

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI

Cr. Appeal No.D-79 of 2017
Cr. Appeal No.D-81 of 2017
Criminal Jail Appeal No.D-84 of 2017

Date of hearing: 26.03.2018.
Date of Decision: 05.04.2018

Appellants : Budho and Ameer Jan
Through Mr. Muhammad Zaman Zaur,
Advocate.

Appellant: Rasool Bux
Through Syed Shahzad Ali Shah, Advocate.

Respondent : The State
Through Syed Meeral Shah A.P.G.

J U D G M E N T

SHAMSUDDIN ABBASI, J: This judgment will dispose of Cr. Appeals No.D-79 and 81 of 2017, and Criminal Jail Appeal No.D-84 of 2017, as they arise out of common judgment passed by learned Sessions / Special Judge CNSA, Mirpurkhas in Special case No.29/2016 (Re: State Versus Budho and others) arising out of Crime No.6/2016, under section 9(c), Control of Narcotics Substances Act, 1997 of P.S DIO Excise Mirpurkhas, whereby appellant Budho son of Abdul Rahim Unar, Ameer Jan son of Sanaullah Achakzai and Rasool Bux son of Muhammad Usman Mallah were convicted for an offence punishable under section 9(c) of Control of Narcotics Substances Act, 1997 and sentenced to imprisonment for life and to pay fine of Rs.2,00,000/- each and in case of default in payment of fine appellants were ordered to suffer simple

imprisonment for six months. Appellants were extended benefit of section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that on 11.06.2016 Nand Lal Excise Inspector left Police Station vide roznamcha entry No.137 alongwith his subordinate staff E.Cs Sikander Ali, Muhammad Yousuf, Muhammad Ameen, Muhammad Zaffar and Excise Driver Javed Iqbal in official vehicle bearing registration No.GS-8225 in the area for patrolling to prevent narcotic offences. During patrolling when they reached near Iqbal patrol pump, Inspector Nand Lal received spy information that white coloured corolla car bearing registration No.AFS-946 would appear from Hyderabad side alongwith three persons who were transporting the narcotic substance. On receiving such information they reached at Mirpurkhas bypass near choona factory and started checking of the vehicles. During checking said car appeared. Excise officials had information, they gave signal to stop it. On that, a person who was sitting on driving seat tried to drove away but they tactfully got stopped the vehicle and found that one person was sitting on driving seat whereas two persons were sitting on rear seat of car. They alighted the persons from the car and inquired their names. The person who was sitting on driving seat disclosed his name as Budho son of Abdul Raheem by caste Unar resident of Peengharo, Taluka Tando Bago, District Badin, whereas other two persons sitting on the rear seat of the car disclosed their names as Ameer Jan son of Sanaullah by caste Achakzai resident of Street Pir Ali Zai, District Qilla Abdullah and Rasool Bux son of Muhammad Usman by caste Mallah resident of Naunabad Paro, Tando Bago, District Badin. Due to non availability of private mashirs, Inspector Nand Lal made ECs Sikandar Ali and Muhammad Yousuf as mashirs and conducted personal search of the accused.

From personal search of Budho one Q-Mobile and one currency note of Rs.500/- and one currency note of Rs.100/- total Rs.600/- were recovered, from personal search of Ameer Jan, one Q-Mobile and one currency note of Rs.1000/-, one currency note of Rs.500/- and one currency note of Rs.100/- total Rs.1600/- were recovered and from personal search of Rasool Bux two currency notes of Rs.1000/- and one currency note of Rs.100/- total Rs.2100/- were recovered from his pocket. Excise Inspector searched the vehicle and found one white coloured plastic sack in a diggy and it contained 50 packets, each packet contained two slabs of charas. They weighed each packet of charas and found it of one kilogram. They weighed total charas and found 50 kilograms charas. Inspector Nand Lal sealed the recovered charas in same sack at the spot and arrested the accused and prepared mashirnama of arrest and recovery of charas in presence of mashirs and sealed at spot. Thereafter, Inspector Nand Lal brought the accused and case property to Excise Police Station where, he had lodged an F.I.R. against accused under section 9(c) of Control of Narcotics Substances Act, 1997 on behalf of the State.

