

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MANZOOR AHMAD MALIK  
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**CRIMINAL APPEAL NO.239/2020**

(On appeal from the judgment dated 11.12.2019 passed by the Islamabad High Court, Islamabad in CrI.No.A.255/2019)

Mian Khalid Perviz

... **Appellant**

**Versus**

... **Respondents**

The State through Special Prosecutor, ANF  
& another

For the Appellant : Raja RizwanAbbassi, ASC  
Syed RifaqatHussain Shah, AOR

For the State : Mr. Inaam Amin Minhas, Spl. Prosecutor, ANF  
Ch. IhteshamulHaq, Spl. Prosecutor, ANF  
alongwithRaja Shoaib, Inspector, ANF  
Naseer, S.I., ANF

Date of Hearing : 26.10.2020

**JUDGMENT**

**MAZHAR ALAM KHAN MIANKHEL, J-.**

The Appellant was booked and tried in case FIR No.72 dated 27<sup>th</sup> May, 2018 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 (CNSA) at Police Station, Anti-Narcotics Force (ANF)/RD, (North) Rawalpindi for an alleged recovery of 12 packets of *charas* (from specially built two secret cavities, six packets in each) weighing 12 kilograms. After a regular trial, Appellant was convicted under Section 9(c), CNSA, 1997 and sentenced to imprisonment for life with a fine of Rs.10,00,000/-,

(One Million) in default whereof to further undergo simple imprisonment for one year vide judgment dated 10<sup>th</sup> July, 2019 passed by learned Judge, Special Court (Control of Narcotic Substances) Islamabad (*Trial Court*). Benefit of Section 382-B Cr.P.C. was also extended to him. His conviction and sentence was upheld by Division Bench of the Islamabad High Court, Islamabad by dismissing his Appeal vide judgment dated 11<sup>th</sup> December, 2019. Hence instant Appeal with Leave of this Court dated 17<sup>th</sup> April, 2020.

2. Learned counsel for the Appellant, learned Special Prosecutors, ANF were heard and record of the case was perused. Perusal of the record reveals that a huge quantity of '*charas*' weighing 12-kilograms was recovered from the secret cavities, specially built, of Toyota Hilux, Vigo Registration No.BF145, Islamabad. FIR noted above was registered; recovery memo and sample parcels were made and then sent for chemical analysis. Appellant was arrested. After investigation of the case, Appellant was sent to the court of Special Judge (CNS), Islamabad to face the trial. Prosecution in support of its case produced five witnesses. Record of the case would further reflect that prosecution proved its case and established the recovery of narcotics, registration of case, safe custody of the recovered substance and onward transmission of sample parcels for chemical analysis and then a chemical analysis report from 'National Institute of Health (Drugs Control and Traditional Medicines Division) (NIH), Islamabad' confirming the recovered substance to be '*charas*'. The Trial Court, while considering the entire evidence, returned a verdict of guilty for

Appellant, as noted above, and the same was maintained and upheld by the High Court in Appeal.

3. Leave to Appeal was granted on 17<sup>th</sup> April, 2020 by this Court for re-appraisal of entire evidence on the ground that only evidence of prosecution was considered by the courts below while recording conviction of the Appellant whereas defence evidence adduced by the Appellant was not considered /evaluated in its true perspective.

4. We, in the given circumstances, heard the learned counsel for the Appellant in detail. Learned counsel could not point out any single piece of misreading or non-reading of the material evidence produced by the prosecution. We may also observe that the Trial Court, while recording a conviction of the Appellant, has discussed the defence evidence in Paras-15 & 16 of its judgment dated 10<sup>th</sup> July, 2019 whereas the Appellate Court while concurring and maintaining the conviction so recorded by the Trial Court has not only considered the defence plea of the Appellant but has also discussed his statement on oath recorded under Section 340(2) of the Code of Criminal Procedure, 1898 (Cr.P.C.) and then the entire defence evidence.

