

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No. 1226 of 2016

Safdar Iqbal

The State etc.

JUDGMENT

Date of hearing: 13.03.2019.

Appellants by: Mr.Sarfraz Khan Gondal, Advocate.

State by: Mr. Muhammad Waqas Anwar, Deputy Prosecutor
General.

Aalia Neelum, J.- Safdar Iqbal son of Muhammad Yaqoob, Caste Gondal, resident of Loang, Tehsil Phalia, District Mandi Bahauddin, the appellant along with his co-accused persons, Bilal Ahmad (since acquitted), Zulfiqar Ahmad alias Goshi (since acquitted) and Qaisar Mahmood (since acquitted) were involved in case F.I.R. No.151-2014, dated 11.07.2014, offence under Section 9 (C)/15 of The Control of Narcotic Substances Act, 1997, registered at Police Station, Ranmal Sharif, District Mandi Bahauddin and were tried by the learned Judge Special Court (CNS)/Additional Sessions Judge, Tehsil Phalia, District, Mandi Bahauddin. The learned trial court seized with the matter in terms of judgment dated 30.05.2016, convicted the appellant under Section 9 (C) of The Control of Narcotic Substances Act, 1997 and sentenced him to ***imprisonment for life*** with the direction to pay Rs.25,000/-as fine and in case of default in payment of fine, the appellant would further undergo simple imprisonment for one year. The benefit of Section 382-B of Cr.P.C was also extended in favour of the appellant.

The appellant has assailed his conviction through filing instant criminal appeal.

2. The prosecution story as alleged in the F.I.R. (Ex.PA/1) lodged on the written complaint (Ex.PA) of Muhammad Aslam, SI (PW-4)-the complainant is that on 11.07.2014, the complainant (PW-4) along with Pervaiz Iqbal, ASI (PW-2), Sarfraz Ahmad 453/H.C (since given up PW), Umair Latif 1486/C, Shahwaiz Arshad 1002/C, Faizan Mehmood 1678/C and driver-Abdul Hafeez 948/DC was present at Adda Laong and in the meanwhile, the complainant (PW-4) received a secret information that the accused-Safdar Iqbal and his co-accused are drug paddlers and if a raid was conducted at the dera of the accused-Safdar Iqbal, huge quantity of narcotics could have been recovered whereupon, police party reached at the dera of the accused-Safdar Iqbal and took into possession 90 bags of Bhang wherein 45 maunds Bhang was lying. The recovered substance was taken into possession by the complainant (PW-4) vide recovery memo (Ex.PB). Out of the recovered substance, a sample of 200 grams Bhang from each sack was separated for narcotic analysis after embossing a seal of M.A. Thereafter, the complainant (PW-4) drafted a complaint (Ex.PA) and sent the same to the police station through Shahwaiz Arshad 1002/C for registration of formal F.I.R. On the basis of written complaint (Ex.PA), formal F.I.R. (Ex.PA/1) was chalked out by Ijaz Ahmad, ASI (PW-1). Thereafter, the investigation was conducted by Muhammad Azam, ASI (PW-5), who reached at the spot, prepared rough site plan of the place of recovery (Ex.PC) and recorded the statements of the prosecution witnesses under Section 161 of Cr.P.C.

3. Having found the accused-Safdar Iqbal guilty, the Investigating Officer (PW-5) prepared report under Section 173 Cr.P.C., while placing the name of the accused in Column No.3 of the

incomplete Challan and sent the same to the court of competent jurisdiction.

4. The learned trial court formally charge sheeted the appellant on 13.10.2015, to which he pleaded not guilty and claimed trial. The prosecution in order to advance its case, produced as many as nine (09) witnesses. Muhammad Aslam, SI (PW-4) is the complainant, Ijaz Ahmad, ASI (PW1) chalked out formal FIR, Muhammad Azam, ASI (PW-5) is the Investigating Officer whereas Pervaiz Iqbal, ASI (PW-2) is witness of the recovery.

5. On 06.05.2015, the learned Assistant District Public Prosecutor gave up Sarfraz Ahmad 453/H.C, PW being un-necessary and closed the prosecution evidence after tendering the report of the Punjab Forensic Science Agency, Lahore (Ex.PL).

6. The appellant was also examined under Section 342, Cr.P.C. wherein he opted not to lead defence evidence but refused to appear his own witnesses in terms of Section 340 (2) Cr.P.C in disproof of the allegations levelled against them and while replying to a particular question that why this case was against him and why the PWs had deposed against him, the appellant (Safdar Iqbal) made following deposition:-

“All the PWs are police officials and they falsely deposed against me being subordinate to the complainant only to show police performance before their high ups. Nothing was recovered from my possession. All the proceedings were conducted while sitting in the police station.”