3. After registration of F.I.R. Inspector Nand Lal conducted investigation of the case. I.O recorded statements of witnesses u/s 161, Cr.P.C. Inspector Nand Lal deposited charas in the office of Chemical Examiner for analysis and report. After receiving report of Chemical Examiner and usual investigation he submitted chalan of the case before learned trial court under above referred sections.

4. Learned trial court framed charge against accused at Ex.4, the accused did not plead guilty and claimed for trial.

5. In order to prove it's case, the prosecution had examined Inspector Nand Lal at Ex.6, who produced roznamcha entry No.137 of

departure from Excise Police Station at Ex.6/A, mashirnama of recovery and arrest at Ex.6/B, arrival entry vide roznamcha entry No.138 at Ex.6/C, F.I.R. at Ex.6/D, report of Chemical Examiner at Ex.6/E. Prosecution had examined P.W EC Sikandar Ali as mashir of arrest and recovery at Ex.7. Thereafter, prosecution had closed it's side at Ex.8.

6. Learned trial court recorded statements of accused u/s 342, Cr.P.C wherein they denied the case of prosecution and claimed their innocence. Accused Budho and Rasool Bux did not examine themselves on oath, whereas, accused Ameer Jan examined himself on oath. Accused Ameer Jan and Rasool Bux produced their witnesses in their defence. All accused produced documents in their defence.

7. After recording the statements of accused and hearing learned counsel for parties, the learned trial court passed the judgment dated 13th July, 2017, whereby the appellants were convicted and sentenced rigorous imprisonment for life and to pay fine of Rs.2,00,000/- each and in case of failure for making payment of fine, each one of them would undergo simple imprisonment for six months. Benefit of section 382-B Cr.P.C was extended to them.

8. Being aggrieved and dissatisfied upon the judgment passed by the learned trial court, the appellants have preferred to file these criminal appeals.

9. Learned Counsel for appellants Budho and Ameer Jan contended that the appellant Budho is a victim of political rivalry with present regime as he belongs to Dr. Zulfiqar Ali Mirza group in Badin and his wife was elected as a Member of District Council Badin, who had political differences with PPP Government and this case is result of political enmity. He further contended that as per section 36 of Control of

Narcotics Substances Act, 1997 the report of Chemical Examiner should have been signed by two authorized officers, whereas, in this case only single officer had signed the report which is against the rules. He further contended that car was not produced by the Excise officials at the time of recording of evidence before trial court. He further contended that the owner of the alleged car was not joined as accused by Investigating Officer. He has also contended that mashirs were subordinate staff to complainant. It is submitted that complainant had received prior information about arrival of accused persons in a car but he failed to associate any independent person to witness the alleged recovery proceedings. Lastly, prayed for acquittal of the appellants of the charge. In support of contentions reliance is placed upon the cases of *Ameer Zeb versus The State* (PLD 2012 Supreme Court 380), (2) *Ikramullah and others versus The State* (2015 SCMR 1002), (3) *Muhammad Hashim and another* (2017 P.Cr.L.J 409), (4) *Mohsin versus the State* (2017 MLD 674), (5) *Waqas Ali versus The State* (2017 YLR 878), (6) *Amjad Ali versus The State* (2012 SCMR 577) and (7) *Sardoor Khan versus The State* (2013 YLR 1874).

10. Learned Counsel for appellant Rasool Bux has adopted the same arguments of learned counsel for appellants Budho and Ameer Jan.

11. On the other hand, learned Additional Prosecutor General Sindh contended that a huge quantity of charas has been recovered from the vehicle which could not be easily foisted upon anyone. He further contended that the complainant / Investigating Officer had deposited the whole charas in the office of Chemical Examiner promptly. Learned A.P.G argued that defense Counsel did not point out a single infirmity, contradiction and lacuna in the case and he supported the judgment passed by the learned trial court and prayed for dismissal of appeals.