5. Re-appraisal of entire evidence led by the prosecution reflects that prosecution was successful in proving its case beyond any reasonable doubt. The defence evidence led by the Appellant was also discussed and considered by the Trial Court and the Appellate Court had concurred on the point that defence had failed to rebut the evidence of prosecution. Since leave was granted only

on the point that defence evidence led by the Appellant was not appraised properly, so we just for the safe administration of justice have also gone through the entire defence evidence. Besides general denials of the occurrence, Appellant in his statement under Section 340 (2) Cr.P.C. has also alleged his abduction on 26<sup>th</sup> May, 2018 by the ANF officials, false involvement on the basis of malice and his refusal to accept the demand of illegal gratification of Rs.05 million made by Inspector Shakeel. He also leveled allegations of dacoity/robbery of different articles including prize bonds from his house on 26<sup>th</sup> May, 2018 and thereafter he was allegedly taken/shifted to P.S. North, ANF along with his vehicle. He also produced ten witnesses in his defence including his brother.

6. Some of the documentary evidence in defence produced by the Appellant was recorded by automated information system which according to law is admissible under Article 164 of the Qanun-e- Shahadat Order, 1984 (P.O. No.X of 1984) but in case of denial, law requires that such evidence generated through the system *ibid* must be proved in accordance with law. The Courts have been empowered to receive and make use of such evidence collected through modern technologies. Articles 46-A and 78-A of the Order *ibid* as well as the provisions of Electronic Transactions Ordinance (LI of 2002) provide procedure to receive and prove such evidence. Reference in this regard can also be made to the case of Ishtiaq Ahmed Mirza v. Federation of Pakistan (PLD 2019 SC 675) and Ali Raza v. State(2019 SCMR 1982).

7. The defence evidence recorded by Najam Riaz (DW-1) and Nouman Khan Bangash (DW-2), pertains to calls data of Appellant's mobile phones and that of the cell phones of Investigating Officer (I.O.) (Ex. DB to DE and DJ). A perusal of these documents would reveal that these were general in nature. Neither relevant entries were pointed out in the data nor the voice record transcripts were produced which, if available, could have made a point. There is nothing on the record in this regard to help out the Appellant in support of his allegations made in defence. Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call transcripts, it should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence. While considering such type of evidence extra care is required to be taken by the Courts as advancement of science and technology, on the other hand, has also made it very convenient and easy to edit and make changes of one's choice as highlighted and discussed in the case of Ishtiaq Ahmad Mirza supra. We also can lay hand on the case of Azeem Khan v. Mujahid Khan (2016 SCMR 274) in this regard. So, the CDR DATA produced by the said witnesses is of no help to the Appellant and cannot be termed as an evidence worth reliance to shatter the direct evidence adduced by the prosecution.

8. The other important piece of evidence so produced was tracking data of a vehicle from 25<sup>th</sup> to 27<sup>th</sup> May, 2018 (Ex.-DK/1-14). Again these are the electronically generated documents of V-Tracking (Pvt) Ltd. Company brought on the record by the Zonal

Manager of the company, Jabran Ahmad, DW-3. This data does not mention the details of vehicle in question or its owner. No doubt this data reflects different locations but apparently nothing could confirm that it is with regard to the same vehicle of the Appellant. During the course of arguments, learned counsel for the Appellant had pointed out certain entries in the bottom of Ex.DK/12 (page 121 of paper book) and few entries on the top of Ex.DK/13 (page 122 of paper book) which reflect that location of a vehicle till 11:11:01 pm, on 26<sup>th</sup> May, 2018 was "0.21 KM SE of ABL Gulzar-e- Quaid Branch Chaklala, Rawalpindi, Punjab, PK". His contention was that it is the vehicle of Appellant BF-145 near P.S. ANF. But the record so relied does not confirm that the record under consideration is of the vehicle in question. DW-10 Mian Majid Perviz, brother of Appellant, produced documents pertaining to Takaful and installation of tracker in the vehicle BF-145, Islamabad owned by Appellant as Ex.DW.11/1-2. But there is nothing on the record which could show that Ex.DK/1-14 pertain to the vehicle shown in Ex.DW11/1-2.

