

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
(JUDICIAL DEPARTMENT)

Crl. Appeal No. 484 of 2017

Ahmed Khan @ Ahmed Qais etc.

.....Appellants

versus

The State etc.

.....Respondents

JUDGMENT

Date of hearing:	14.01.2019.
Appellant by:	Raja Aamir Abbas, Advocate.
State by:	Syed Intikhab Hussain Shah, Special Prosecutor ANF.

Muhammad Tariq Abbasi, J – By way of this appeal, Ahmed Khan @ Ahmed Qais and Awais Khan (***hereinafter referred to as the appellants***) have challenged the judgment dated 11.05.2017, passed by the learned Judge Special Court (CNS), Rawalpindi, whereby in case FIR No. 70, dated 18.05.2015, registered under Sections 9(c)/14/15 of the Control of Narcotic Substances Act, 1997 (***hereinafter referred to as the Act***), at Police Station ANF RD North, Rawalpindi, they have been convicted and sentenced as under:-

Ahmed Khan @ Ahmed Qais

- i) **Under Section 9(c) of the Act** – simple imprisonment for 07 years, alongwith fine of Rs.50,000/-, in default whereof to further undergo simple imprisonment for 07 months.
- ii) **Under Section 15 of the Act** – simple imprisonment for 07 years, with fine of Rs.50,000/-, in default whereof to further undergo simple imprisonment for 07 months.

Awais Khan

- i) **Under Section 9(c) of the Act** – simple imprisonment for 06 years, alongwith fine of Rs.30,000/-, in default whereof to further undergo simple imprisonment for 06 months.

- ii) **Under Section 15 of the Act** – simple imprisonment for 07 years, with fine of Rs.50,000/-, in default whereof to further undergo simple imprisonment for 07 months.

It was directed that benefit of Section 382-B Cr.PC, would be available to the appellants.

2. The matter was reported to the Police by Shakeel Ahmed Inspector, through complaint (Ex.PA/1-2), which resulted into registration of the FIR (Ex.PA), on the grounds that he received an information that Muhammad Saleem and Akif Shuaib, alongwith their companions, namely Ahmed Khan @ Ahmed Qais and Awais Khan (appellants) would smuggle a huge quantity of narcotics to a foreign country and that for the said purpose, the appellants would bring narcotics in the office of Kings Cargo Company, situated at 79-Jinnah Avenue, Airport Housing Society, Rawalpindi, hence a raiding party was constituted and checking was started; at about 8.40 PM, a car registration No. CU-130/ICT, arrived at the office of above said Cargo Company; two persons de-boarded the vehicle and while taking two shoppers, from its dickey, started moving towards gate of the company; on pointation of the informer, the persons were apprehended, who told their names as Ahmed Khan @ Ahmed Qais and Awais Khan (appellants); the shopping bag, which was being carried by Ahmed Khan @ Ahmed Qais (appellant), was checked and from it, three packets of heroin, each weighing 01 kilogram, were recovered; from the shopping bag, lying in the hand of Awais Khan (appellant), two packets of heroin, each weighing 01 kilogram emerged; the complainant separated 10 grams from each of the packets, for the purpose of chemical analysis and prepared 05 sealed sample parcels, whereas 02 sealed parcels of the remaining quantity were also prepared and all the parcels were taken into possession, through recovery memo (Ex.PB); during personal search of the

appellants, the articles and the documents were recovered and secured through memos Ex.PC & PD.

3. The prosecution had alleged that thereafter, on pointation of the appellants, 4300 Ecstasy tablets, weighing 720 grams were also recovered from a vehicle registration No. BC-3636, parked at House No. 156, Street No. 01, Phase-II, Bahria Town, Rawalpindi, where Alamgir Khan and Mushtaq (co-accused since acquitted) were available, hence the said narcotic, alongwith the vehicle was secured, through memo Ex.PE-1.