12. It is a case of prosecution that huge quantity of charas has been recovered from the possession of appellants and appellants have taken defence plea and examined their defence witnesses, therefore, we have examined the evidence of both sides minutely.

13. In order to prove it's case prosecution examined P.W No.1 Inspector Nand Lal of P.S DIO Excise Mirpurkhas, who was complainant as well as Investigating Officer of the case and P.W No.2 EC Sikandar Ali was mashir of the case. We found that both the prosecution witnesses have fully supported the prosecution case. They were subjected to lengthy cross-examination but nothing came on record to discredit their evidence. Both the witnesses were unanimous on all material aspects of the case. We could not find out any discrepancy or material contradiction in their evidence, they have explained each and every point in the case. I.O had sent entire charas to the Chemical Examiner for analysis without loss of time. Evidence of Excise Officials is fully supported by positive chemical report. We do not find out any justification in the plea that huge quantity of 50 KGs charas has been foisted upon accused. The evidence of prosecution witnesses is quite reliable, trustworthy and confidence inspiring.

14. We have perused the statements of accused recorded u/s 342, Cr.P.C, statement on oath of accused Ameer Jan and D.Ws examined by the accused in their defense. The case of appellants has been put on juxtaposition and court has to see both sides, therefore, we have examined their evidence. Learned trial court had recorded statement of accused Budho under section 342, Cr.P.C at Ex.9. The accused denied the allegations and replied to the question that what else you want to say? he replied as under:-

“Sir, I have falsely been implicated in this case at the instance of Ali Asghar Halepoto and Muhammad Halepoto who are affiliated with PPPP while my wife Mst. Ajeemat was also elected as member of District Council Badin and we are affiliated with PPPW Mirza group. We were pressurized by the above said persons to give vote for their candidate for the seat of Chairman District Council Badin, to which we refused and then I have been falsely implicated in this case by the excise police by making foistation of charas at the instance of the said persons. My brothers Rasool Bux Unar, Rab Dino and cousin Ashraf were also implicated falsely in FIRs Cr. No.06 and 07 of 2016 of P.S Tando Bhago. My wife Mst. Ajeemat appeared before this court and sworn her affidavit in support of my bail application therein she has disclosed the same facts; her affidavit is available in the file of this court. On 08.06.2016 I and co-accused Rasool Bux were arrested from Kaloi, District Tharparkar @ Mithi, in presence of Allah Jurio, Jafar, Ishaque and Abdullah. Then we were illegally kept confined for three days. In the meantime the excise police brought one unknown Pathan. Then we alongwith said Pathan have been involved in this case falsely. The case is false one. The excise police cooked up stereo type story as that of F.I.R. Cr.No.01/2014 of P.S DIO Excise, Mirpurkhas. I produce certified true copy of said F.I.R. at Ex.09-A. I produce attested copies of receipt dated 22.01.2016 issued by Returning Officer District Council, Badin, form of reserved seats for Women of District Council Badin showing the name of my wife Mst. Ajeemat and letter dated 06.06.2016 issued by Dr. Safdar Ali Abbasi President P.P.P Workers showing the name of my wife Mst. Ajeemat as member as Ex.09-B to Ex.09-D. Nothing was recovered from my possession. I was not arrested from the place of incident. Mashirs and P.Ws of this case are sub ordinates to the complainant and deliberately investigation of this case was not handed over to any other officer. I am innocent and pray for justice.”

