

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE KHAWAJA M. NASIM  
MR. JUSTICE RAZA ALI KHAN

**CRIMINAL APPEALS NO. 40 & 42 OF 2023**

(On appeal from the judgments of the Shariat Appellate Bench of the High Court dated 20.10.2023, passed in Crim. Appeals No. 28 of 2018 & 17 of 2019).

Liaquat Ali Shaheen s/o Muhammad Hussain, caste Jatt  
r/o Barohi Tehsil Dadyal, District Mirpur.  
(In both the appeals)

... Convict-Appellant

**VERSUS**

State through Advocate-General Azad Jammu and Kashmir  
Muzaffarabad.  
(In both the appeals)

...Respondent

**Appearances:**

For the convict-  
Appellant:

Sardar Muhammad Akhtar Khan,  
Advocate.

For the State:

Kh. Muhammad Maqbool War,  
Advocate-General.

Date of hearing:

15.02.2024

**JUDGMENT:**

**Raza Ali Khan, J:-** The captioned appeals arise out of the even-dated judgments of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High*

*Court*), passed on 20.10.2023, in Criminal Appeals No. 28 of 2018 & 17 of 2019, whereby, the appeals filed by the appellant, herein, were dismissed. Despite separate FIRs in each case, the convict-appellant is the same culprit and the nature of the offenses committed in both FIRs is also similar, therefore, these appeals were heard together and are being decided through the proposed single judgment.

**FACTS OF APPEAL NO. 40/23**

2. The facts involved in Criminal Appeal No.40 of 2023, are that Liaqat Ali Shaheen, the convict-appellant, was tried in FIR No.194 of 2013, registered at Police Station Dadyal on 26<sup>th</sup> October, 2013 for the offenses under section 3 and 4 of the Prohibition (Enforcement of Hadd) Act, 1985, (*hereinafter to be referred as Hadd Act, 1985*). It was alleged that 40 packets containing of heroin were recovered from him. Initially the Tehsil Criminal Court Dadyal, acquitted the accused under section 3 of Hadd Act, 1985, however, convicted him under section 4, of Hadd Act, 1985 by sentencing him to three years' simple imprisonment, along-with a fine of Rs. 25,000, and the punishment of whipping of 20 stripes vide judgment dated 2.11.2017. On appeal, the Additional District Criminal Court Dadyal modified the judgment while sentencing the convict to two years' rigorous imprisonment along-with a fine of Rs.10,000 vide judgment dated 11<sup>th</sup> September, 2018 The convict-appellant filed an appeal before the High Court, but no one turned up on

behalf of the convict-appellant at the date of hearings, however, the High Court dismissed the appeal in its judgment dated 20.10.2023, based on available record.

**FACTS OF APPEAL NO. 42/23**

3. An FIR No. 123/2015, was registered against the appellant at Police Station Dadyal on 30.08.2015, in the offenses under section 3 and 4 Hadd Act, 1985. Following an investigation, the challan was presented in the Tehsil Criminal Court Dadyal. It was alleged that the quantity of heroin weighting 115 grams was recovered from his possession. The trial Court acquitted the appellant under section 3 Hadd Act, 1985 however, convicted him under section 4 Hadd Act, 1985 and sentenced to two years' rigorous imprisonment along-with fine of Rs. 10,000 vide its judgment dated 30.01.2019. An appeal filed by the convict-appellant before the Additional District Criminal Court Dadyal remained unsuccessful, as is evident by the judgment dated 27.03.2019. Subsequently, the convict appealed against the said judgment to the High Court, which, after necessary proceedings, was also dismissed through the impugned judgment dated 20.10.2023.

**APPELLANT'S ARGUMENTS IN APPEAL NO. 40/2023**

4. Sardar Muhammad Akhtar Khan, Advocate, appearing on behalf of the convict-appellant, asserted that the High Court's judgment is legally unfounded, divergent

from the factual reality and does not align with the case record. He contended that the judgment was rendered without affording the accused an opportunity of hearing, which contravenes the principles of administration of criminal justice. He further contended that the seizure of heroin was shown to be conducted in a densely populated area and on a bustling street, yet no independent witnesses were associated violating therein the provisions of Section 103 of the Code of Criminal Procedure 1898. (Cr.PC) Moreover, he maintained that although the prosecution claimed to have seized 40 packets/segments containing of heroin, but the evidence adduced by witnesses reveals that the quantity of heroin recorded was only 20 grams in the weight. Furthermore, despite the prosecution's assertion that 1 gram was extracted for chemical analysis, resulting in positive outcome. However, he argued that in the light of the questionable nature of the seizure, a positive chemical report carries little significance. He also highlighted a significant delay of 11 days from the registration of the FIR on 26.10.2013, when the alleged heroin was sent for chemical examination which undermines the credibility of both the chemical report and seizure evidence. The learned Advocate also pointed out material discrepancies in the statements of the police witnesses regarding their approach to the location, the identity of the driver accompanying them, and other pertinent details. He contended that these

discrepancies, considered minor by the lower courts, cast significant doubt on the reliability of the prosecution's case. He finally concluded by praying that the prosecution failed to establish its case beyond a reasonable doubt, and therefore, the convict-appellant should be acquitted of the charges.