4. The case was investigated and the appellants as well as their co-accused, namely Alamgir Khan and Mushtaq (since acquitted) were challaned to the court. Formal charge against the all was framed on 12.10.2015, which was denied and trial was claimed, hence the prosecution witnesses namely Syed Mehboob Hussain Shah Head Constable, Wajid Hameed SI, Muhammad Tauqeer Shahzad Constable and Umair Fahim SI were summoned and recorded, as PW-1, PW-2, PW-3 and PW-4 respectively. On completion of the prosecution evidence and closure of the case, the appellants and their co-accused (since acquitted) were examined under Section 342 Cr.PC, during which the questions arising out of the prosecution evidence were put to them, but they had denied almost all the questions, while pleading their innocence and false involvement in the case, with *malafide*. The questions ***“Why this case against you and why the PWs have deposed against you?”*** were replied by the appellants in the following similar words:-

“It is false case. Inspector Shakeel has made this bogus case against us, because earlier on, he had removed house hold articles worth Rs.03 Crores, from our house regarding which FIR has been lodged and said Inspector Shakeel had also demanded huge amount, which was denied hence he falsely involved us in the instant case and had abducted us on

15.05.2015. Hence, on his instruction PWs have falsely deposed against me."

The appellants opted to lead evidence in their defence and also to make statements under Section 340(2) Cr.PC. Consequently, the appellants had made statements on oath and also got examined Adnan Ayub, Aamir Jahangir Khan, Haroon Aitimad and Wajid Gul, as DW-1, DW-2, DW-3 and DW-4 respectively. During the evidence of the DWs, documents were also brought on the record, as Mark DA/1-3, Mark-DB/1-2 and Ex.DW-4/A. Finally, the impugned judgment was passed, whereby the appellants were convicted and sentences in the above mentioned terms, whereas their above named co-accused were acquitted of the charge. Consequently, the appeal in hand.

5. Arguments advanced by the learned counsel for the appellants as well as the learned Prosecutor ANF, have been heard and record has been perused.

6. The complainant namely Shakeel Ahmed, Inspector ANF, who allegedly:-

- i)* received the above mentioned information;
- ii)* arranged raiding party;
- iii)* apprehended the appellants and recovered narcotics;
- iv)* separated samples;
- v)* prepared sealed parcels and took the same into possession, through recovery memo (Ex.PB);
- vi)* secured the articles, document and cash, recovered during personal search of the appellants vide memos (Ex.PC & Ex.PD);
- vii)* took into possession the vehicle registration No. CE-130/ICT, by way of memo (Ex.PE);

viii) recovered the Ecstasy tablets weighing 720 grams and secured the same as well as the vehicle No. BC-3636, through memo (Ex.PE-1); and

ix) drafted the complaint (Ex.PA/1-2);

to substantiate the above said proceedings, did not appear before the learned trial court, which fact is fatal for the prosecution and sufficient to demolish the entire structure of the prosecution case. If any case law in this regard is needed, reference may be made to the case titled

"STATE versus MUHAMMAD RAFEEQUE" reported as **1984**

P.Cr.L.J 961, relevant portion whereof reads as under:-

"in addition to this neither I.O nor police Official who recorded the F.I.R. and conducted investigation were examined by prosecution at trial and consequently respondent was seriously prejudiced and in our opinion trial was vitiated on this ground, as well."

7. The stance of the prosecution was that the complainant was responsible to book different persons in different FIRs, hence criminal proceedings against him were in progress, wherein he was a proclaimed offender, which were the reasons of his non-association in the case in hand and that to bring on the record, the proceedings conducted by him, secondary evidence had been led, through Umair Fahim (PW-4). To lead secondary evidence, certain pre-requisites should be fulfilled. Some of them are that the concerned witness should either be:-

i) not alive;

ii) incapable to make a statement;

iii) out of reach of the court; or

iv) his whereabouts are not known to anyone.

8. In any of the above stated situations, secondary evidence can be led, through another witness, who must remain associated with the actual witness and must be acquainted with his hand-writing and signatures. In the situation in hand, neither any of the above

mentioned circumstances has been brought on the record nor the PW-4 remained associated with Shakeel Ahmed Inspector and as such was not acquainted with his hand-writing and signatures as the PW-4 had frankly conceded that previously he never worked with Shakeel Ahmed Inspector and that no document prepared by the Inspector was seen by him. In this way, it can safely be said that the prosecution has failed to substantiate the above said proceedings, allegedly carried on by Shakeel Ahmed Inspector. Furthermore, the prosecution stance remained that Shakeel Ahmed Inspector was responsible for concocting false FIRs, against innocent persons, hence under due proceedings, he had been removed from service. By saying so, the prosecution had also discredited the above named complainant.

