

Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr.A No.89-B/2023

Asad Khan

v.

The State

JUDGMENT

For appellant: **Mr. Imran Ali Shah Mandan Advocate**

For State: **Mr. Najib Ullah, A.A.G.**

Date of hearing: **16.04.2024**


Dr. Khurshid Iqbal, J.-

1. The appellant was indicted for the charge under section 9(d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 ("the Act") on the strength of FIR No.138, dated 20.03.2021, registered at Police Station Karak. By its judgment, dated 23.02.2023 ("the impugned judgment"), the Special Court of Additional Sessions Judge-II, Karak convicted and sentenced him to life imprisonment, along with a fine of Rs.5,00,000/- (Rupees Five Hundred Thousand), or to suffer 12 months S.I. in default of its payment. The benefit under section 382-B Cr.P.C was extended to him. Being aggrieved, the appellant has challenged the impugned judgment under section 24 of the Act through the instant appeal.

2. Before we proceed to embark upon the merits, it would be necessary to unveil the pertinent facts of the case. On 20.03.2021, at 17:30 hours, the complainant Asif Sharif, SHO, Karak received what he called authentic information that charas would be smuggled on a large scale through Shehzore pickup to southern districts. Acting on the information, the SHO, accompanied by a police contingent, laid a barricade at Toll Plaza Check Post, District Karak. Meanwhile, he

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intercepted a Shehzore pickup bearing Registration No.J-5551/Peshawar for checking purpose. Its driver was alighted and searched, but nothing incriminating was found in his possession. However, the body floor of the vehicle was suspected. Accordingly, an official mechanic named Qayyum Khan was called from the police lines to open the floor. He arrived and did so. Consequently, 79 packets of charas wrapped in yellow colour solution tape were recovered from it. On weighment, those came out 1200 grams each (94800 grams in toto). Out of the recovered packets, five grams were separated and sealed in parcels No.1 to 79 for their onward dispatch to the FSL for chemical analysis, while the remaining quantities were packed and sealed in parcel No.80. The recovered charas, along with the vehicle, were taken into possession as per the recovery memo Ex.PW-7/2. The driver disclosed his identity as Asad Khan son of Sunab Gul resident of Ambar Banda, District Kohat. He was accused of trafficking the recovered substance and arrested. The murasila was drafted and sent to the police station through constable Zakir Ullah No.5852 for registration of the case. This stood converted into the FIR Ex.PA.

 3. After the completion of the investigation, the final report (challan) under section 173 Cr.P.C was submitted against the appellant. He was summoned, and copies of relevant statements and documents were supplied to him under section 265-C Cr.P.C. Charge was framed, to which he pleaded not guilty and claimed trial. The prosecution produced 11 witnesses to substantiate the charge against the appellant. In his statement recorded under section 342 Cr.P.C, the appellant pleaded innocence and refuted all the allegations leveled against him. He did not opt to appear as his own witness on oath under section 340(2) Cr.P.C to disprove the allegations against him. He also did not produce any evidence in his defence. After hearing the arguments, the trial Court adjudged the appellant guilty and, as such, convicted and sentenced him as aforesaid. Hence, this appeal.

4. We have anxiously considered the arguments addressed at the bar and perused the material available on the record.

5. Perusal of the record reveals that the testimony of the complainant Asif Sharif, SHO, served as the founding pillar of this case inasmuch as he conducted the processes of search, seizure, and arrest in the instant case. We would, therefore, like to start with his testimony. He testified as PW-07 and provided the same narrative as detailed in the FIR. He maintained consistency regarding the material points related to the mode and manner in which he conducted the processes of search, seizure, and arrest. He remained unwavering in asserting the factum of recovery from the floor of the vehicle driven by the appellant, in the presence of marginal witnesses, as reflected in the recovery memo Ex.PW-7/2. In his testimony, he affirmed that he had shown the recovered contraband in sealed form to the I.O., a fact emphatically acknowledged by the I.O. in his statement as PW-08.

6. Mechanic Qayyum Khan was examined as PW-03. He remained categorical in stating that he opened the floor of the vehicle, where 79 packets of charas were found concealed. Similarly, Constable Habib Ullah No.219 was examined as PW-09. As a marginal witness to the recovery memo Ex.PW-7/2, he fully narrated and supported its contents. He narrated the minute aspects in which the seizing officer conducted the processes of search, seizure, and arrest. He fully endorsed the testimonies furnished by the seizing officer and the mechanic against the appellant. All three witnesses faced cross-examination on material aspects of the case. However, they maintained consistency and did not contradict each other regarding the factum of recovery being effected from the floor of the vehicle driven by the appellant. Though, the learned counsel for the appellant referred to some discrepancies in the testimony of the mechanic (PW-03) regarding his arrival at the spot, the time he spent there, and his departure from the spot, but the fact remains that the role of this witness is limited to opening the floor of the vehicle,

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regarding which no discrepancy could be pointed out. Moreover, the noted discrepancies, being not relevant to the core issue, do not cast any aspersion on the prosecution narrative against the appellant.