He had produced certified copy of F.I.R. No.01/2014 of P.S Excise DIO Mirpurkhas at Ex.9/A, scrutiny receipt of nomination papers of his wife namely Mst. Ajeemat for reserve set of Women of District Badin. He has also produced result of reserve seat for Women showing the name of his wife at serial No.17 of the list. He has also produced Party ticket of his wife issued by President Pakistan Peoples Party Workers at Ex.9/B. It is a matter of record that accused Budho did not examine himself on oath and he had disclosed that he was arrested from hotel at Charya chowk at Kaloi town in presence of Allah Jurio, Jafer, Ishaque and Abdullah but he did not examine any D.W in his defence version. From the perusal of statement of accused Budho Unar, it appears that he had taken plea of political victimization at the hands of present regime as

they were affiliated with PPP Workers Mirza group and his wife was elected as Member of District Council and due to this enmity he has been implicated in this false case but at the same time we have noticed that the appellant Budho had not produced his wife in defence before trial court who is elected Member of District Council, in order to prove / establish his defense plea. Mere contention of accused Budho that his wife had sworn an affidavit in support of his bail application is not sufficient to discredit prosecution evidence. The further contention of accused Budho that his brother Rasool Bux Unar, Rab Dino and cousin Ashraf were also involved falsely in the case. Mere submission of copies of FIRs, scrutiny receipt and result of District Council is not sufficient to establish the defense plea taken by the appellant Budho Unar. Neither he had examined himself on oath nor led any defense evidence in his favour. We can say here that appellant Budho had failed to substantiate defense plea.

15. Accused Rasool Bux in his statement under section 342, Cr.P.C at Ex.11 to the question that what else you want to say? he replied as under:-

“Sir, I have car show room by name Bismillah Autos at Tando Bhago, District Badin. I had purchased car from Muhammad Farooque (car dealer) from Mirpurkhas. There arose dispute in between me and said Muhammad Farooque over payment of the said car. There is also dispute of my son in law Soomar with Abdul Jabbar Gharano Excise Officer Mirpurkhas over plot situated at Talhar. I have been involved in this case falsely by Abdul Jabbar Gharano at the instance of Muhammad Farooque and due to his dispute with my son in law over plot at Talhar. On 08.06.2016 I and co-accused Budho were arrested from Kaloi, District Tharparkar @ Mithi, in presence of Allah Jurio, Jafar, Ishaque and Abdullah. Nothing was recovered from my possession. I produce attested copies of sale receipt and delivery letter No.66 dated 29.07.2013 and two visiting cards one big and other small at Ex.11-A to Ex.11-C. Nothing was recovered from my possession. I was not arrested from the place of incident. Mashirs and P.Ws of this case are sub ordinate to the complainant and deliberately investigation of this case was not handed over to any other officer. I am innocent and pray for justice.”

He has produced sale receipt and Delivery letter, cars of Bismillah Autos and Motor at Ex.11/A to 11/C but he did not examine himself on oath.

As far the defence plea taken by appellant Rasool Bux is concerned that he had car showroom by name of Bismillah Autos and Motors at Tando Bago, District Badin and he had purchased car from Muhammad Farooque (car dealer from Mirpurkhas). The dispute arose in between him and said Muhammad Farooque over payment of the said car. He has further taken the plea that his son-in-law Soomar had dispute with one Abdul Jabbar Gharano, who is Excise Officer at Mirpurkhas and his son-in-law had dispute over plot situated at Talhar with the said Excise Officer Abdul Jabbar and due to above reasons, he has been involved falsely in this case. He has further taken plea that on 8.6.2016 he alongwith co-accused Budho were arrested from Kaloi, District Tharparkar @ Mithi, in presence of Allah Jurio, Jafar, Ishaque and Abdullah and he in support of his version has produced visiting cards in the name of Bismillah Autos and one delivery letter No.66 dated 29.07.2013. He has produced Muhammad Ishaque as DW in his defence who has deposed that he was sitting at hotel of Charya chow Kaloi Town and one person was in police uniform and two were in civil dress had picked up appellant Budho and Rasool Bux in their car and drove away. After 2/3 days he came to know about false implication of appellants in this case. The said defence witness was cross examined and he admitted the fact that he knew accused Budho since last 5 / 8 years and accused had friendship with his nephew. In his cross examination this DW had deviated from his first version that at the time of abduction of appellants Budho and Rasool Bux he was available at hotel but on the same time in his cross examination he deposed that he was sitting at sweet shop and he had seen the accused when they were taken away.