No doubt this is the important evidence if proved and established on the record, then it goes to the root of the case and sufficient for indentation and completely diminishing the prosecution evidence. The two types of documents noted above do not connect each other and apparently do not support the stance of the Appellant. Since Zonal Office of the said tracking company is in Islamabad and to clarify certain questions, officer of the company was asked to send any technical expert to clarify the record and answer some important questions cropped up during

writing the judgment. The person appeared in response was the same person who had brought the record during trial, Jabran Ahmad, Zonal Manager, DW-3. He in reply to our query submitted that what is tracked by their system or what helps in tracking is the tracking device fitted in the vehicle. If the said device with the help of an expert or with collusion of the company's employee, is removed from that vehicle and refitted in any other vehicle without intimation to the tracking company then in that case, the vehicle to be tracked by the system would be the vehicle in which the tracking device is refitted and the movement of original vehicle would not be traced. He further explained that normally it is very difficult even for the owner to trace the device fitted in the vehicle but possibility of removal and refitting cannot be ruled out. At this juncture, he further explained that whenever power supply to the device from the battery of the vehicle is disconnected or current supply line to the device is removed, the system of the company receives an alert through a fully automated process in this regard. He pointed out such alerts five in numbers appearing on Ex.DK/13 (page 122 of the paper book) which show zero, zero entries of latitude and longitude. When this being the position, possibility of intervention by the Appellant side cannot be ruled out. These readings show some sort of interference but the record is silent as to who was responsible for such interference. This situation creates a serious doubt on the stance of Appellant. The specific plea taken by the Appellant legally has to be proved by the Appellant without any loophole and ambiguity specially when there is no ill-will, *mala fide* or any other grudge on the part of the other party/prosecution. We, while scanning the entire record, are

unable to understand as to why the Appellant was chosen for alleged abduction on 26<sup>th</sup> May, 2018 at daytime and then raid and alleged dacoity/robbery and demand of illegal gratification and that too in the month of *Holy Ramadan*. Besides the above, no separate report was lodged in the police station for these wrongdoings of the ANF. The other disturbing factor is that DW-10, Mian Majid Perviz, who is the brother of Appellant, claims to be present at the time of alleged abduction of the Appellant from the Shell Petrol Pump at 3:30 pm on 26<sup>th</sup> May, 2018 and he reported the matter at 15:40 on 27<sup>th</sup> May, 2018 (Ex.D-11/B). He also moved an application to the concerned SHO/Police Station, Aabpara, Islamabad (Ex.DW-11/A) on 7<sup>th</sup> June, 2018 to trace the location of mobile phones and the vehicle of the Appellant. This appears to be an attempt of maneuvering evidence in defence. It is hardly to believe that till 7<sup>th</sup> June, 2018 he or the family of Appellant was unaware of the recovery of narcotics. Details of Takaful of the vehicle and installation of tracking device by the tracking company *ibid* were also produced by DW-10 (Ex-DW-11/1-2). Investigating Officer of the case Raja Shoaib, Inspector, PS-ANF, during personal search of the Appellant had also recovered '*Inter-Services Intelligence (ISI)*' Card (P/6) and a stamp in the name of Appellant 'AD Ministry of Defence, Rawalpindi' (P/15). The Appellant during the investigation disclosed that these were fake and on such disclosure other Sections of Penal Code were also inserted in the FIR. The other witnesses with oral evidence produced in defence have no evidentiary value in presence of prosecution evidence. Appellant in his statement under Section 340(2) Cr.P.C. alleged that at the time of his abduction his son and driver were also with



him who were let off by the ANF staff but both were not produced in defence rather DW-10 who was not named by Appellant was produced. With all the above short comings in defence evidence it becomes very difficult to believe such evidence. DW-3, Zonal Manager of the tracking company during his statement had also produced map of movement history of the vehicle comprising three sheets Ex.DL 01-03 but the map available on the paper book consist of (five sheets) (from page 124 to 128) without exhibit mark. We are unable to rely or consider such documents which are not part of the record. Original record of the case was perused. The map produced during trial (Ex.DW 01-03) is different from these documents. The exhibited map also is of no help to the Appellant as the same have the similar shortcomings as discussed above. So, we are of the considered view that the defence evidence so led by the Appellant is not of such credence and trustworthy that it could shatter the confidence inspiring evidence of prosecution. Resultantly, this appeal, having no merit, is dismissed.

These are the reasons for our short order of even date which is re-produced herein below:-

"For reasons to be recorded later, the instant criminal appeal is dismissed."

Judge

Judge

Judge

Islamabad,  
26<sup>th</sup> October, 2020  
Sarfraz/-  
'Approved for reporting'