7. Nasir Iqbal, MHC, was examined as PW-06. He testified that the seizing officer handed him the case property, along with the application addressed by the I.O. to the FSL for its chemical analysis, which he dispatched, along with the road certificate through Constable Kashif-ur-Rehman No.542 to the FSL. Upon return, he was handed over the receipt and road certificate duly stamped by the FSL authorities as acknowledgment receipt. This fact was fully supported by the said constable, who took the witness box as PW-01. Both witnesses were extensively cross-examined by the defence. However, nothing in their testimony was revealed that could cast doubt on the safe custody or the secure transmission of the case property to the FSL.

8. In addition to the aforementioned witnesses, the prosecution has also produced and examined the remaining material witnesses. An in depth examination of their testimonies reveals a consistent and coherent account of the events pertaining to the charge against the appellant. Despite thorough cross-examination by the defence, the witnesses remained steadfast and unwavering in their accounts. Remarkably, their testimonies collectively contribute to a compelling and unambiguous narrative supporting the prosecution case against the appellant.

9. Furthermore, the appellant has failed to point out any reason, what to say of production of confidence inspiring evidence, that why the local police would opt to implicate him in a false case involving capital punishment. Regardless of whoever was the owner of the vehicle, the fact remains that it was the appellant who drove it at the time of recovery. While the appellant was driving the vehicle all alone, no ambiguity is left as to his full control and conscious possession of the recovered contraband, especially when those were

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recovered from its floor. The Supreme Court of Pakistan in Kashif Amir v. The State (PLD 2010 Supreme Court 1052) ruled that when a person is driving a vehicle, he is in charge of it, and whatever articles are within it are under his control and possession. Similarly, in the case of Syed Karam Hussain Shah and others v. The State and others (2019 MLD 1445), it was held that:

...in this case, the contraband was concealed in front doors of the vehicle, therefore, onus is upon the appellants to prove in terms of Article 122 of the Qanun-e-Shahadat Order, 1984 as to how the contraband was concealed in the car and as such, the appellants have not explained the circumstances. At last, the Apex Court has also laid down heavy burden of proof upon the driver of vehicle, against whom the prosecution has discharged its onus and the driver of the vehicle is to be declared responsible person for transportation of narcotics as no condition or qualifications are made in Section 9(c) of CNSA, 1997.

10. Considering the inherent worth of the evidence presented, it has been established that the prosecution has successfully proven against the appellant the factum of recovery, the safe custody of the contraband, and the secure transmission of the sample parcels to the FSL. The sample parcels were dispatched to the FSL well within the prescribed period of 72 hours of their recovery. The sample parcels were subjected to chemical analysis at the FSL. The report (Ex.PZ) confirmed the substances in the sample parcels as charas. This provides significant corroboration to the charge against the appellant.

11. Much was argued by the learned counsel for the appellant regarding the failure of the prosecution to produce Register No.XIX to prove the safe custody of the case property. In our view, Rule 22.70 of the Police Rules, 1934, which pertains to Register No.XIX, is relevant. Its object is to ensure that the case property remains in safe custody and is not tampered with. It is noted that in order to

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prove the factum of safe custody and secure transmission of the case property to the FSL, the prosecution has examined all material witnesses. Each of them affirmatively testified as to the recovery of the case property, its transfer from one police officer to another, its secure deposit in the storeroom of the police station, and its onward transmission to the FSL through PW-01. There is no ambiguity as to which police officers were responsible for the case property at each stage, from beginning to end. Moreover, all relevant officials were produced and examined, where they maintained clarity regarding their respective roles throughout the process. The defence attempted to impeach their credit through cross-examination, but remained unsuccessful. Notably, the defence even did not put any suggestion to the witnesses that entries in Register No.XIX were never made. When the Muharrir took the witness box as PW-06, the defence attempted to question his credibility regarding safe custody due to Register No.XIX not being produced. However, the witness emphatically stated that he made entries in Register No.XIX regarding the receipt of the case property on 20.03.2021, a fact affirming that entries were duly made and the register was maintained. In these circumstances, it is clear that the prosecution has otherwise succeeded in establishing, through a well knitted chain of evidence, the factum of safe custody and secure transmission from start to finish.

12. Nevertheless, we cannot turn a blind eye to the fact that when the Register No.XIX was duly maintained and the entries related to the case property were also recorded therein, then of course, its non-production, neither by the I.O. during the investigation, nor by the Muharrir of the police station during his statement before the trial court, would give an impression that they are either inefficient or intentionally omitted to perform their duties for reasons best known to them. Even under section 4(1)(b)(ii) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions, and Powers) Act, 2005, the Public Prosecutor, upon receiving the final report under

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section 173 Cr.P.C, could withhold it due to the absence of a copy of the relevant extract from Register No.XIX and return it to the I.O. for re-submission after removing the deficiency. But unfortunately, the prosecution branch also failed to identify this deficiency and follow the prescribed procedure as adumbrated in the above said provision of law. Furthermore, no attempt was made by the Public Prosecutor during the trial to ensure the production of the register before the trial Court. This shows that the prosecution branch, too, omitted to fulfill its functions and duties as required by law.