**APPELLANT'S ARGUMENTS IN APPEAL NO. 42/2023**

5. The convict-appellant's counsel contended that the allegation against the convict-appellant regarding the recovery of heroin weighing 115 grams is flawed. He pointed out that while the complainant claimed to have sent 10 grams of heroin for chemical examination but the Chemical Examiner recorded the quantity of contraband only 7.92 grams. This inconsistency raises serious doubts about the alleged recovery, its handling, and its transmission for chemical examination. Such contradictions and discrepancies in the quantity/weight are substantial enough to warrant the appellant's acquittal under section 4 Hadd Act, 1985 as even the slightest doubt is sufficient to exonerate an accused of the charge. Additionally, the learned counsel argued that no independent witness was brought forward, which violates the provisions of section 103 Cr.PC considering the contraband was allegedly seized from the convict-appellant in a densely populated area. He further asserted that the judgments of the lower courts were based on a misinterpretation or oversight of the evidence. In his

final plea, he contended that the prosecution failed to shed the burden of proof beyond a reasonable doubt, thus, requesting the appellant's acquittal.

**STATE'S ARGUMENTS IN BOTH APPEAL**

6. Conversely, the learned Advocate-General, representing the State in both appeals, contended that the convict-appellant is a habitual offender who frequently is found to be engaged in sale of drugs/contrabands. He argued that the convict-appellant's counsel failed to identify any instances of evidence being misread or overlooked. According to him, the convictions and sentences imposed on the convict-appellant in both the cases are justified. He argued that the alleged discrepancies in the witnesses' statements are inconsequential as minor inconsistencies in statements are common and, more importantly, superficially scripted testimony is generally disregarded by the Courts. Consequently, he urged for dismissal of the appeals and the maintaining the convictions and sentences awarded by the both the trial and appellate Courts.

**COURT'S ARTICULATION IN APPEAL NO. 40/2023**

7. Upon careful consideration of the arguments presented by the appellant's counsel and the learned Advocate-General for the State, along with a thorough examination of the case file, it is evident that the convict-appellant was charged in FIR No. 194/2013, with the

offenses under section 3 & 4 Hadd Act, 1985. Following the arrest of the convict-appellant, an investigation was conducted, and the challan was subsequently presented in the Tehsil Criminal Court, Dadyal. The trial Court convicted the appellant, and sentenced him to three years' simple imprisonment along with a fine of Rs. 25,000 and the punishment of whipping of 20 stripes, on 02.11.2017. However, the sentence awarded was later on reduced to two years of simple imprisonment, along with a fine of Rs. 10,000, after appeal before the Additional District Criminal Court, Dadyal. The allegation against the appellant in the FIR is that 40 packets containing heroin were recovered from his custody. The prosecution listed 08 witnesses in the calendar of challan presented under section 173, Cr.PC and produced their statements before the Court. All prosecution witnesses fully supported the prosecution regarding the date, place, time, and the quantity of weight of the heroin as well as the number of packet, color of the shopping bag and the amount of money recovered. Despite lengthy cross-examination by the defence, no favourable statements were elicited from the witnesses. The prosecution has convincingly established the recovery of the heroin from the convict-appellant's custody beyond any reasonable doubt, while the defense has failed to cast any dent on the veracity of the testimony of the recovery witnesses, therefore, the

conviction of the appellant under section 4 of Hadd Act, 1985 by the Additional District Court is justified.

**COURT'S ARTICULATION IN APPEAL NO. 42/2023**

8. Upon a careful examination of the case file, it is evident that in FIR No. 123/2015, a case was registered at the Police Station Dadyal, on August, 30, 2015, in the offenses under section 3 and 4 of Hadd Act, 1985. Following the apprehension of the convict-appellant, an investigation ensued, heading to submission of challan in the Tehsil Criminal Court, Dadyal. At the conclusion of the proceedings, the learned trial Court convicted the appellant by sentencing him to two years' rigorous imprisonment along with a fine of Rs. 10,000, vide judgment dated 30.01.2019. Appeals filed before the Additional District Criminal Court and the High Court were consequently dismissed. The allegation against the convict-appellant in FIR is that the quantity of heroin weighing 115 grams was recovered from his possession. The prosecution enlisted 07 witnesses in the calendar of challan presented under section 173 Cr.PC, out of which 06 witnesses got their statements recorded before the trial Court. All of whom wholeheartedly supported the prosecution's version and remained aligned with the FIR narrative. Furthermore, the chemical examination of the alleged contraband yielded positive report, conclusively linking it to the convict-appellant, hence, the prosecution convincingly established its case beyond a reasonable doubt



leading to the appellants rightful conviction under section 4 of Hadd Act, 1985.

