

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

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Criminal Appeal No.335 of 2015.

ASIM YASIN.

Versus

THE STATE & ANOTHER.

JUDGMENT

Date of hearing: **06.06.2017**

Appellants by: M/s Muhammad Abid Raja,
Advocate and Ch. Hafeez Ullah
Yaqoob, Advocate.

Respondent by: Mr. Amjad Jalil, Assistant
Attorney General with Qamar
Abbas SI, FIA/ACC.

MIRZA VIQAS RAUF, J. By way of this single judgment we intend to decide the instant appeal as well as Crl. Appeal No.338 of 2015 and Crl. Appeal No.375 of 2015 as all these appeals are directed against the judgment dated 30th of July, 2015, passed by the learned Drug Court for Punjab, Rawalpindi Division, Rawalpindi.

2. The appellants namely Asim Yasin, Abdul Waris Bhatti and Mir Hassan were tried by the learned Drug Court in pursuance to a complaint lodged by the Provincial Inspector of Drugs, Potohar Town, Rawalpindi, for violation of Section 23(1)(a)(i), 23(1)(c) and 23(1)(i), punishable under Section 27(1) & (4) of the of the Drugs Act, 1976.

3. The prosecution against the appellants was set into motion on the allegation that on 30th of November, 2011 the Provincial Inspector of Drugs, Rawalpindi, while on routine inspection got an information regarding sale of some drugs at a medical store by some unknown persons. On the basis of this information Muhammad Shoaib Akhtar Drug Inspector intercepted Asim Yasin (appellant) from in front of M/s Farhan Medical Store and recovered two different allopathic drugs from his possession which were taken into possession through Form No.5 (seizure Memo) Exh.PA. Suspecting the said drugs to be spurious, samples were extracted for the purpose of test/ analysis vide Form No.4 Exh.PB and a request was routed to the District Quality Control Board (DQCB), Rawalpindi, for permission to lodge an FIR against the accused, which was accorded. In pursuance thereof on the application of Drug Inspector FIR No.27 of 2011 dated 30th of November, 2011 (Exh.PQ) was lodged at Police station FIA Crime Circle, Rawalpindi. After registration of FIR Asim Yasin (appellant) was taken into custody by the FIA officials, who made disclosure about the chain of supply of spurious drugs and named his co-accused Abdul Waris Bhatti (appellant), who was then called through Asim Yasin to bring more spurious drugs and when he arrived at the given address alongwith consignment, he was arrested and from his possession a drug was taken into custody vide Form No.5 (Exh.PF). A sample was also extracted from the recovered drug for analysis through Form No.4

(Exh.PE). Abdul Waris Bhatti further made a disclosure and named Mir Hassan as his co-accused. Mir Hassan (appellant) was also called through Abdul Waris Bhatti (appellant) for supply of drugs at the specific place and when he arrived alongwith the consignment, he was also arrested and from his possession two drugs were taken into custody vide Form No.5 (Exh.PG). Samples from the said drugs were also extracted vide Form No.4 (Exh.PH). All these samples were thus sent to the Drug Testing Laboratory, Punjab, Lahore, (DTL) vide Form No.6 (Exh.PI/1-5) and on analysis the Government Analyst declared all the recovered drugs as spurious vide reports Exh.PZE, Exh.PZH, Exh.PZF, Exh.PZI, and Exh.PZG. Since the Drug Inspector namely Muhammad Shoaib Akhtar, who effected the recovery, in the meanwhile, was transferred and in his place Naveed Anwar took the charge. So after fulfillment of the codal formalities, he referred the matter to PQCB where the formal proceedings were conducted and after hearing the accused (appellants), permission for their prosecution was granted and consequently complaint Exh.PP was placed before the learned Drug Court. While taking cognizance of the offence the accused (appellants) were summoned by the learned Drug Court to face the trial. The learned Drug Court framed the charge against the appellants on 18th of December, 2012 to which they pleaded not guilty and claimed trial.

