. It needs no reiteration that CNS Act, 1997 is a special law and it has been specifically provided in section 29 of the Act that presumption of the recovery of contraband items is always deemed to be from the accused unless it is proved to the contrary. Except for minor and negligible contradictions which certainly do not strike at the roots of the prosecution version, the case stands proved against the appellants to the hilt leaving no room to doubt the veracity of the statements of the PWs. Moreover, the PWs were not at all questioned about any previous ill-will or animous with the appellants whereby the latter could have been substituted with so called other accused. Though the appellants have denied the prosecution allegations in their stereotype statements under section 342 Cr.P.C, but mere denial of the charge and pleading innocence without substantiating the same through cogent and convincing evidence in the face of a strong prosecution case cannot earn them acquittal.

In view of the foregoing position when the prosecution case stood fully proved against the appellant, the learned trial Judge recorded a proper and well reasoned judgment

according to law and evidence available on the record. The impugned findings do not suffer from any illegality, misreading or non-reading of evidence which could in turn call for interference through the present appeal. Resultantly, this appeal being meritless stands dismissed.

Announced:
08.10.2015

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