We are unable to rely on the statement of DW Muhammad Ishaque as he has taken somersault in his cross examination in respect of presence at the hotel at the time of abduction of appellants Budho and Rasool Bux or his presence at sweet shop.

16. From the perusal of statement of accused Ameer Jan, accused Ameer Jan had also replied to a question in his statement under section 342 Cr.P.C at Ex.10 what else you want to say? he replied as under:-

“Sir, on 09.06.2016 I was abducted by some unknown culprits in plain clothes duly armed with weapons from near Maa Ji hospital, Hyderabad in presence of my relatives namely Fida and Essa Muhammad. Then on 10.06.2016 my brother Wali Jan moved an application to the S.H.O P.S A-Section Latifabad Hyderabad for my recovery and for taking legal action against the unknown culprits. I produce certified true copy of receiving of such application at Ex.10-A. After my abduction I was kept confined illegally at Excise police station Mirpurkhas, there the complainant at the instance of Iqbal alias Mama demanded disputed money from me, to which I refused. Then on 11.06.2016 I have been involved in this case falsely by the Excise police Mirpurkhas by making foistation of charas at the instance of Iqbal alias Mama. Nothing was recovered from my possession. I am innocent and pray for justice.”

He has produced an application addressed to the S.H.O P.S A-Section Latifabad regarding his arrest by his brother Wali Jan at Ex.10/A. Accused Ameer Jan has examined himself on oath at Ex.16, wherein he has deposed that on 09.06.2016 at 9:00 a.m he was abducted by three culprits in a white coloured corolla car having weapons near Maaji Hospital, Hyderabad. The culprits had fastened his eyes and kept him illegally in a room for two days and on next day he was handed over to Excise Police Mirpurkhas. He deposed that no contraband substance was recovered from him and his brother Wali Jan was having a business of Auto Rickshaws with Mama Iqbal. The unknown culprits were demanding that his brother Wali Jan would not demand money from Mama Iqbal otherwise he would learn a lesson to him. While replying to the question, accused Ameer Jan had denied all the suggestions made

by learned SPP for the State. Accused Ameer Jan had examined his defence witness DW Wali Jan at Ex.17. This DW has deposed as follows:-

“Accused Ameer Jan is my cousin, not brother. On 09.06.2016 when accused Ameer Jan and Fida Muhammad were standing by the side of Maaji hospital at Hyderabad there at about 9:00 P.M time came some unknown culprits an apprehended Ameer Jan, put him in their car and drove it away. I then was related of the incident on phone by Fida Muhammad. Then I went at P.S A-Section Latifabad Hyderabad and moved an application for redressal of our grievance. I produce such application at Ex.17-A and say that; it is same, correct and bears my signature. On the next date I was told by Mohallah people that; Ameer Jan has been apprehended at Mirpurkhas by the Excise police as it is reported in KTN news channel. I then went at District Jail Mirpurkhas and held a meeting with Ameer Jan. I then went to Excise office at Mirpurkhas and held a meeting with Inspector Nandlal and asked from him as to how he has apprehended accused Ameer Jan. He told me that; there is no issue with Ameer Jan and he would be released. I then engaged Counsel and then am in attendance before the Court. Accused Ameer Jan is innocent. He has got no concern with the car containing chars.

CROSS TO MR. ZULFIQAR ALI LEGHARI I/C SPP FOR THE STATE

It is correct to say that; accused Ameer Jan was not apprehended by police from Hyderabad. It is incorrect to say that; accused Ameer Jan together with rest of the culprits was apprehended by Excise police at “Chuna” factory Mirpurkhas when they were going through their car. Accused Ameer Jan at the time of his arrest was having Rs.1600/- and mobile phone. It is incorrect to say that on search from the car of accused Ameer Jan was secured by Excise police 50 packets of chars lying in a sack, those were weighing to be 50 K.Gs. Voluntarily says that; accused Ameer Jan is a Rickshaw driver. It is incorrect to say that; accused Ameer Jan with rest of the culprits is doing business of narcotics substance. Accused Ameer Jan is my near relative. It is incorrect to say that; I am before the court to save accused Ameer Jan being my near relative from the legal consequences.”

