

JUDGMENT SHEET

**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN**

JUDICIAL DEPARTMENT

Criminal Appeal No. 217 of 2017
(Umar Shahzad v. The State & another)

Criminal Appeal No. 84 of 2017
(Nadeem Anwar v. The State & another)

Criminal Appeal No. 516 of 2017
(Maqsood Hussain v. The State & another)

JUDGMENT

DATE OF HEARING	22.1.2019
Appellants by:	Mr. James Joseph, Advocate, for Appellant in Crl.Appeal No.217/2017 Rana Muhammad Arif Kamal Noon, Advocate, for the Appellant in Crl. Appeal No.84/2017 Rao Sajjad Ali, Advocate, for the Appellant in Crl. Appeal No.516/2017.
State by:	Mr. Shahid Aleem, Additional Prosecutor General with Inspector Ahmad Yar and Qaiser/ASI

TARIO SALEEM SHEIKH, J. – By this consolidated judgment we propose to decide Crl. Appeal Nos. 217/2017, 84/2017 and 516/2017 as they assail vires of the same judgment.

2. Brief facts of the case are that on 23.6.2013 Complainant Shahid Abbas Inspector/SHO (PW-3) along with other police officials was patrolling at Faazil Road when he received a secret information that two drug barons, Appellant Umar Shahzad Jatt and Umar Hayat Jatt, who used to supply narcotics to Chak No.375/EB on a large scale, were bringing in huge quantity of contrabands in a private car. He summoned the Chowki Incharge, Muhammad Sawar Khan,

constituted a raiding party and deputed police officials at different places leading to Dera Patwarian to apprehend them. At about 1:30 a.m., his source informed him that Car No. LEC-64 carrying narcotics had reached Dera Patwarian whereupon he immediately rushed to that place and found it parked in an open place in front of the house of Appellant Umar Shahzad. All its doors were open and Appellants Maqsood Hussain, Nadeem Anwar and Umar Shahzad were unloading the contraband from it. The Complainant apprehended them with the aid of his men and seized some packets even from their hands. He recovered a total of 83 packets of charas weighing 100 kilograms and 17 packets of opium weighing 18 kilograms from them most of which were concealed in the secret cavities of the car. The Complainant separated 10 grams out of every packet for chemical analysis and secured the remaining bulk of both the items P-1 & P-2 through distinct sealed parcels vide Recovery Memos Exh.PC & Exh.PD. He drafted complaint (Exh.PB) at 2:15 a.m. and despatched it to the police station through Muhammad Iqbal 503/C for registration of formal FIR. Moharrar Muhammad Mansha 817/HC (PW-1) received that complaint and penned FIR No.447/2013 (Exh.PA) at 2:45 a.m. the same day.

3. Investigation of this case was entrusted to Inspector Ahmad Yar (PW-6) who was also a member of the raiding party. He prepared rough site plan of the place of occurrence Exh.PG and physically searched the Appellants. He recovered a copy of CNIC, one Nokia mobile phone and an amount of Rs.2500/- from Appellant Nadeem Anwar (which he took into possession vide Recovery Memo Exh.PF) and original CNIC, registration book of Car No. LEC-64, Rs.2000/- in cash, China mobile phone G-5000 along with SIM No.03246625581 from Appellant Maqsood Hussain (which he secured vide Recovery Memo Exh.PE). On the other hand, personal search of Appellant Umar Shahzad yielded two Nokia mobile sets with SIM Nos. 03006992175 and 03056926768, his original CNIC

No. 36601-3209455-3, copy of driving licence No.16815 and Rs.1500/- in cash which he seized vide Recovery Memo Exh.PD. Ahmad Yar/Inspector then formally arrested the Appellants and recorded the statements of witnesses under Section 161 Cr.P.C. On his return to the police station he deposited the case property with the Moharrar. Next day he obtained physical remand of the Appellants. During the investigation he found that Umar Shahzad was a record holder. On completion of investigation he found the Appellants guilty. Report under Section 173 Cr.P.C. was submitted accordingly.