4. In order to prove the charge against the appellants the prosecution examined seven witnesses in toto and in addition thereto

also tendered certain documents to bring home guilt of the accused (appellants). On closure of the prosecution evidence the respective statements of the accused (appellants) were recorded under Section 342 of The Code of Criminal Procedure, 1898 (hereinafter referred as Cr.P.C.). All the accused pleaded their innocence and stated that false recovery has been foisted and planted upon them. The appellants however, neither lead any defence evidence nor appeared as their own witnesses in terms of Section 340(2) Cr.P.C. On culmination of trial the learned Drug Court after holding the accused (appellants) guilty, convicted and sentenced them as under:-

“Accused Mir Hassan is convicted U/S 27(1) of the Drugs Act, 1976 for commission of offence under section 23(1)(a)(ii) of the Act ibid and sentenced to ten(10) years R.I. with a fine of Rs.100,000/- (rupees one lakh). In default of payment of fine, the convict shall further undergo two years S.I. He is also convicted U/S 27(4) of the Drugs Act, 1976 for selling drugs without having drug sale license and is sentenced to imprisonment of five (05) years R.I. and to pay fine of Rs.50,000/- (rupees fifty thousand) or in default he shall further undergo one year S.I. All the sentences shall run concurrently. Benefit of Section 382-B, Cr.P.C. shall also be extended to the convict.

“Accused Asim Yasin is convicted U/S 27(1) of the Drugs Act, 1976 for commission of offence under section 23(1)(a)(ii) of the Act ibid and

sentenced to ten(07) years R.I. with a fine of Rs.100,000/- (rupees one lakh). In default of payment of fine, the convict shall further undergo two years S.I. He is also convicted U/S 27(4) of the Drugs Act, 1976 for selling drugs without having drug sale license and is sentenced to imprisonment of five (05) years R.I. and to pay fine of Rs.50,000/- (rupees fifty thousand) or in default he shall further undergo one year S.I. All the sentences shall run concurrently. Benefit of Section 382-B, Cr.P.C. shall also be extended to the convict.

“Accused Abdul Waris Bhatti is convicted U/S 27(1) of the Drugs Act, 1976 for commission of offence under section 23(1)(a)(ii) of the Act ibid and sentenced to ten(07) years R.I. with a fine of Rs.100,000/- (rupees one lakh). In default of payment of fine, the convict shall further undergo two years S.I. He is also convicted U/S 27(4) of the Drugs Act, 1976 for selling drugs without having drug sale license and is sentenced to imprisonment of five (05) years R.I. and to pay fine of Rs.50,000/- (rupees fifty thousand) or in default he shall further undergo one year S.I. All the sentences shall run concurrently. Benefit of Section 382-B, Cr.P.C. shall also be extended to the convict.”

5. While opening the case of appellants Mr. Muhammad Abid Raja, Advocate, submitted that prosecution has badly failed to prove the charge against the appellants. He added that though no offence

whatsoever is made out against the appellants but a guilty verdict has been recorded by the learned Drug Court in an illegal and unlawful manner. While referring to the statement of Muhammad Amin Bhatti (PW-2), learned counsel emphatically argued that as per prosecution's own case he was the star witness and despite discarding his statement the appellants were held guilty of the offence. Learned counsel added that prosecution evidence was not of trustworthy and there are multiple legal infirmities in the prosecution case. It is contended that conviction of the appellants in the circumstances cannot sustain.

6. Conversely, learned Assistant Attorney General while defending the impugned judgment emphasized that appellants were rightly convicted by the learned Drug Court and there is no illegality in the impugned judgment warranting into interference by this Court in exercise of its appellate jurisdiction. The learned law officer submitted that the appellants have indulged themselves in the business of selling of spurious drugs and they do not deserve any leniency.

7. After having heard learned counsel for the appellants as well as learned law officer at considerable length we have also gone through the record.

8. As per initial complaint (Ex.PD) crafted by Muhammad Shoaib Akhtar Provincial Drug Inspector (PW-1), on 30th November, 2011, when he alongwith Muhammad Amin Bhatti, Naib

Qasid (PW-2) was on routine checking in the area of Tahli Mori, Rawalpindi, reached in front of M/s Farhan Medical Store, he saw a person standing there with the intention to supply drugs and when he was interrogated on the basis of suspicion, he was unable to justify his presence there. On the basis of this suspicion from his possession two drugs VELOSEF CAP 500 MG, and NOVIDAT 500 MG TABLET were taken into possession which were later on found as spurious. The said person disclosed his name as Asim Yasin (appellant). The drugs recovered were taken into possession vide Form No.5 (Ex.PA). As per prosecution case accused Asim Yasin further disclosed the name of his co-accused namely Abdul Waris Bhatti (appellant), who was asked through Asim Yasin to supply more medicines and when he reached near G.P.O. Saddar, he was apprehended alongwith spurious drugs. The name of Mir Hassan accused (appellant) was surfaced by Abdul Waris Bhatti, who was also trapped near Bread and Butter Bakery, Saddar by the FIA officials in the same manner and from his possession certain spurious drugs were also taken into custody. After having a cursory glance of the gist of allegations and the nature of accusation against the appellants, we being mindful of the importance of the framing of charge against the accused (appellants), adverted ourselves to the charge framed by the learned Drug Court against the appellants. For the purpose of convenience the same is reproduced below:-