However, this DW had denied all the suggestions made by the learned SPP for the State and only he has admitted the fact that accused Ameer Jan is his near relative. He has produced copy of application submitted by him to S.H.O P.S A-Section Latifabad, Hyderabad. But, here we have noticed that neither the name of receiving officer has been mentioned nor receiving date has been mentioned. Accused Ameer Jan has also examined DW Fida Muhammad at Ex.18, who has deposed that on

09.06.2016 he alongwith accused Amir Jan were going to Auto Bhan from Latifabad Hyderabad on a rickshaw alongwith his younger brother Essa Muhammad; when they reached adjacent to Maaji hospital at chowrangi a white colour corolla car intercepted their rickshaw. Three persons came out from the car who were in civil dress. One was having pistol and one was armed with Kalashnikov while third one was empty handed. They identified Ameer Jan and took him with them and thereafter, he informed to Wali Jan on cell phone. We have noticed that there is a material contradiction in between the statements of D.Ws as accused Ameer Jan deposed that he was standing by side of Maaji Hospital when unknown armed persons abducted him, whereas, D.W Fida Muhammad has stated that he, accused Ameer Jan and his younger brother Essa Muhammad were going on a rickshaw from Auto Bhan road to Latifabad and when they reached adjacent to Maaji Hospital at Chowrangi they were intercepted by the armed persons and abducted Ameer Jan. Neither accused Ameer Jan in his statement has deposed that at the time of abduction DW Fida Muhammad and his younger brother Essa Muhammad were accompanied with him nor he has stated that they were going on a rickshaw when accused persons intercepted them.

17. As far as defence taken by the appellant Ameer Jan is concerned, he has examined himself on oath and led evidence in his defense of DWs Wali Jan and Fida Muhammad. After scrutiny of depositions of appellant Ameer Jan and his two DWs, we can say here that appellant Ameer Jan had miserably failed to prove his defense plea through his DWs. Appellant Ameer Jan has stated in his statement on oath that he was standing by the side of Maaji Hospital when three culprits had abducted him in white colour corolla car. Neither appellant Ameer Jan

had shown presence of DW Wali Jan nor shown the presence of DW Fida Muhammad and his brother Essa Muhammad at the place of his abduction at relevant time. On the contrary DW Fida Muhammad has deposed that he alongwith appellant Ameer Jan and his younger brother Essa Muhammad were going from Auto Bhan road to Latifabad Hyderabad when they reached Maaji Hospital one car intercepted them and abducted Ameer Jan and he further deposed that he had informed DW Wali Jan about abduction of appellant Ameer Jan. We found another material contradiction that Appellant Ameer Jan in his statement has shown Wali Muhammad as his brother, whereas, D.W Wali Jan in his deposition has stated that Appellant Ameer Jan is his cousin. Further, the motive had been disclosed by appellant Ameer Jan for abduction was Wali Jan who had dispute over money with one Iqbal and for that dispute unknown culprits had abducted him in order to pressurize Wali Jan through accused Ameer Jan and thereafter handed over him to Excise Police Mirpurkhas; where a false case was registered. We found that appellant Ameer Jan, DWs Wali Jan and Fida Muhammad had contradicted to each other and evidence led by them did not inspire confidence and cannot be relied on their evidence.

18. It is well settled law that the police witnesses are as good as other public witnesses and their statements could not be discarded merely for the reason they were the police employees. The police employees are the competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are the police employees as laid down in the cases of Muhammad Azam v. The State PLD (1996 SC 67), Muhammad Hanif v. The State (2003 SCMR 1237), Riaz Ahmed v. The State (2004 SCMR 988) and Naseer Ahmed v. The State (2004 SCMR 1361). The relevant portion of case law

reported in 2004 SCMR 1361 (Naseer Ahmed v. State) is reproduced as under:-

“It has been held by this Court, time and again that the police officials are as good witnesses as others, and their evidence on this score alone should not be discarded. Now-a-days, drug trafficking has created dangerous problems for the society and the country at large. This menace should be curbed so that people in society would get relief.”