9. The prosecution version was that Rs.7000/- were recovered from the appellant Ahmed Khan @ Ahmed Qais, Rs.5000/- from Awais Khan appellant, whereas Rs.2000/- each from Alamgir Khan and Mushtaq (co-accused since acquitted). But during the trial, three currency notes of denomination of Rs.5000/- each, whereas two notes of Rs.500/- each, have been produced and got exhibited. The said fact also speaks a volume about the proceedings, carried on by the above named Inspector.

10. The defence stance was that Shakeel Ahmed Inspector (complainant) had taken away the articles valuing Rupees three crore, from the house of the appellant's party, hence an FIR No. 21, dated 28.01.2016 under Sections 380/381A/506(ii) PPC, at Police Station Lohi Bher, Islamabad had been registered against him. Tauqeer Shahzad (PW-3) had showed his ignorance about installation of tracker system in the vehicle registration No. CU-130/ICT or CCTV cameras at Bahria Town, Rawalpindi, but during evidence of Haroon Aitimid (DW-3), it was confirmed on the record that in the above said

vehicle, the above mentioned system was installed and that according to their data, from 16.05.2015 to 18.05.2015, the car remained parked at F-11/3, Islamabad and that thereafter, it came at Gulzar-e-Quaid, Rawalpindi. In the evidence led by Aamir Jahangir Khan (DW-2), it had come on the record that CCTV cameras were installed in Bahria Town and according to the footage of the cameras on 17.05.2015, black coloured car, alongwith two double door vehicles, entered in the said Town. The above mentioned evidence, led by the above said DWs, coupled with the documents, tendered by them, had cast a serious doubt into the alleged story, narrated in the complaint (Ex.PA/1-2). The statements of PW-3 and PW-4 qua Alamgir Khan and Mushtaq (co-accused since acquitted) had been disbelieved by the learned trial court and as such for believing their testimony, to the extent of the appellants, strong corroboration was required, which was missing in the file. In this regard, reference may be made to the case titled **"MUHAMMAD AKRAM versus THE STATE"** reported as **2012 SCMR 440**, wherein the august Supreme Court of Pakistan has held as under:-

"Except for the oral statements of eye-witnesses there is nothing on record which could establish the presence of both the eye-witnesses at the spot and as their presence at the spot appears to be doubtful, no reliance could be placed on their testimonies to convict the appellant on a capital charge. Since the same set of evidence has been disbelieved qua the involvement of Muhammad Aslam, as such, the same evidence cannot be relied upon in order to convict the appellant on a capital charge as the statements of both the eye-witnesses do not find any corroboration from any piece of independent evidence."

11. The facts and circumstances highlighted above, have made the alleged prosecution story and charge against the appellants, highly doubtful. It is an admitted principle and proposition of law, that the prosecution should establish its case and prove charge, against an accused, beyond shadow of all reasonable doubts and even a slightest doubt would entitle an accused, due benefit of acquittal, not as a

matter of grace or concession, but as of right. In this regard reliance may be placed upon the dictum laid down by the august Supreme Court of Pakistan in the case titled **"TARIQ PERVAIZ Vs. THE STATE"** reported as **1995 SCMR 1345**, wherein it has been held as under:-

"If a simple circumstance creates reasonable doubt in a prudent mind about guilt of accused, then he will be entitled to such benefit not as a matter of grace or concession, but as a matter of right."

The same view has been reiterated in a subsequent judgment titled **"Ayub Masih Vs. The State"** reported as **PLD 2002 SC 1048**, whereby it has been directed that while dealing with a criminal case, the golden principle of law ***"it is better that ten guilty persons be acquitted, rather than one innocent person be convicted"*** should always be kept in mind.

12. Resultantly, the appeal is **allowed**, impugned judgment towards conviction and sentence of the appellants is **set aside** and they are acquitted of the charge, while extending them the benefit of doubt. The appellants are in custody, therefore it is directed that they be released from the jail, if not required to be detained in any other case. The vehicles in question be returned to the rightful owner(s), whereas the articles and cash, recovered during personal search of the appellants and secured through memos (Ex.PC & Ex.PD), be handed over to the respective appellants and the narcotics be destroyed, in accordance with law.

(Raja Shahid Mehmood Abbasi)
Judge

(Muhammad Tariq Abbasi)
Judge

Approved for reporting