“That on 30.11.2011, at 2.30 pm, Provincial Drugs Inspector Rwp: observed a person (who declared his name) Asim Yasin S/O Ghulam Yasin accused No.1 with the intention of selling or supplying of drugs/medicines opposite the above mentioned business premises and recovered capsule Velosef 500 mg Batch No.IF702 and Tablets Novidat 500 mg Batch No.22J (outer carton) and 5K on the strips upon information accused No.1 recovered/seized capsule Velosef 500 mg Batch No.IF 702 from the custody of Abdul Waris Bhatti S/O Maqbool Bhatti, Accused No.2. Upon information of Accused No.2 recovered/seized Tablet Tarivid 200 mg Batch No.WH 049 and Capsul Velosef 500mg Batch No.IF702 from the custody of Mir Hassan S/O Syed Hassan, accused No.3. All the samples were sent for test/Analyses purpose to the Drug Testing Laboratory, Punjab, Lahore, who declared “Them SPURIOUS” Hence you all have committed the offence un-Warranted, Spurious, Without drug sale License u/s 23(1)(i), 23(1)(a)(i), 23(1)(c) of the Drugs Act, 1976, punishable u/s 27(1) & 27(4) of the said Act.

And hereby you contraved the provisions of section 23 of the Drugs Act, 1976 Punishable u/s 27 of the said Act which is within the cognizance of this Court.” (Underlining for emphasis).

9. There is no cavil that charge is always treated as foundation of the trial and the legislature in Chapter XIX of Cr.P.C. has provided an elaborate procedure for framing of the charge, enabling the

accused to know the exact nature of accusation made against him so that he could give a proper reply of the same. The object and rationale for laying down an exhaustive and elaborate procedure for framing of charge is that the accused should know the exact nature of the accusations made against him so that he may not be misled if any vagueness in the said accusations. Charge is always expected to contain all material particulars including time, place and specific name of the alleged offence, the manner in which the offence is committed.

10. After having an analytical view of the charge framed against the appellants and the evidence lead in pursuance thereof by the prosecution, we have no doubt in our mind to observe that the appellant Asim Yasin was apprehended only on the basis of suspicion that he was intending to sell the drugs which are later on detected as spurious by the government analyst. Perusal of charge clearly reveals that all the appellants were put to trial on the same allegations. The appellants were undoubtedly have been punished under Section 27 of The Drugs Act, 1976, on account of offending the prohibition contained in Section 23 of the Act *ibid*. We are mindful of the fact that penalties provided under the said provisions can only be imposed on account of non-compliance of prohibition referred to under Section 23 of the said Act. For the purpose of ready reference and convenience Section 23 is reproduced below:-

*“23. Import, manufacture and sale of drugs.---(1)
No person shall himself or by any other person on
his behalf:--*

*(a) export, import or manufacture for sale or
sell:*

- (i) any spurious drug;*
- (ii) any counterfeit drug;*
- (iii) any misbranded drug;*
- (iv) any adulterated drug;*
- (v) any substandard drug;*
- (vi) any drug after its expiry date;*
- (vii) any drug which is not registered or is
not in accordance with the conditions
of registration;*
- (viii) any drug which, by means of any
statement, design or device
accompanying it or by other means,
purports or claims to cure or mitigate
any such disease or ailment, or to
have any such other effect, as may be
prescribed.*
- (ix) Any drug if it is dangerous to health
when used in the dosage or with the
frequency, or for the duration
specified, recommended or suggested
in the labeling thereof; or*
- (x) any drug in contravention of any of
the provisions of this Act or any rule;*

*(b) manufacture for sale any drug except under,
and in accordance with the conditions of, a
licence issued under this Act;*