19. So far as the contention raised regarding conducting of investigation by the complainant himself, it is well settled that complaint being a Police Officer was competent to investigate the case if he was witness of offence, and such recovery could not be defeated merely on the ground that the complainant and the Investigation Officer was a same police officer, if no mala fide was established against the said complainant. Reliance is placed on a case of Nazar Muhammad v. The State reported in 2017 P. Cr.L.J 1399.

20. The contention of the learned Counsel that there are material contradictions in the evidence of the prosecution witnesses, has no force. Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities. Reliance is placed on the case of Ghulam Qadir v. The State reported in PLD 2006 Supreme Court 61. Relevant portion is reproduced as under:-

“8. We are not agreeable with the contention of the learned Counsel because fact remains that “Poppy Flower” were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned Counsel, would not be sufficient to acquit him. In addition to it in such-like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305).”

21. Although there was a minor delay in sending the sample parcels to the Forensic Science Agency but the rules to that effect are directory

and not mandatory. There is nothing on record to establish that the said parcels were ever tampered with rather the evidence led by the prosecution established that the parcels received by the said agency, remained intact. Reliance is placed on the case of Muhammad Sarfraz v. The State and others reported in 2017 SCMR 1874. The relevant portion is reproduced hereunder:-

“Although there was a minor delay in sending the sample parcels to the Punjab Forensic Science Agency but the rules to that effect are directory and not mandatory. There is nothing on record to establish that the said parcels were ever tampered with rather the evidence led by the prosecution established that the parcels received by the said agency, remained intact.”

22. The case law, which is relied upon by the counsel for the appellant, is found on distinguishable facts and circumstances. The case of Ameer Zeb versus the State reported in PLD 2012 Supreme Court 380 was on the point of samples taken from recovered substance and on the quantum of sentence as per recovered narcotic substance. In this case whole recovered narcotic substance was sent to Chemical Examiner and positive report was received.

23. Learned counsel for the appellants have also relied upon the case of Ikramullah and others versus The State reported in 2015 SCMR 1002. This case law is on the point of safe custody of recovered narcotic substance but here in this case the Investigating Officer had transmitted the whole recovered case property to the office of Chemical Examiner within 36 hours after recovery and it is pertinent to mention here that Investigating Officer himself deposited the case property and was examined before learned trial court but safe custody of charas was not questioned.

24. According to the case of prosecution, appellants / accused were transporting charas in the car on 11.06.2016 and they were

arrested by Excise Officials. The person who was driving the car disclosed his name as Budho and two other accused persons sitting on rear seat of the car disclosed their names as Ameer Jan and Rasool Bux. Excise Officials during search of the vehicle recovered 50 K.Gs charas from the car and positive report was received. Prosecution produced witnesses before the trial court and they have implicated the accused in the commission of the offence and evidence of Excise Officials has been corroborated by the positive report of the Chemical Examiner. Under Article 29(d) of the Control of Narcotics Substances Act, 1997 unless otherwise proved, presumption would be that a person has committed an offence under this Act in respect of any material which have undergone any process towards the production or manufacture of the narcotics, drug psychotropic substance controlled substance or any residue left of the materials from which a narcotic drug, psychotropic substance or controlled substance has been produced or manufactured for the possession of which he fails to account satisfactorily. Presence of appellant Budho being a driver in the car is not denied and it has been established by cogent evidence. The driver of a vehicle invariably raises the plea of having no knowledge when narcotics or other contraband items are recovered from the vehicle. But depending upon the facts and circumstances of the case contention of the defence Counsel is found without merit. Driver cannot absolved from the responsibility. Now the question arises with regard to responsibility / involvement of the co-accused in this case. There is huge evidence that remaining appellants namely Ameer Jan and Rasool Bux were sitting on the rear seat of the car. It was not a passenger Bus. Remaining two accused / appellants had also not raised the plea that they had hired the said car as taxi. Therefore, we are clear in our mind that co-accused / appellants

