

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA

Criminal Appeal No.239 of 2022
(CC-100107501995)

Muhammad Naeem v. The State.

JUDGMENT

Date of hearing 12.04.2023 Announced on .06.2023

Appellant by: Mr. Amanullah Batezai, Advocate.

Respondent by: Mr. Haib-ur-Rehamn Baloch, Special
Prosecutor, ANF

Shaukat Ali Rakhshani, J. Appellant Muhammad Naeem has challenged the judgment dated 26-04-2022 ("impugned judgment") authored by Special Judge-CNS, Balochistan, Quetta ("Trial Court"), whereby he was convicted under Section 9 (c) of Control of Narcotic Substances Act, 1997 ("Act of 1997") and sentenced to suffer imprisonment for life with a fine of Rs.50,000/-(rupees fifty thousand); in default of payment of fine to further undergo one (01) year S.I and convicted under section 3-4 of the Anti-Money Laundering Act, 2010 ("AMLA of 2010") sentenced for a period of one (01) year R.I with a fine of Rs.5000/- (rupees five thousand); and in default of payment of fine to further undergo one (01) month S.I with the premium of section 382-B CrPC, emanating from a case *vide* FIR No.01/2021 registered at Police Station ANF, Quetta.

2. Succinctly, on 05-01-2021 Inspector Muhammad Jawad Ali complainant (PW-2) along with other members of the raiding team of ANF officials on a tip off regarding

smuggling of narcotics, foreign currency & weapons, at about 4:00 pm near Killi Umer Cross Airport Road, Quetta signaled a Land Cruiser bearing No.JAA-301 to stop, but instead the culprits started firing upon them and in response when they fired, the tyre of the land cruiser got burst, as such appellant was arrested, however proclaimed offender Ajab Khan escaped from the place of occurrence, whereupon on search of the vehicle 13 kgs of charas '*garda*' were recovered lying in between his legs, as such *murasila* (Ex.P/2-A) was sent to lodge the FIR.

After necessary investigation, the appellant was sent up to the trial Court to face the deeds of his culpability, where on commencement of the trial, the prosecution in order to bring home the charge produced as many as four witnesses. The appellant was examined under section 342 of CrPC, who denied the allegations and professed innocence. He neither opted to record his statement on oath nor produced any defence witness, thus the trial culminated into a verdict of guilt, whereby the appellant was convicted and sentenced *vide* impugned judgment in the terms mentioned in para *supra*.

3. Mr. Amanullah Batezai, learned counsel for the appellant *inter alia* contended that the prosecution has neither proved the recovery of the narcotics nor its safe custody and transmission, but the trial Court has recorded the conviction for the reasons contrary to the evidence

available on record. He added that there are material contradictions in the statements of the witnesses, which has made the recovery of narcotics highly doubtful, but the trial Court has failed to appreciate such aspect of the case. On the basis of above illegalities, learned counsel for the appellant prayed for acquittal of the appellant.

On the other hand, Mr. Habib-ur-Rehman learned Special Prosecutor ANF resisted and vehemently opposed the contentions made by the learned counsel for the appellant. He urged that prosecution has successfully proved the recovery of the narcotics from the possession of the appellant and above all, the prosecution has also proved the safe custody and transmission of the narcotics through tangible evidence, which has rightly been appreciated by the trial Court while drawing the impugned judgment, thus requested for dismissal of the appeal.

4. Heard. Record sussed out cover to cover in view of the arguments advanced by the learned counsel for the parties. Seizing Officer Inspector Muhammad Jawad Ali (PW-2) testified that on a tip off that Ajab & Muhammad Naeem shall smuggle narcotics, foreign currency & arms in a Land Cruiser bearing No.JAA-301, as such, he along with other ANF personnel tried to stop the said vehicle, but instead of stopping, the culprits made firing upon them and when they in retaliation fired, the tyre of the vehicle got burst, which stopped ahead near cattle market. He further

deposed that the driver of the said land cruiser while making firing upon them succeed to escape, while taking a white sack with him, whereas the appellant Muhammad Naeem was apprehended, while sitting on the front seat, attempting to escape. According to him, a white sack was found lying in-between legs of the appellant, which was found to be charas in powder form i.e. '*garda*' weighing 9 kgs, whereof sample of 100 grams was separated and parcel No.1 was prepared, whereas the remaining charas '*garda*' was put in parcel No.2. On further search of the vehicle, 2 packets, each weighing 2 kgs, total 4 kgs were recovered from the rear seat, whereof 20 grams from each packet were separated, whereof parcel No.3 & 4 were prepared, whereas the remaining charas '*garda*' was put in the parcel No.5. According to him, on formal arrest, Iranian currency was recovered from the personal search of the appellant, whereas three empties of 9mm pistol were also recovered inside the land cruiser. The burst tyre of the said vehicle was also secured through recovery memo. During cross examination, Seizing Officer (PW-2) remained firm and consistent, as such, his testimony went un-shattered.