- (c) *sell any drug except under, and in accordance with the conditions of, a licence issued under this Act;*
- (d) *import or export any drug the import or export of which is prohibited by or under this Act.*
- (e) *import or export any drug for the import or export of which a licence is required, except under, and in accordance with the conditions of, such licence.*
- (f) *supply an incorrect, incomplete or misleading information, when required to furnish any information under this Act or the rules;*
- (g) *peddle, hawk or offer for sale any drug in a park or public street or on a highway, footpath or public transport or conveyance;*
- (h) *import, manufacture for sale, or sell any substance, or mixture of substances, which is not a drug but is presented in a form or a manner which is intended or likely to cause the public to believe it to be a drug;*
- (i) *sell any drug without having a warranty in the prescribed form bearing the name and batch number of the drug issued,--*
 - (i) *in the case of a drug manufactured in Pakistan, by the manufacturer holding a valid licence to manufacture drugs and permission to manufacture that drug or by his authorized agent;*
 - (ii) *in the case of an imported drug, by the manufacturer or importer of that*

- drug or, if the drug is imported through an indenter by such indenter;*
- (1) apply an incorrect batch number to a drug.*
 - (2) Nothing in sub-section (1) shall apply to the manufacturer of subject to prescribed conditions, of small quantities of any drug for the purpose of clinical trial, examination, test, analysis or personal use.”*

11. Bare perusal of the above referred provision envisages that prohibition in terms of Section 23 of the Drugs Act, 1976 is imposed upon a person only on the export, import or manufacture for sale or sell any spurious drug. It is prosecution's own case that the appellant namely Asim Yasin was implicated in the case on the basis that he was intending to sell spurious drugs. While taking the case of Asim Yasin appellant we have noticed that he was apprehended by the Drug Inspector in presence of Muhammad Amin Bhatti, (PW-2) only on the basis of suspicion that he was standing there with the intention to supply drugs. As already observed that an accused charged under the Drugs Act, 1976, can only be punished under Section 27 of the Act in case he violates the prohibition contained in Section 23 of the said Act. For invoking the prohibition mentioned in Section 23 of The Drugs Act, 1976, it was incumbent upon the prosecution to first set forth the charge of selling the spurious drugs by the accused and then to lead cogent evidence to this effect.

Admittedly, Asim Yasin appellant was neither charged on the basis of selling nor it was the prosecution case that he was selling some spurious drugs. Mere having an intention of sale is not sufficient to saddle the accused with the culpability of offence.

12. There is yet another important aspect, the edifice of the prosecution case was solely structured upon the recovery allegedly effected from Asim Yasin appellant which was purportedly witnessed by Muhammad Amin Bhatti (PW-2). It is established on the record that the learned Drug Court has discarded the evidence of PW-2 from its consideration. Thus on account of lack of necessary ingredients for constituting an offence under Section 27 of The Drugs Act, 1976 and the deficient evidence to this effect, we are of the considered view that Asim Yasin (appellant) could not be held guilty of the offence for which he was charged.

13. So far case of accused Abdul Waris Bhatti and Mir Hassan appellants is concerned, both were implicated on the statement of their respective co-accused. Law is well settled that mere statement of the co-accused is not sufficient to saddle an accused with the culpability of the offence. There is no independent evidence available with the prosecution to prove that either of the accused namely Abdul Warris Bhatti or Mir Hassan had indulged in the offence of selling spurious drugs. The recovery memos prepared with regard to the alleged recovery effected from these two appellants and samples extracted therefrom through Form No.4 and

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Form No.5 tendered in evidence as Ex.PE, Ex.PF, Ex.PG and Ex.PH respectively clearly substantiate that both these appellants were booked in the case with malafide intent and the Drug Inspector has clearly exceeded his jurisdiction. The manipulation with the said documents was even suppressed by the Abid Saeed Baig, Director Technical DHQ Hospital, Rawalpindi, when he appeared as PW-7. The prosecution case is not only suffers a lot of legal infirmities but is fraught with reasonable doubts, the benefit of which always leans in favour of the accused. There are dishonest improvements in the prosecution case which were certainly introduced with a prejudice mind so as to earn a guilty verdict for the appellants.

14. The above discussion leads us to an irresistible conclusion that the prosecution evidence was not worthy of credence and legal infirmities noted hereinabove are sufficient enough to discard the findings of guilt recorded by the learned Drug Court. We are thus of unanimous view that the appellants were convicted without properly appraising the evidence, thus the impugned judgment, holding the appellants guilty, cannot sustain in the circumstances. We, thus while extending the benefit of doubt to the appellants, **allow** these appeals and acquit the appellants from the charge. The appellants shall be released forthwith, if not required in any other case.

(MUHAMMAD TARIQ ABBASI)
JUDGE

(MIRZA VIQAS RAUF)
JUDGE

IMTIAZ*

Approved for reporting