13. We cannot ignore that the escalating menace of narcotics, both in its sale and trafficking, is a pressing concern that intensifies day by day, as more and more young people are falling into addiction. What never ceases to alarm us is the fact that even children are known addicts nowadays, and the prevalence of this harmful addiction knows no boundaries. Consequently, the youth addicted are destined to compromise their future and become a burden on society. Viewing this issue from a broader perspective, the widespread prevalence of this menace poses a grave threat to society, which carries the potential to precipitate its eventual collapse and imperil the future of the youth. If left unchecked, the pervasive consequences may weaken the stability, progress, and prosperity of the nation as a whole. The Legislature, recognizing the urgency of the situation, has proactively brought about legislative strictness within the province through the enactment of the 2019 CNS Act. The legislative framework on the subject accentuates the gravity of the menace. It is, therefore, high time to combat this menace through the available machinery of the criminal justice system in confluence with legislative efforts, all while adhering to the norms of the law. It requires no reiteration that the object behind the establishment of the criminal justice system can only be achieved if everyone forming its part fulfills their duties in accordance with law. However, should anyone of them fails to discharge their duties as mandated by law, then of course, the image of the criminal justice

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system will be tarnished beyond repair, and the majesty of the law will be lost. Considering this crucial aspect of the matter in juxtaposition with the conduct shown by the Public Prosecutor, the I.O., and the Muharrir of the police station, it is imperative to direct the Director General Prosecution, Khyber Pakhtunkhwa, and the District Police Officer, Karak, to hold within their respective spheres inquiries into the matter as to why Register No.XIX was not brought on the record, neither by the I.O. during the investigation, nor by the Muharrir of the police station during his statement, nor any attempt was made for this purpose by the Public Prosecutor, either upon the receipt of the report under section 173 Cr.P.C, or during the trial, and in case the omission is found to be the result of inefficiency, or any other reason constituting inefficiency or misconduct on their part, to initiate disciplinary proceedings against them in accordance with law. The compliance reports shall be submitted to this Court through the Additional Registrar of this Bench for our perusal in chambers.

14. Considering the afore-noted facts and circumstances and the huge quantity of the recovered charas, we are afraid to hold the mere non-production of Register No.XIX as fatal to the prosecution case. The submission of the learned counsel for the appellant is, therefore, repelled.

15. Although, the learned counsel for the appellant also pointed out some minor contradictions and discrepancies, such as those related to timings and the number of police officials accompanying the seizing officer to the spot, however, these do not cast doubt on the guilt of the appellant in the judicial mind of this Court. Instead, these discrepancies are found to be trivial and can be overlooked, especially when the factum of recovery, the chain of safe custody, and the secure transmission of the contraband are proven beyond doubt. It cannot lose sight of the fact that police officials routinely conduct the process of recovery of narcotic substances. Over time, recollections of exact timings and the number of officials involved

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may vary. This does not imply that witnesses did not provide truthful testimony, rather it shows the fallibility of memory and the routine nature of such proceedings. By now, it is well settled that prosecution witnesses are not expected to provide statements with mathematical precision, but to provide truthful testimony to the best of their recollection. Minor discrepancies or inconsistencies in testimony should be disregarded as long as the core facts remain consistent. It follows that parrot like narration of facts with mathematical precision is not required, nor necessarily trustworthy. As held by the Supreme Court of Pakistan in *Aqil v. State* (2023 SCMR 831), parrot like statements are discredited by the Courts. It is a normal course of human conduct that minor discrepancies may occur while narrating a particular incident.


16. In appreciating the effect of minor discrepancies and contradictions in the prosecution case, the Supreme Court in *Shamsher Ahmad and another v. The State and others* (2022 SCMR 1931) unequivocally held that undue importance should not be attached to such discrepancies that do not shake the salient features of the prosecution case, rather they should be ignored. The accused cannot claim a premium for such minor discrepancies, and attaching too much importance to such insignificant inconsistencies would destabilize the purpose of the criminal administration of justice, which is not solely intended for acquittals based on minor discrepancies.

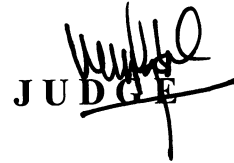
17. With these observations in mind, we are constrained to hold that the prosecution has successfully proven the charge against the appellant through compelling and confidence inspiring evidence beyond any reasonable doubt. Not being persuaded that there was no sound basis for adjudging the appellant guilty, we conclude that the trial court has thoroughly appreciated the evidence presented, and, as such, the impugned judgment is not open to any interference by this Court.

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18. In the result, we would dismiss the appeal. Copy of this judgment, along with full particulars of the case, be immediately remitted to the Director General Prosecution, Khyber Pakhtunkhwa, and the DPO, Karak for compliance as aforesaid.

Announced
16.04.2024
(Ghafoor Zaman)


JUDGE


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SCANNED

04 MAY 2024



(D.B)
Hon'ble Mr. Justice Kamran Hayat Miankhel
Hon'ble Mr. Justice Dr. Khurshid Iqbal