

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

CRIMINAL APPEAL NO.48 OF 2021

(On appeal against the judgment dated 10.12.2015 passed by the Lahore High Court, Lahore, in CrI. Appeal No.2831 of 2010)

Ahmed Ali and another	Appellants
Versus			
The State	Respondent

For the appellants	:	Raja Rizwan Abbasi, ASC ASC Syed Rifaqat Hussain Shah, AOR.
For the State	:	Mr. Muhammad Jaffar, Addl. PG Pb. (Via video link from Lahore)
Amicus Curiae	:	Raja Inaam Ameen Minhas, ASC
Date of hearing	:	13.12.2022

JUDGMENT

SARDAR TARIQ MASOOD, J. Ahmad Ali and Iftikhar Ahmad (hereinafter referred to as the ("**appellants**") were booked in case FIR No. 605 of 2010, registered on 26.05.2010 at Police Station A-Division, District Sheikhpura, under Section 9(c) of the Control of Narcotic Substances Act, 1997 ("**CNSA**"). After regular trial, the learned Sessions Judge/Special Court, CNSA, Sheikhpura, vide its judgment dated 13.11.2010, convicted the appellants under Section 9(c) of CNSA and sentenced to imprisonment for life with a fine of Rs.500,000/- (Rupees five hundred thousand) each, or in default thereof to further undergo simple imprisonment for one year each, with benefit of Section 382-B of the Code of Criminal Procedure, 1898 ("**the Code**"). The appeal filed by the appellants before the learned High Court was dismissed vide impugned judgment dated 10.12.2015; hence, the instant appeal by leave of this Court granted on 22.01.2021.

2. Learned counsel for the appellants contends that the appellants are innocent and have falsely been involved in the commission of the offence; that the prosecution has failed to prove its case beyond any

reasonable doubt as the prosecution evidence is tainted with contradictions and discrepancies; that the police, just to show their efficiency, has entangled the appellants in this crime; that during the trial neither the recovered *Charas* was produced in Court nor the same was exhibited; that the vehicle, the secret cavity whereof contraband was recovered, was also neither produced nor exhibited; that *Moharrar* of the *Malkhana* had not mentioned the date on which sample parcels were received by him, and also that he remained quiet regarding receipt of the remaining *Charas*. On the basis of the above deficiencies in the prosecution case, learned counsel submits that the appellants deserve acquittal.

3. On the other hand, learned Additional Prosecutor General Punjab ("APG") supported the impugned judgment and stated that the prosecution has succeeded in proving the case beyond any reasonable doubt; that there is no inconsistency in the prosecution evidence; that Muhammad Bashir ASI/*Moharrar* (PW-2) appeared in the trial court and stated that he kept the sample parcels in safe custody and handed over the same to Muhammad Jamil, Constable (PW-3) for onward transmission to the Chemical Examiner, while the said Muhammad Jamil also appeared and stated that he deposited the sample parcels in the office of the Chemical Examiner intact for analysis; thus, the prosecution has proved safe custody and safe transmission.

4. Heard and record perused. The main point agitated by the learned counsel for the petitioners is that the case property was neither produced in the trial court nor exhibited by the prosecution. The learned APG, after going through the record, conceded that this flaw was left by the prosecution during the trial. He, as well as the learned Amicus Curia, however, assisted this court regarding the legal effects of non-production of case property in the trial court.

5. In light of the above, the main questions for consideration before this court are: why is the case property to be produced and exhibited during the trial? under which provisions of law? and which provisions of law deal with the proposition. For that purpose, first we need to examine the relevant provisions of law and rules as to the case property and exhibition of the same in a court of law.

Rule 22.16 of the Police Rules, 1934 ("**the Police Rules**") deals with the "case property". Sub-rule (1) thereof provides, *inter alia*, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal cases, and take charge of property which is unclaimed. Sub-rule (2) thereof provides, *inter alia*, that each weapon,

article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule. Sub-rule (3) thereof provides, *inter alia*, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, *inter alia*, that motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete *challan*. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by Section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court.