4. The learned Additional Sessions Judge indicted the Appellants on 22.8.2013. They pleaded not guilty and claimed trial. In order to prove its case the prosecution produced six witnesses, namely, Muhammad Mansha 817/HC (PW-1), Muhammad Hanif 342/C (PW-2), Complainant Inspector Shahid Abbas (PW-3), Muhammad Sadiq Langah/SI (PW-4), Muhammad Sadiq Dogar (PW-5) and Inspector Ahmad Yar/I.O. (PW-6). On 5.3.2016, the learned prosecutor closed the prosecution evidence after tendering reports of Chemical Examiner Exh.PH & Exh.PJ.

5. After the close of prosecution evidence the learned trial Court recorded the statements of the Appellants under Section 342 Cr.P.C. They denied the allegations and professed innocence. Appellant Umar Shahzad maintained that Muhammad Sadiq Langah/SI (PW-4) was married to his maternal aunt Nusrat Parveen and both were locked in litigation. All the PWs were official witnesses and they had framed him at his behest. On the other hand, Appellants Nadeem Anwar and Maqsood Hussain stated that they were servants of Umar Shahzad owing to which they had been falsely implicated in this case. The Appellants neither got their statements recorded on oath under Section 340(2) Cr.P.C. nor produced any witness in their defence. Umar Shahzad, however, tendered in evidence certified copy of Writ Petition No.10456/2014 titled “Nusrat Parveen v. CPO Multan etc.” along with order dated 29.9.2014 (Exh.DA), certified copy of

private complaint titled “Nusrat Parveen v. Muhammad Sadiq etc. (Exh.DB), certified copy of statement of Nusrat Parveen dated 23.10.2014 (Exh.DC) and certified copy of Crl.Org.No.113-W/2015 in Writ Petition No.10456/2014 along with order dated 30.1.2015 (Exh.DD).

6. On the conclusion of the trial, vide impugned judgment dated 22.2.2017, the learned Additional Sessions Judge, Burewala, District Vehari, convicted the Appellants under Section 9(c) of the Control of Narcotic Substances Act, 1997 (the “CNSA”), and sentenced them to imprisonment for life with fine of Rs.150,000/- each and in default thereof to undergo simple imprisonment for a further period of one year. Benefit of Section 382-B Cr.P.C. was, however, extended to them. Hence, these appeals.

7. In support of Crl. Appeal No.217/2017, Mr. James Joseph, Advocate, contended that the prosecution case was false and *mala fide*. No narcotics were recovered from Appellant Umar Shahzad or his co-accused. The police had framed them in this case at the behest of Muhammad Sadiq Langah/SI (PW-4) who wanted to settle personal scores with the Appellant’s family. He further contended that the prosecution evidence was not reliable. The PWs were inconsistent and contradicted each other on material particulars. Safe custody of the alleged drugs in the Malkhana was not satisfactorily established and the reports of the Chemical Examiner Exh.PH & Exh.PJ in respect of the samples were a nullity as they were not in accordance with the law laid down by the Hon’ble Supreme Court of Pakistan in *Ameer Zeb v. The State* (PLD 2012 SC 380). The learned counsel argued that the conviction recorded against Appellant Umar Shahzad was not sustainable and prayed that he may be acquitted.

8. Rana Muhammad Arif Kamal Noon and Rao Sajjad Ali, Advocates, who represented the Appellants in Crl. Appeal Nos. 84/2017 & 516/2017, adopted the arguments of Mr. James Joseph, Advocate. They contended that the police had roped Appellants

Nadeem Anwar and Maqsood Hussain into this case merely because they were servants of Appellant Umar Shahzad. They also prayed for acceptance of their appeals.

