

3. At the commencement of the trial, the learned trial Court had framed a charge against the appellant to which he had pleaded not guilty and claimed to be tried.

4. The prosecution had produced 06-witnesses besides the report of Chemical Examiner (Ex.PD). The appellant, in his statement recorded under Section 342 Cr.P.C., had denied and controverted the allegations leveled against him, he neither opted to make statement under Section 340(2) Cr.P.C. nor had he produced any witness in his defence.

5. Learned trial Court, upon conclusion of the trial, had convicted and sentenced the appellant as stated above, hence this criminal appeal.

6. We have heard learned counsel for the appellant, learned Deputy Prosecutor General appearing for the State and have perused the record.

7. Ghulam Fareed, ASI (PW-6) had received a spy information on 16.06.2011 at 5:00 p.m. that Muhammad Younas (since acquitted) and Ameer Ghulam alias Chaura (appellant) were busy in selling narcotics whereupon he constituted a raiding party consisting of five police contingents, conducted raid at 3-Marla Scheme and apprehended one of the accused namely Muhammad Younas at the spot whereas the other one Muhammad Amir alias Chaura (appellant) succeeded to flee away while throwing a plastic shopper bag containing 350-grams charas. Upon personal search of co-accused Muhammad Younas, the sale proceed of Rs.310/- was recovered from his possession. Ghulam Farid ASI/complainant (PW-6) and Qamar Hussain 260/C (PW-5) being members of the raiding party made unanimous and consistent statement before the learned trial Court deposing that the raid was conducted on spy information and on pointation of the spy informer, Muhammad Younas (since acquitted) was apprehended at the spot whereas Amir Ghulam alias Chaura (appellant) succeeded to run away while throwing the shopper bag containing 350-grams of charas. The appellant was arrested subsequently on 07.07.2011 after about 21-days. The prosecution is clear on the point that co-accused Muhammad Younas (since acquitted) was apprehended at the spot and the alleged sale proceed of Rs.310/- was recovered from his possession whereas the appellant had succeeded to run away and was apprehended subsequently. The prosecution has claimed that the spy informer had told the names of the appellant and his co-accused being busy in selling narcotic substance but quite astonishingly the raiding party

consisting of well-prepared, trained and armed police officials with the conscious knowledge of the consequences of their raid, could not arrest the appellant from the populated area in the day-light. Even otherwise, the spy informer had not been produced before the learned trial Court or arrayed as a witness in this case to substantiate the prosecution's claim that he had disclosed the names of both the accused persons to the complainant and in absence of his statement, the source with regard to the names of the accused persons could not be established especially when the complainant had no previous acquaintance with the appellant or his co-accused. If the prosecution's claim that the appellant had succeeded to flee away while throwing the narcotic substance, is taken to be true even then the narcotic substance, which was only 350-grams could not create any difficulty for the appellant to escape from the place of occurrence and he had no occasion to throw the narcotic substance to be implicated in this case. The alleged recovery of narcotic substance cannot be connected with the appellant in any capacity whatsoever under the mischief of Section 6 of the Control of Narcotic Substances Act, 1997.

8. It is an admitted fact that the appellant was not apprehended at the spot and his name was disclosed by the spy informer but the spy informer had not been produced by the prosecution. Learned trial Court had acquitted Muhammad Younas co-accused, who was apprehended at the spot, by disbelieving the prosecution evidence to his extent. It is well settled principle of law by now that when the co-accused having identical role on the same set of witnesses had been acquitted of the charge being disbelieved, the same cannot be relied upon to the extent of remaining accused persons. We seek guidance from case titled "SHAHBAZ versus The STATE" (2016 SCMR 1763). The relevant portion is reproduced for ready reference:-

"The law is settled by now that if some eye-witnesses are disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be relied upon to the extent of the other accused persons in the absence of any independent corroboration."

9. We have noticed that the report of Chemical Examiner Ex.PD shows the name of forwarding officer as an 'ETO' (Excise & Taxation Officer), who had nothing to do with the same. The Excise & Taxation Officer has been intruded in this case without any justification, who was neither member of the raiding party nor representative of the police station concerned, therefore, the

same cannot be linked with the recovered contraband substance and its sample, which creates serious doubt in the veracity of prosecution case with regard to the question of safe custody of the recovered contraband substance. The safe custody as well as safe transmission of the separated sample to the office of Chemical Examiner had also not been established by the prosecution. We seek guidance in this respect from the case titled “Muhammad Abbas vs. The State (2006 YLR 2378 [Lahore])”. The relevant portion of the said judgment is reproduced as under:-

“After hearing the learned counsel for the parties and going through the record, we have straightaway observed that although the alleged recovery of narcotic substance from the appellant’s possession had been effected on 29.06.1998 yet none of the prosecution witnesses had uttered even a single word as to what had happened to the recovered substance after its recovery and with whom the same had been deposited for safe custody. It was only Muhammad Ramzan, FC (P.W.4), who had stated before the learned trial Court that on 13.07.1998 he had been handed over two parcels said to contain heroin and Charas by Moharrir Head Constable of the relevant Police Station for onward transmission to the office of the Chemical Examiner which he delivered there on the same day. The report of the Chemical Examiner (Exhibit-PE), however, shows that the docket of the samples of the recovered substance had been prepared on 06.07.1998 and the said samples had been dispatched by the Excise and Taxation Officer, Sheikhpura and not by the local police. We have required the learned counsel for the State to explain as to how the samples of the recovered substance had come in the hands of the Excise & Taxation Officer, Sheikhpura, and what was the evidence available on the record to confirm that the same had been kept in safe custody while in possession of the Excise and Taxation Officer, Sheikhpura but after going through the record of this from cover to cover he has categorically conceded that there is no evidence whatsoever available on the record in those respects. In such a state of the evidence available on the record safe custody of the recovered substance or its samples is not discernable from the record of this case and, thus, we have found it to be extremely unsafe to uphold and maintain the appellant’s convictions and sentences recorded by the learned trial Court.”

10. The nutshell of above discussion is that the prosecution has failed to bring home guilt of the appellant beyond reasonable shadow of doubt and the benefit of doubt always favours the accused and, thus, the appeal in hand is allowed, the conviction and sentence of appellant Amir Ghulam alias Chorra are set aside and he is acquitted of the charge by giving him the benefit of

doubt. The appellant is present on bail, his bail bonds as well as surety stands discharged from the liability.

(Raja Shahid Mehmood Abbasi)
Judge

(Asjad Javaid Ghural)
Judge

Approved for reporting.

JUDGE

*Asif**