Rule 22.18 of the Police Rules deals with "custody of property". Sub-rule (1) thereof provides, *inter alia*, that property exceeding in value of Rs.500/-, whether appertaining to cases or seized on suspicion, or taken as unclaimed, shall be forwarded as soon as possible to district headquarters for deposit in the treasury in accordance with Police Rule 27.18(2) or, in the case of property connected with a case to be tried at an outstation or *Tahsil*, to the *Tahsil* Treasury, where it shall be placed in the *Tahsil* strong-room under the charge of *Tahsildar*. Sub-rule (2) thereof provides, *inter alia*, that all case property and unclaimed property, other than cattle, of which the police have taken possession, shall, if capable of being so treated, be kept in the store-room. Otherwise, the officer in-charge of the police station shall make other suitable arrangements for its safe custody until such time as it can be dealt with under sub-rule (1) above. Each article shall be entered in the store-room register and labelled. The label shall contain a reference to the entry in the store-room register and description of the article itself and, in the case of articles of case property, a reference to the case number. If several articles are contained in a parcel, a detail of the articles shall be given on the label and in the store-room register. The officer in-charge of the police station shall examine, government and other property in the store-room, at least twice a month and shall make an entry in the station

diary on the Monday following the examination to the effect that he has done so.

Rule 22.70 of the Police Rules provides that Register No. XIX shall be maintained, wherein, with the exception of articles already included in Register No. XVI, every article placed in the store-room shall be entered and the removal of any such article shall also be noted in the appropriate column.

Rule 27.11 of the Police Rules provides that the head of the legal branch shall, with the help of his assistants, maintain the Registers, including Register of case property and unclaimed property in Form 27.11(1), which may be destroyed three years after being completed.

Rule 27.12 of the Police Rules provides that at headquarters, the Deputy Superintendent of Police (Legal), with the assistance of his staff, shall take charge of weapons, articles and property connected with their safe custody until the case is decided. When final orders are passed in the case, such weapons, articles and property shall, if not made over to the owner, be made over to the District Nazir. The Deputy Superintendent of Police (Legal) shall similarly take charge of, and be responsible for, the safe custody of suspicious property until the issue of the proclamation under Section 523 of the Code of Criminal Procedure, when such property be made over to the District Nazir.

Thus, the Police Rules mandate that case property be kept in the *Malkhana* and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tampered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.

6. Now adverting to the Lahore High Court Rules and Orders (Civil and Criminal) (**"High Court Rules"**), it is to be noted that Part B of Chapter 24 of Volume III thereof deals with the trial of the Sessions cases. Rule 14-E thereof provides, *inter alia*, that care is often required in tracing the custody of a prisoner's substances, personal food, blood-stained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the

various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the chemical examiner. The person who packs, seals and dispatches such articles should invariably be examined.

Rule 14-F of the High Court Rules provides that clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses. Rule 14-H thereof provides, *inter alia*, that all exhibits should be marked with a letter or number. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, then that series of numbers should be mentioned to avoid confusion. A printed label should be affixed or attached to each exhibit containing, number of exhibit, produced by, admitted (signature of court), date, case and description of exhibits. The Sessions Judge is responsible to see that these entries are properly made.

The above rules are reproduced as under:-

"14-E. Custody of other articles. - Similar care is often required in tracing the custody of prisoner's substances, personal food, blood-stained clothes etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should invariably be examined.

14-F. Every article to be produced. Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses.

14-H. Exhibits.- All exhibits should be marked with a letter or numbers, Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, that series of numbers should be mentioned to avoid confusion.

A printed label should be affixed or attached to each exhibit containing the following particulars:-

- (i) Number of exhibit
- (ii) Produced by
- (iii) Admitted (Signature of Court)
- (iv) Date
- (v) Case

(vi) Description of exhibits.

The Sessions Judge, should see that these entries are properly made.

Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments, food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses.

7. Now, advertent to the relevant provision of the Code of Criminal Procedure, 1898, Section 516-A thereof deals with the order for custody and disposal of property pending trial in certain cases. It provides that when any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy or natural decay, it may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. The first proviso thereto provides that if the property consists of explosive substances, the court shall not order it to be sold or handed over to any person other than a government department or office dealing with, or to an authorized dealer of such substances. The second proviso thereto provides that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance, seized or taken into custody under various laws, the court may, either on an application or of its own motion, and under its supervision and control, obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other court, and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf. The third proviso thereto provides that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or court.