Recovery witness (PW-3) testified in line with the deposition of Seizing Officer (PW-2) particularly, regarding interception of the land cruiser, firing made by the culprits including appellant from the vehicle, escape of the driver Ajab and recovery of 9 kgs of charas '*garda*' lying in-

between the legs of the appellant and recovery of the 4 kgs of charas '*garda*' from the rear seat concealed therein. He also testified regarding recovery and preparation of charas '*garda*' and extraction of samples, whereof parcel No.1 to 5 were prepared, which were secured through recovery memo (Ex.P/3-A) produced as Art.P/01 to Art.P/06; besides, preparation of recovery memos pertaining to articles recovered from personal search so secured through recovery memo (Ex.P/3-B) produced as Art.P/07 to Art.P/12 as well as recovery of three empties of 9 mm pistol secured through recovery memo (Ex.P/3-C) produced as Art.P/13 & memo of recovery of land cruiser bearing No.JAA-301 through recovery memo (Ex.P/3-D), so produced as Art.P/14. His testimony also could not be shaken, despite lengthy cross examination. His testimony was found to be confidence inspiring and trustworthy, suffering from no discrepancy in view of the testimony of the Seizing Officer (PW-2). Imperatively, it may be observed that neither any personal grudge or enmity has been alleged by the defense nor any reason has been brought on record for false implication of the appellant, as such it can be concluded with no doubt in mind that the prosecution has establish the recovery of the charas '*garda*' from the possession of the appellant without any glimpse of doubt.

5. So far the safe custody and transmission is concerned, the prosecution has produced Mohsin Bilal ASI

(PW-1). He was *malkhana* Incharge on 05.01.2021, who stated to have received the parcels of narcotics, samples & land cruiser bearing No.JAA-301, whereof he made entry in register No.19. He further testified that on 06.01.2021, parcel Nos.1, 3 & 4 were handed over by him to SI with docket form for onward transmission to the office of Federal Government Analyst Balochistan, Quetta ("FGA") for chemical analysis and on 14.01.2021, he received back the parcels. He was cross examined at length, but he remained firm to his examination in chief. His statement is worth of credence as it inspires confidence and rings true. Bilal Siddique SI (PW-4) is the investigating officer of the case, who produced the copy of the FIR as (Ex.P/4-A) and site plan as (Ex.P/4-C). He stated that after recovery of the contraband, he handed over the same along with land cruiser to *malkhana* Incharge (PW-1) and that on 06.01.2021 took the parcel Nos.1, 3 & 4 and deposited the same in the office of FGA for chemical analysis, whereof he received the result on 14.01.2021. He was also put to a lengthy cross examination, but he remained consistent and his deposition went unshaken, thus it can be concluded with no doubt in mind that the prosecution has proved the recovery as well as safe custody and transmission from the place of occurrence to the *malkhana* and onward transmission to the office of FGA successfully. In this regard, we would like to refer to the judgment of '*Faisal*

Shehzad v. State' (2022 SCMR 905), which enumerates that when the prosecution is able to prove its case then unnecessary technicalities should not hamper the very purpose of the law on the subject. Meaning thereby that approach of the court must be dynamic in all terms. The relevant para-9 of the judgment of Faisal Shahzad's *supra* is as infra;-

"9. This Court has time and again held that the menace of drugs is increasing day by day due to various reasons. It is very disheartening to observe that every day there are many reports of drug peddlers being caught with drugs. This menace is a great threat to a peaceful society and is affecting many lives especially the youngsters, therefore, immediate steps are required to be taken to curb these nefarious activities. The proceeds of narcotics are largely utilized to anti-state/terrorist activities, which this country is facing since decades. When the prosecution is able to prove its case on its salient features then un-necessary technicalities should not be allowed to hamper the very purpose of the law on the subject. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and the statements of the prosecution witnesses when evaluated conjointly leaves no room to come to a different conclusion than what has been arrived at by the learned courts below."

6. Upshot of the above discussion is that the prosecution has successfully established the recovery of 9

kgs 'garda' charas lying in-between the legs of the appellant, but so far 4 kgs of 'garda' charas recovered from the rear seat concealed therein was admittedly not recovered on his disclosure and pointation, thus we believe that the recovery of the remaining 4 kgs of 'garda' charas have not been proved against the appellant as the driver of the vehicle fled away, who is responsible for the remaining 4 kgs of 'garda' charas concealed in the rear seat.

For what has been discussed hereinabove, as well as keeping in view the peculiar circumstances of the instant case the sentence awarded to the appellant under section 9 (c) of the Act of 1997 is reduced from life imprisonment to ten (10) years, whereas the remaining sentence shall remain intact with the premium of section 382-B CrPC, which shall serve the purpose.

7. As far as conviction and sentenced recorded by the Trial Court under section 3-4 of the AMLA of 2010 is concerned, it does not fall within the jurisdiction of the Trial Court, as it does not squares within the provision of section 72, 73 & 74 of the Act of 1997, thus the conviction and sentence awarded by the Trial Court to the appellant is *coram non judice* under the offences punishable under section 3-4 of the AMLA of 2010.

As such, the impugned judgment to such extent is set at naught and the case is remitted to the Court constituted under the AMLA of 2010 to initially adjudicate upon the

question of maintainability and cognizance of the indictment in view of section 21 of the AMLA of 2010 and decide the case in accordance with law.

8. Corollary, the appeal being shorn of merits is *dismissed* in the above terms.

Announced on.

Dated ___ day of June 2023.

Judge

Judge

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