**SIMILAR POINTS RAISED IN BOTH APPEALS:**

9. The learned counsel for the convict-appellant raised several points aimed to undermine the credibility of the prosecution witnesses and the prosecution story. The crucial points raised are: -

- I. the material contradictions in the statement of witnesses creating doubt in the prosecution story;
- II. the violation of provisions of section 103, Cr.PC; and
- III. the discrepancy in the weight of the sample sent for chemical examination.

10. The argument advanced by the convict-appellants' counsel regarding material contradictions in witnesses' statements lacks merit. Despite minor discrepancies, overwhelming evidence on record substantiates the incident rendering these contradictions insignificant. Additionally, the natural testimony provided by all the witnesses further strengthens the prosecution case, therefore, the convict-appellant's sentence stands valid. The inconsequential difference on minor matters should not detract from the prosecution narrative. Giving undue weight to such inconsistencies would be over technical thus, while assessing evidence the court should not overly focus on minor discrepancies that do not fundamentally challenge the core of the prosecution case and should therefore, be

disregarded. We are fortified in our view from the case reported as *Yasmin Ashraf & 7 others vs. Abdul Rasheed Garesta & 5 others*<sup>1</sup>, wherein, it has been held that: -

“In the instant case, all the witnesses remained consistent on the material points, however, some minor discrepancies are found in their statements which can lightly be ignored and it is settled principle of law that the minor discrepancies do not affect the case of the prosecution as a whole, however, these may make some mitigation to some extent which may be taken into the consideration towards the quantum of the sentence.”

11. The counsel for the convict-appellant also raised the point that the police did not associate any independent witness during the course of appellant's arrest, which is violation of the provisions of section 103, Cr.PC. However, keeping in view of the nature of offence and peculiar circumstances of case, this argument is not viable because non-compliance of this provision does not factually undermine the prosecution's case. Courts have consistently upheld the competency of police officers as witnesses, emphasizing that their testimonies should not be disregarded solely due to their affiliation with the police force. In support of this stance, reliance may be placed on the latest judgment of this Court reported as *Khursheed Hussain Shah vs. State*<sup>2</sup>, wherein, this Court has observed as under: -

“It is consistent view of the Courts that police officials are competent witnesses and their

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<sup>1</sup> [2018 SCR 661]

<sup>2</sup> [2022 SCR 334]

statement cannot be discarded merely, for the reason that they belong to the police force.”

Reference may also be made to the case reported as *Salah-ud-Din vs. The State*<sup>3</sup>, wherein it has been held that: -

*“It is well settled by now that police officials are good witnesses and can be relied upon if their testimony remained unshattered during cross examination.”*

12. Furthermore, the defense has failed to point out any enmity or prejudice of police or any witness against the convict-appellant. Even otherwise, generally the private persons remain reluctant due to having no direct grievance against the accused of such offences, exasperating legal procedure and lack of security and protection to witnesses. This point also came under the consideration before the Supreme Court of Pakistan in the case reported as *Shabbir Hussain vs. The State*<sup>4</sup>, wherein, it has been held that: -

*“On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long-drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime-reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with assistance of functionaries of the state tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status.”*

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<sup>3</sup> [2010 SCMR 1962]

<sup>4</sup> [2021 SCMR 198]

13. The learned counsel for the convict-appellant also highlighted a significant discrepancy regarding the quantity/weight of the sample sent for chemical examination. The complainant has claimed to have separated 10 grams of heroin to be sent for chemical examination, whereas, the chemical examiner recorded the quantity of samples as 7.92 grams, thus, this inconsistency does raise concern about the credibility of prosecution's case but it alone is not sufficient to throw out the entire case of the prosecution. The trial Court's failure to consider seriously this discrepancy could have been viewed as a mitigating factor in favour of the convict-appellant.

14. Based on discussion above, we conclude that the Courts below have rightly convicted the appellant in both the cases, however, considering the mitigating circumstances, such as discrepancy in quantity/weight of samples sent for chemical examination and minor contradictions in the statement of the witnesses benefit of which should go to the convict warranting reduction in sentence. Therefore, in both the appeals, i.e. No. 40/2023 and 42/2023, the sentence awarded to the convict-appellant is reduced to one-year rigorous imprisonment along-with fine of Rs. 10,000/- in each case and the punishment of whipping of the 20 strips awarded by the Courts below is also -aside.

The impugned judgments stand modified in the manner indicated hereinabove by accepting the appeals partially.

**JUDGE**

**JUDGE**

Muzaffarabad:  
04.03.2024