Thus, the Court, on an application or of its own motion, under its supervision and control, can obtain and prepare such a number of samples of the property as it may deem fit for safe custody and

production before it or any other Court and can cause the destruction of the remaining portion of the property under a certificate issued by it in that behalf. Only then shall such samples be deemed to be the whole of the property in an inquiry or proceeding in relation to such offence before any authority or court. Even then, the sample parcels and the certificate are to be produced before the trial court and required to be exhibited, alongwith the report of the said Magistrate.

8. Another important provision is the Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides the procedure to be followed by the police while dispatching the narcotic for the test or analysis and also the procedure to be adopted by the analyst. Relevant provisions therefrom are as follows:

4. Dispatch of sample for test or analysts, --- (1) Reasonable quantity of samples from the narcotic drugs, psychotropic substances of the controlled substances seized, shall be drawn on the spot of recovery and dispatched to the officer-incharge of nearest Federal Narcotic Testing Laboratory, depending upon the availability for test facilities, either by insured post or through special messenger duly authorized for the purpose.

(2) Samples may be dispatched for analysis under the cover of a Test Memorandum specified in Form-1 at the earliest, but not later than seventy-two hours of the seizure. The envelope should be sealed and marked "Secret Drug Sample/Test Memorandum."

5. Receipt in the laboratory and examination of sample with reference to Test Memorandum. --- (1) The sealed envelope containing the samples, received in the laboratory should be carefully opened and given a distinct laboratory number.

(2) A separate register be maintained for narcotic drugs which may be further sub-divided agency-wise and the laboratory numbers should form a continuous series for each year.

(3) All samples shall be passed to the analyst the same day, who will then keep the same in his safe custody and will examine and record its, or their, weight in the Test Memorandum. He will compare the markings on the Test Memorandums with the markings on the packages envelopes and will ensure that he test the relevant sample, and in no case, the analysis of a narcotic drug be delayed as the Courts may refuse to extend remand beyond fifteen days in the absence of a chemical report.

6. Report of result of test or analysis. --- After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II.

The above provisions make it clear that samples of reasonable quantity have to be drawn at the spot from the narcotic substances and the same have to be dispatched to the nearest Testing Laboratory. It is important to note that the samples have to be dispatched for analysis at the earliest, but not later than seventy-two hours of the seizure. Further, the samples have to be dispatched for analysis, either by insured post or through special messenger duly authorized for the purpose, under the

cover of a "Test Memorandum" specified in Form-I and the envelope should be sealed and marked as "Secret Drug Sample/Test Memorandum". After reaching the laboratory, the sealed envelope containing the samples should be carefully opened and given a distinct laboratory number, further subdivided agency-wise and the laboratory numbers should form a continuous series for each year, and for that purpose, a separate register has to be maintained. Thereafter, all samples have to be passed to the analyst on the same day, who has to keep the same in his safe custody, examine and record their weight in the Test Memorandum, compare the markings on the Test Memorandum with the markings on the package envelopes, and to ensure to test the relevant samples. It is emphasized that in no case should the analysis of a narcotic substance be delayed, as the courts refuse to extend remand beyond fifteen days in the absence of a chemical report.

9. With regard to the case law on the subject, it is to be noted that in the case of **Qamar Zaman v. Waseem Iqbal and 5 others** (2004 SCMR 1209), this court held that the gold articles said to be the belonging of the deceased were neither got identified in accordance with law nor exhibited in the trial, and as such, reliance on the same and awarding capital punishment would not at all be justified. In the case of **State of Islamic Republic of Pakistan through Deputy Attorney: General for Pakistan v. Kenneth Marshal and 2 others** (2005 SCMR 594) it was held that the prosecution miserably failed to produce and exhibit the case property though many opportunities were afforded by the trial Court; in such circumstances, it was rightly held by the High Court that there was no possibility of the accused being convicted and continuation of trial against them would be an abuse of the process of the Court. In the case of **Gul Dast Khan v. the State** (2009 SCMR 431), it was held that it would not be out of place to mention that the case property in that case has neither been exhibited nor produced at the trial, causing a dent in the prosecution's case. In the case of **Amjad Ali v. State** (2012 SCMR 577) it was held that admittedly the case property, the stepney of the car was never produced during trial to verify as to whether it could contain such a huge quantity of the narcotics in question; the referred elements of doubt surrounding the prosecution case have led us to hold that the prosecution has failed to prove its case beyond reasonable doubt to sustain conviction.

