

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.231 of 2020

*(Against the judgment dated 24.04.2017 passed
by the Peshawar High Court, Mingora Bench
(Dar-ul-Qaza), Swat in Crl. Appeal No.199-M of
2014)*

Shah Nawaz Khan

...Appellant(s)

Versus

The State

...Respondent(s)

For the Appellant(s): Rana Abdul Latif Khan, ASC
Mr. Mehmood A. Sheikh, AOR

For the State: Mr. Anees M. Shahzad,
State Counsel, KPK

Date of hearing: 02.11.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Through leave of the Court, impugned herein is judgment dated 24.4.2017 by a learned Division Bench of the Peshawar High Court, Mingora Bench, whereby appellant's conviction under section 9(c) of the Control of Narcotic Substances Act, 1997, returned by a learned Addl. Sessions Judge Chitral vide judgment dated 23.7.2014, has been upheld; he was tried alongside five others, since acquitted, for transportation of 12070 grams of cannabis in ten separate packs, concealed in a public vehicle No.3296/Peshawar registered in his name, intercepted by a contingent of Police Station Darosh District Chitral on 30.11.2012 while he was on the wheel. The appellant confronted indictment after retracting a detailed judicial confession recorded by a Judicial Magistrate (PW-3) whom he faced from the safety of judicial custody.

2. Heard. Record perused.

3. The learned trial Judge extended benefit of the doubt to Nizam-ud-din, co-accused, employed as a conductor on the possibility of want of conscious knowledge whereas let off Shah Nawaz, Ashiq Jan,

Abdul Nasir and Syed Hazrat, subsequently arrayed on the basis of appellant's confession wherein they were blamed as privy to the crime, a course that went unchallenged, otherwise unexceptionable. However, we have not been able to sway for the same path vis-à-vis the appellant. Even if, appellant's confession purportedly recorded by his own choice when he was already remitted into judicial custody, is excluded from consideration, the prosecution still possessed overwhelming evidence to establish his exclusive culpability, beyond doubt; he was not only on the driving seat but also owned the vehicle that carried huge cache of contraband, concealed in a secret cavity thereof; seizure of cash of Rs.152,000/- vide inventory adds to the credibility of operation carried out by the functionaries seemingly with no axe to grind. Testimony furnished by Abdul Hayat SHO (PW-1) and Sardar Wali Khan, SI/IO (PW-2) does not suffer from any flaw or infirmity; both of them comfortably faced cross-examination, otherwise hopelessly inconsequential and directionless. Surprisingly, presence of contraband in the vehicle is attributed to an unknown passenger, vehemently denied by Abdul Hayat, SHO (PW-1), a position that goes a long way to help out the prosecution, otherwise well entrenched on the issues of safe custody of the contraband and transmission of samples to the office of Chemical Examiner. Acquittal of co-accused, indicted on the basis of appellant's confession as an unsuspecting carrier, does not bring him any benefit in retrospect. View taken by the Courts below being well within the remit of law does not call for interference. Appeal fails. Dismissed.

Judge

Judge

Judge

Islamabad, the
2nd November, 2020
Not approved for reporting
Azmat/-