Ameer Jan and Rasool Bux were also rightly held equal responsible for committing the offence charged against them. In this behalf reference may be made to the cases reported as:

- (i) Muhammad Shah v. State (PLD 1984 SC 278)
In this case driver was found guilty for the commission of keeping in his possession prohibited items under the provision of Prohibition (Enforcement) of Hadd) Order, 1979.
- (ii) Said Shah v. State (PLD 1987 SC 288)
In this case as well driver was convicted and sentenced holding that prohibited items were being transported in the vehicle, which was in the control and possession of the convict. In this very judgment it was also held that fixing responsibility upon a driver for transporting narcotics/drugs depends upon each case.
- (iii) Similarly in case of Nadir Khan v. State (1988 SCMR 1899) it was held that licensed drivers, having charge of vehicle for long journey supposed to have knowledge with regard to the contents and articles being transported in it.
- (iv) In another judgment in the case of Shehrzada v. State (1993 SCMR 149, the liability of driver for transportation of the contraband items was viewed under the provision of section 27, P.P.C.
- (v) In the case of Shah Wali & another v. The State (PLD 1993 SC 32) charas was recovered lying in front of the passenger seat of a car occupied by two persons, therefore, it was held that Heroin was in possession of the accused person including driver therefore, latter was found guilty and convicted.

In the case of *ELLA-UD-DIN and another v. The STATE (2017 P.Cr.L.J 85)* it has been held as follows:

“The co-accused/convict Jalal-ud-Din was also rightly held responsible for committing the offence charged against him. The “knowledge and the conscious possession” of both the appellants cannot be ruled out in presence of the un-impeachable prosecution evidence. The ocular testimony, the recovery of substance, the 2D Corolla Car and the positive FSL report, the appellants/convicts in rebuttal either made evasive denial or produced one DW, the statement of DW was rightly disbelieved on basis of logical hypotheses. The appellants/convicts did not categorically deny the factum of recovery, particularly, when they had not entered on oath in

their defense. Though, the statement on oath is optional in nature and can only be recoded, when the accused himself wishes so and he cannot be compelled to do so. When the initial burden of proof is discharged by the prosecution, then in case of special plea, the onus of proof shifts upon the defence and failure to discharge the same leads to adverse inference against the defence. Both the appellants were sailing the same boat as they both relied and pleaded the same defence plea. They claimed that the original culprits were substituted with them. On one hand the appellants / convicts admitted the police blockade at the (Quetta-Sibi) National Highway Raod, the recovery of the prohibited substance at the stated time, date and place, as well as, their presence on the spot but on the other they failed to bring any evidence pertaining to the truck, which they claimed to have been left at the hotel where they were taking meal/lunch. Since the owner of the truck was not produced, therefore, this plea was rightly discarded by the learned trial court. Had the appellants been falsely implicated for transportation of contraband items then the recovery would have been shown from their left over truck instead of 2.O-D Toyota Corrola Car.

In view of the above discussion, we are of considered opinion that the prosecution successfully proved its case beyond shadow of any doubt, no interference is required by this court. Therefore, the judgment dated 20th February, 2014 passed by learned Sessions Judge/Special Judge for Narcotics, Sib is upheld and consequently, the appeal is dismissed accordingly.”

25. We have come to the conclusion that the prosecution proved it's case against Appellants. Judgment passed by the learned trial court does not suffer from any infirmity. Prosecution evidence was quite reliable and trustworthy. Learned trial court has rightly convicted the appellants. Consequently, we maintain conviction and sentence awarded by the learned trial court to the appellants. Appeals lack merit, the same are dismissed.

JUDGE

JUDGE

A.H.