7. After hearing the arguments advanced by the learned counsel appearing on both sides, the learned trial court, while evaluating the evidence available on record, found the version of the

prosecution as correct beyond any shadow of doubt, which resulted into conviction of the appellant in the above stated terms.

8. We have heard the arguments advanced by the learned counsel for the appellant as well as the learned Deputy Prosecutor General and have minutely perused the record available on the file.

9. In the instant case the prosecution had miserably failed to connect the appellant with the alleged recovered Bhang and also could not establish that the Dera where-from 90 bags containing the Bhang, were recovered, was owned and possessed by the appellant. Muhammad Azam, A.S.I. (PW-5)-the investigating officer during the course of cross-examination admitted that he (PW-5) did not enquire regarding the ownership of dera. Muhammad Azam, A.S.I. (PW-5)-the investigating officer deposed during cross-examination that: -

"I have heard that there is some piece of land in the name of accused Safdar Iqbal accused but I have not verified from Revenue Department about ownership of land of Safdar Iqbal accused. It is correct that I have not mentioned the name of Village on the head note of Ex.PC i.e. rough site plan---I have not specifically shown any room at the Dera of accused Safdar Iqbal in the site plan Ex.PC."

Muhammad Aslam, S.I. (PW-4)-the complainant deposed during cross-examination that: -

"The Dera of Safdar is at a distance of 7/8 acres from Village Loang. The Dera of Safdar consists of one room. I have not mentioned the detail of room etc of Dera of Safdar accused. I have not confirmed the revenue record of Dera of Safdar accused. The people of surrounding Deras told

us about the Dera of Safdar---There is no boundary wall of Dera of Safdar Iqbal accused.”

The position that emerges is that no evidence was brought forward before the court in order to indicate that the premises from where 90 bags of Bhang were allegedly recovered belonged to the accused, that he was in exclusive possession of the Dera.

10. There is nothing on the record, that the contraband substance was recovered from the dera. Muhammad Azam, ASI (PW-5)-the Investigating Officer, who has placed on record site plan (Ex.PC) in relation to the place of recovery, we find the place of recovery depicted therein to be totally different. Instead it is reflected from the site plan (Exh.PC) that the place of recovery was in front of dera and beneath the tree.

In view of the above, the prosecution has miserably failed to prove that the accused-appellant was in conscious possession of the alleged contraband.

11. It is noteworthy that ninety (90) numbers of samples each having 200 grams bhang were described in the recovery memo (Exh.PB) and as deposed by the prosecution witnesses i.e. Pervez Iqbal, A.S.I. (PW-2)-the recovery witness and Muhammad Aslam, S.I. (PW-4)-the complainant in the court. But, the narration regarding the samples in Exh.PB shows that were taken from the spot were not shown as specifically marked with alphabets or numbered. In Exh.PB, the entire procedure of seizure was narrated, but nowhere it is stated that items were marked with alphabets or numbered. This may also create a suspicion about the identity of the properties seized from the spot and those produced before the court. Moreover, in Exh.PB, the seizure

memo, the samples and each sack/beg seized from the spot have not been described as marked with alphabets or numbered to link specific sample with specific sacks/begs. There is no reference in Exh.PB that the items bear the markings of alphabets or numbered therein. This fact was admitted by Muhammad Aslam, S.I. (PW-4)-the complainant, who deposed during cross-examination that, "**No parcel was specially marked by me for identification.**" This would also create a doubt as to the identity of the case property (P-1/1-90) produced before the court with the identity of those actually seized from the spot.

12. Similarly in Exh.PL, the Narcotics Analysis report of the Punjab Forensic Science Agency, Lahore, reveals that it is collective report of all samples. Thus, it is seen that in the present case there is total non-compliance with the Control of Narcotics Substances (Government Analysts) Rules, 2001 provides for report of result of test or analysis by the Forensic Science Laboratory which makes the entire prosecution case doubtful. Moreover, Exh.PL, the Narcotics Analysis report is not proved by the prosecution to lend corroboration to the case of the prosecution. As per Exh.PL, the Narcotics Analysis report 90 parcels of samples were received by the FSL on 18-07-2014, and result and conclusion of their examination reads as under: -

Result and Conclusion

Item # 01-90 All the ninty samples of crushed, dried green plant material in sealed parcels contain Cannabis (Bhang).

In the light of the above, it is found in the instant case, that the Narcotics Analysis report of the Forensic Science Laboratory was not as per requirement of law. There is, thus, no evidence to connect the Narcotic Analysis Report (Ex.PL) with the substance that the seized from the possession of the appellant.