9. On the other hand, the learned Additional Prosecutor General controverted the above contentions and supported the impugned judgment. He argued that the Appellants were notorious drug traffickers and Appellant Umar Shahzad was even a previous convict. On 23.6.2013 huge quantity of contraband was recovered from them and the prosecution had proved the charge beyond any shadow of doubt. The PWs were coherent and their testimony was corroborated by the positive reports of the Chemical Examiner (Exh.PH & Exh.PJ). He further argued that the Appellants' contention that the prosecution did not prove safe custody of the recovered contraband had no substance as it was based on misreading of evidence. He prayed for dismissal of these appeals.

10. Arguments heard. Record perused.

11. The prosecution case is that on 23.6.2013 a police party headed by Shahid Abbas Inspector/SHO (PW-3) nabbed the Appellants from Dera Patwarian in Chak No. 375/EB within the territorial limits of Police Station Gaggo, District Vehari, when they were unloading narcotics from Car No. LEC-64 and recovered 83 packets of charas weighing 100 kilograms and 17 packets of opium weighing 18 kilograms from them. The prosecution produced Complainant Shahid Abbas/Inspector (PW-3) to prove the alleged recovery along with Muhammad Sadiq Langah/SI (PW-4) and Muhammad Sadiq Dogar/SI (PW-5). A careful reading of their depositions reveals that they were inconsistent in respect of the manner in which the raid was conducted and the Appellants were apprehended. They also differed on the sizes of the recovered packets.

12. Apart from the aforementioned contradictions, there are a number of issues in this case which raise eyebrows. Firstly, the

prosecution case is that the narcotics were brought to Dera Patwarian in Honda Civic Car No. LEC-64 concealed in its secret cavities and on the Appellants' pointing out they were recovered from them. Despite the fact that the said car was the most vital evidence it was not produced at the trial. Secondly, the samples and the remaining bulk P-1 & P-2 were sealed with the stamp having the monogram M.A. but there is no explanation what it stood for. If they denote initials of some name, Shahid Abbas/Inspector has not given any reason why he did not put his own monogram on the seals. Thirdly, the witnesses deposed that after drawing samples Shahid Abbas/Inspector put the remaining bulk in four plastic bags and sealed them. None of the PWs could explain where these bags came from although they were specifically asked about them. All these circumstances make the prosecution case extremely doubtful. Reliance is placed on Akhtar Iqbal v. The State (2015 SCMR 291), Akhtar Ali v. The State (2009 PCr.LJ 50) and Ihsan Ullah v. The State (2018 YLR Note 93). Documents Exh.DA to Exh.DD placed on record by Appellant Umar Shahzad depict that Muhammad Sadiq Langah/SI (PW-4) was inimical towards his family. Against this background possibility of false implication cannot be ruled out.

13. This is not all. Shahid Abbas/Inspector (PW-3) deposed that 83 packets of charas and 17 packets of opium were recovered from the Appellants. He separated 10 grams from every one of them and prepared 100 representative sealed samples and secured the remaining bulk (charas P-1 and opium P-2) in four bags. Ahmad Yar/Inspector (PW-6) testified that he "deposited the case property" with the Moharrar. However, he neither mentioned the name of the Moharrar nor the total number of parcels that he handed over to him. Moving forward, Muhammad Mansha 817/HC (PW-1) deposed that on 2.7.2013 he handed over 100 sealed parcels to Muhammad Hanif 342/C for onward transmission to the office of the Chemical Examiner, Multan. He neither acknowledged receipt of charas P-1 and opium P-2 from Ahmad Yar/Inspector nor confirmed their safe

keeping. In *Ikramullah and others v. The State* (2015 SCMR 1002), the Hon'ble Supreme Court of Pakistan held that the prosecution is obligated to establish safe custody of the recovered substance as well as safe transaction of the representative samples drawn therefrom to the office of the Chemical Examiner. Any break in the chain of custody or lapse in the control of the samples or the remaining bulk would wring the prosecution case.