With regard to the case-law from Indian jurisdiction on the subject, it is to be noted that in the case of **Ashok alias Dangra Jaiswal v. State of Madhya Pradesh** [(2011) 5 SCC 123] the Indian Supreme Court held as under:

"12. Last but not the least, the alleged narcotic powder seized from the possession of the accused, including the appellant was never produced before the trial court as a material exhibit and once again there is no explanation for its nonproduction. There is, thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused."

In the case of **Vijay Jain v. State of Madhya Pradesh** [(2013) 14 SCC 527] it was held as follows:

"10. On the other hand, on a reading of this Court's judgment in Jitendra v. State of M.P. (2004) 10 SCC 562, we find that this Court has taken a view that in the trial for an offence under the NDPS Act, it was necessary for the prosecution to establish by cogent evidence that the alleged quantities of the contraband goods were seized from the possession of the accused and the best evidence to prove this fact is to produce during the trial, the seized materials as material objects and where the contraband materials alleged to have been seized are not produced and there is no explanation for the failure to produce the contraband materials by the prosecution, mere oral evidence that the materials were seized from the accused would not be sufficient to make out an offence under the NDPS Act particularly when the panch witnesses have turned hostile. Again, in the case of Ashok v. State of M.P. [(2011) 5 SCC 123], this Court found that the alleged narcotic powder seized from the possession of the accused was not produced before the trial court as material exhibit and there was no explanation for its non- production and this Court held that there was therefore no evidence to connect the forensic report with the substance that was seized from the possession of the appellant."

In the case of **Vijay Pandey v. The State of Uttar Pradesh** [(2019) 18 SCC 215] it was held as under:

"8. The failure of the prosecution in the present case to relate the seized sample with that seized from the appellant makes the case no different from failure to produce the seized sample itself. In the circumstances the mere production of a laboratory report that the sample tested was narcotics cannot be conclusive proof by itself. The sample seized and that tested have to be co-related."

10. In the rules referred to above, great emphasis has been laid on the safe custody and safe transmission of the narcotic substances and their transmission to the laboratory within seventy-two hours, perhaps for the reason that if the recovery of the narcotics from the custody of an accused is proved, he has to be convicted relying upon the report of the chemical examiner.

Further, the case property is always relevant for the decision of the case because if the narcotics are recovered from any accused, the same should have been shown in court, and then the report of the laboratory would be helpful to the prosecution. Likewise, in narcotics cases, the conviction and sentence are based on the possession of the narcotics or on aiding, abetting or associating with the narcotics offences. In that eventuality, it is incumbent upon the prosecution to

produce the case property before the court to show that this is the narcotics/case property that was recovered from accused's possession. The defense counsel may then request the court to de-seal and weigh the case property.

Even otherwise, if the prosecution claims that huge quantities of narcotics, i.e., many mounds, were recovered but the same were never produced, then how can the accused be convicted for the said narcotics, which were never before the court or may not even be in existence? However, if the narcotics were destroyed under Section 516-A of the Code, then, of course, the said practice should be done after issuing notice to the accused, and the destruction should be done in the presence of the accused or his representative. The Magistrate is required to prepare samples of the narcotics substance that was ultimately destroyed so that a representative of the destruction process could be produced in the Court; besides, the certificate so issued by the Magistrate would also be relevant and the same should be exhibited in the Court. When the contraband, on the basis of which a person is convicted, is not produced or exhibited, how can a conviction be sustained on the basis of the same? When the material (narcotics) is neither produced nor exhibited, the presumption can be drawn that it is not in existence at all. When the best evidence, i.e., the case property/narcotics, vehicle, etc., is withheld by the prosecution and there is no plausible explanation for the non-production of the same in court, an adverse inference or assumption against the prosecution could be drawn under Article 129-(g1) of the Qanoon-e-Shahadat Order, 1984, and it can easily be presumed that no such material/narcotics is in existence. Needless to observe that if the case property is not produced in Court, the concerned authority/prosecution is required to furnish plausible explanation based upon concrete material and not mere lame excuses.