13. According to Muhammad Aslam, S.I. (PW-4)-the complainant, the case property seized has been handed over to Muhammad Azam, A.S.I. (PW-5)-the investigating officer at the spot on 11-07-2014. Neither Muhammad Aslam, S.I. (PW-4)-the complainant nor Muhammad Azam, A.S.I. (PW-5)-the investigating officer has a case that the samples drawn from the case property (P-1/1-90), have been kept in the safe custody of either of them. They have not even a case that the samples drawn from the case property (P-1/1-90), have been handed over to any other officer or to the Moharrar for keeping it in safe custody. Whereas, Muhammad Ilyas 121/HC (PW-3)-the Moharrar deposed during court statement that, "---Muhammad Azam S.I./I.O handed over to me 90 sealed parcels said to contain Bhang---" Muhammad Ilyas 121/HC (PW-3)-the Moharrar did not depose a single word that Muhammad Aslam, S.I. (PW-4)-the complainant or Muhammad Azam, A.S.I. (PW-5)-the investigating officer had handed over to him 90 parcels of the samples drawn from the case property (P-1/1-90). Neither of the prosecution witnesses i.e. Muhammad Aslam, S.I. (PW-4)-the complainant nor Muhammad Azam, A.S.I. (PW-5)-the investigating officer have explained those aspects during their examination before the court. Even, Muhammad Aslam, S.I. (PW-4)-the complainant did not depose that he (PW-4) handed over parcels of samples to Muhammad Azam, A.S.I. (PW-5)-the investigating officer. There is no explanation for this failure to establish safe custody of the parcels of samples drawn from 90 bags of Bhang weighing 1,800-kilograms from time of the seizure till its submission in the office of Punjab Forensic Science Agency, Lahore. Mere oral evidence as to preparing of parcels of samples drawn from the substance recovered from the possession of the appellant would not discharge the heavy burden which lies on the prosecution particularly when the sentence is

punishable with severe sentence under the Act. Exh.PL is the Narcotics Analysis report of the Punjab Forensic Science Agency, Lahore. It shows that the samples, which have been forwarded to the laboratory, reached there on 18.07.2014 can not be connected with the parcels of samples drawn from recovered substance at the spot. Muhammad Aslam, S.I. (PW-4)-the complainant has not spoken during his examination about the affixture of any impression seal on the articles seized from the spot. Therefore, there is nothing on the record for the prosecution to convince the court that specimen seal impression was put on the case property (P-1/1-90) seized from the spot. Explanation of any nature is not forthcoming from Muhammad Aslam, S.I. (PW-4)-the complainant, will be fatal to the prosecution and the accused is entitled to the benefit of doubt. Therefore, there is no scope for the prosecution, even to maintain a stand that seal was affixed by Muhammad Aslam, S.I. (PW-4)-the complainant on the parcels of samples and case property (P-1/1-90). In a circumstance when reference of the seal impression was not deposed by Muhammad Aslam, S.I. (PW-4)-the complainant, there is absolutely no basis to connect the case property (P-1/1-90) with the substance recovered from the place of recovery. Therefore, there is every scope for a doubt to arise in the mind of this Court regarding the identity of the case property (P-1/1-90) seized and the samples forwarded for the purpose of analysis. Practically the prosecution took upon them the risk of losing the case. In the considered opinion of this Court, the aforesaid inconsistencies and contradictions considered cumulatively do lead to an irresistible inference that the prosecution has not been able to prove safe custody of the recovered substance through material and cogent evidence.

14. The conclusion that possibly be drawn from the discussion hereinabove is that the court below has thoroughly failed to advert to

the above aspects while passing the impugned judgment. The court below has not evaluated the evidence of the prosecution in a proper manner. In view of the inconsistencies that loom large in the evidence relied on by the prosecution and the legal flaws, pointed out by the learned counsel as existing, the case alleged by the prosecution against the accused is not sustainable and the accused would be entitled to the benefit of that.

15. Accordingly, the benefit of doubt is extended to the appellant, thus the Criminal Appeal No.1226 of 2016 is **accepted** and the appellant-Safdar Iqbal is **acquitted** of the charge. The conviction and sentence passed by the learned trial court vide the impugned judgment dated 30.05.2016 in case F.I.R. No. 151-2014, dated 11.07.2014, offence under Section 9 (C)/15 of The Control of Narcotic Substances Act, 1997, registered at Police Station, Ranmal Sharif, District Mandi Bahauddin are hereby ***set aside*** and he (the appellant-Safdar Iqbal) is directed to be released from the Jail forthwith, if not required in any other criminal case.

(Sardar Muhammad Sarfraz Dogar)
Judge

(Aalia Neelum)
Judge

Approved for reporting.

Judge

Judge