14. Chemical report is pivotal for conviction under Section 9 of the CNSA. Section 36(2) provides that the report of the Narcotics Testing Laboratories signed by a Government Analyst enjoys the benefit of being admissible as evidence of the facts stated therein without formal proof and such evidence is conclusive unless rebutted. Control of Narcotic Substances (Government Analysts) Rules, 2001, prescribe the procedure for analysis of the recovered substances. Rule 5 states how a sample is to be handled in the laboratory while Rule 6 deals with the substantive aspect. It provides that the Government Analyst shall draw report of the test or analysis with full protocols of the test applied in Form-II signed in quadruplicate and despatch it to the sender. In *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039), the Hon'ble Supreme Court of Pakistan has held that Rule 6 is mandatory to the extent that full protocols ought to be mentioned in the aforesaid report and its non-compliance will render the report inconclusive and unreliable. The Apex Court ruled:

“It [Rule 6] provides that the Report of the Government Analyst, after the test and analysis, is to furnish the result together with full protocols of the test applied. The accuracy of test and analysis and the correct application of the full protocols alone can determine if the recovered substance is a narcotic drug or a psychotropic or controlled substance. “Protocol” means an explicit, detailed plan of an experiment, procedure or test or a precise step-by-step description of a test, including the listing of all necessary reagents and all criteria and procedures for the evaluation of the test data. Rule 6 requires that full protocols of the test applied be part of the Report of the Government Analyst. Every test has its protocols, which are internationally recognized and a test without the observance of its protocols has no sanctity. “Full Protocols” include a description of each and every step employed by the Government Analyst through

the course of conducting a test. Hence, the Report under Rule 6 must specify every test applied for the determination of the seized substances with the full protocols adopted to conduct such tests.”

15. Previously in **Ameer Zeb’s case** (*supra*), the Hon’ble Supreme Court of Pakistan observed that the CNSA provides stringent punishments which depend on the quantity of the recovered narcotics rather than its content so there should be adequate safeguards to ensure that justice is done to the accused. Accordingly, it ruled that samples must be taken from every packet, cake or slab and separately analyzed. The relevant excerpt is reproduced hereunder for ready reference:

“As is evident from the resume of the precedent cases mentioned above, the trend of authority of this Court leans overwhelmingly in favour of obtaining and sending for chemical analysis a separate sample of every separate packet/cake/slab of the substance allegedly recovered from an accused person’s possession and for its **separate analysis** by the Chemical Examiner in order to confirm and establish beyond doubt that the entire quantity of the allegedly recovered substance was indeed narcotic substance. It is our considered opinion that a sample taken of a recovered substance must be a representative sample of the entire substance recovered and if no sample is taken from any particular packet/cake/slab or if different samples taken from different packets/cakes/slabs are not kept separately for their **separate analysis** by the Chemical Examiner then the sample would not be a representative sample and it would be unsafe to rely on the mere word of mouth of the prosecution witnesses regarding the substance of which no sample has been taken or tested being narcotic substance.” (emphasis added)

16. A combined reading of the dicta laid down in *Ameer Zeb* and *Imam Bakhsh* cases would show that where the contraband is in more than one packets, cakes or slabs the prosecution must prove the recovery by establishing that representative samples were taken from every one of them and they were separately analyzed. Further, it should produce separate reports for every sample mentioning full protocols. In the instant case, the prosecution has produced consolidated reports of 83 samples of charas (Exh.PC) and 17 samples of opium (Exh.PD) which do not meet the legal requirements. They cannot be treated as a “conclusive proof” of the recovery of narcotic substances from the Appellants.

17. For all the above reasons we hold that the prosecution has failed to prove its case against the Appellants. Resultantly, all these appeals are **allowed**. The impugned judgment is set aside and the Appellants are acquitted of the charge. They shall be released from the jail forthwith if not required to be detained in any other case.

(CH. MUSHTAQ AHMAD)
JUDGE

(TARIQ SALEEM SHEIKH)
JUDGE

M.Khalid

Approved for reporting

Judge