11. It is further to be noted that in a stringent law such as the CNSA, where capital punishment or imprisonment for life can be awarded even on the testimonies of police officials, in order to bring home guilt against an accused, it is necessary for the prosecution to prove their case through reliable, unimpeachable, and confidence-inspiring evidence beyond any reasonable doubt. The harder the punishment, the stricter the standard of proof. In this regard, reliance can be placed on the judgment of this Court reported as **Ameer Zeb v. the State** (PLD 2012 SC 380), where it was observed that:

“Punishments provided in the Control of Narcotic Substances Act, 1997 were quite stringent and long, if not harsh, and, thus, a special care had to be taken that a court trying such an offence had to be convinced that the entire quantity allegedly recovered

from the accused person's possession was indeed narcotic substance. We, reverently and respectfully, tend to agree with the latter view and would like to add that the rule of thumb for safe administration of criminal justice is: **"The harsher the sentence the stricter the standard of proof."** (Underling is provided by us for emphasis.)

In the said **Ameer Zaib's case** it was also observed by this court that:

"We may also observe that in such cases it is the accused person who is at the receiving end of long and stringent punishments and, thus, safeguards from his point of view ought not to be allowed to be sacrificed at the altar of mere comfort or convenience of the prosecution."

12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as **Tajamal Hussain v. the State** (2022 SCMR 1567), **Sajjad Hussain v. the State** (2022 SCMR 1540), **Abdul Ghafoor v. the State** (2022 SCMR 1527 SC), **Kashif Ali v. the State** (2022 SCMR 1515), **Muhammad Ashraf v. the State** (2022 SCMR 1328), **Khalid Mehmood v. the State** (2022 SCMR 1148), **Muhammad Sami Ullah v. the State** (2022 SCMR 998), **Bashir Muhammad Khan v. the State** (2022 SCMR 986), **The State v. Ahmed Omer Sheikh** (2021 SCMR 873), **Najaf Ali Shah v. the State** (2021 SCMR 736), **Muhammad Imran v. the State** (2020 SCMR 857), **Abdul Jabbar v. the State** (2019 SCMR 129), **Mst. Asia Bibi v. the State** (2019 PLD 64 SC), **Hashim Qasim v. the State** (2017 SCMR 986), **Muhammad Mansha v. the State** (2018 SCMR 772), **Muhammad Zaman v. the State** (2014 SCMR 749 SC), **Khalid Mehmood v. the State** (2011 SCMR 664), **Muhammad Akram v. the State** (2009 SCMR 230), **Faheem Ahmed Farooqui v. the State** (2008 SCMR 1572), **Ghulam Qadir v. the State** (2008 SCMR 1221) and **Tariq Pervaiz v. the State** (1995 SCMR 1345).

13. In the instant case, the exhibits include an application to the SHO (Ex. PA), FIR (Ex. PA/1), a recovery memo (Ex. PB) and a report of the chemical examiner (Ex. PC/1) which were produced during trial; however, the narcotics substance and the vehicle, which form the case property i.e. narcotics recovered, were neither produced in court nor exhibited by the prosecution without plausible explanation. Therefore, we are of the view that the prosecution has failed to prove its case beyond a

reasonable doubt and the benefit of the doubt is extended to the appellants, Ahmed Ali and Iftikhar Ahmed.

14. These are the reasons of our short order dated 13.12.2022 which is reproduced as under:

"For reasons to be recorded later, this appeal is allowed and conviction and sentences passed by the trial court and upheld by the High Court are hereby set-aside and the appellants Ahmed Ali and Iftikhar Ahmed are acquitted of the charge. They be released from jail forthwith, if not required to be detained in any other case.

Judge

Judge

Judge

APPROVED FOR REPORTING

Islamabad
_____.02.2023
*M. Saad**