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Atika Lohani ^{*}

Aamir Abbas [†]

An Appraisal of Cases under Section 9(c) of The Control of Narcotic Substance Act 1997 and the role of Forensic Evidence

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Abstract: *The role of forensic and chemical expert evidence is increasingly vital due to technological and scientific advancements changing the social, economic, political, and cultural trends. This paper considers exploring the role of forensic and chemical expert's evidence under the control of narcotic substance laws as prevail in Pakistan. The analysis is conducted on cases involving section 9(C) CNSA 1997 from the last five years, 2017-2021. To further narrow down the research, the cases were limited to the petitions filed for leave to appeal in the Supreme Court for the reappraisal of evidence which afforded an opportunity to see how the superior courts in Pakistan have been dealing with the cases involving forensic and chemical analyst's reports. The result of the analysis suggests that the legal framework for control of narcotics is well developed, and judicial policy is to consider expert evidence in corroboration with other material facts otherwise the expert evidence is excluded.*

Key Words: Expert Evidence, Oral Evidence, Chemical Examiner, Forensic Evidence, Chain of Custody, Narcotic Substances

Introduction

The Scientific and technological evidence is admissible in the legal framework of Pakistan under Qanoon-e-Shahadat Ordinance 1984 sections 59 and 164. It is worth noticing that despite the fascination inherent in scientific inventions, the scientific expert evidence is itself a unique blend of rules of evidence and the principles established in the legal realm. It is legally important to admit that primary and direct oral evidence has more reliability than hearsay evidence. Hearsay evidence is generally declared inadmissible except in circumstances the rules of evidence allow so. These exceptional circumstances include scientific and technical expert evidence and the dying declaration of a person which was recorded before his death at the time when the imminence of his death was expected. To the exceptional nature of the scientific expert evidence, the rules of procedure and admissibility of this evidence are also exceptional to cater for the technicalities and affordances of the special kind of evidence. For this purpose, the standard procedures and protocols for scientific expert evidence are vital for its admissibility in a courtroom when a just decision for

a dispute hinge on the explanation of some technical and scientific knowledge and practice. The disputes under The Control of Narcotic Substances Act 1997 (hereinafter as CNSA 1997) are significant examples for the discussion in this regard. The recovery of an unlawful substance, when brought before the court, the trial of the crime, will somehow need the determination of the fact that the narcotic characteristics of the substance are proved as mentioned under CNSA. This fact is more about laboratory examination of the seized material. The courts have a very different role to play than the laboratory technician, chemical examiner or scientific expert. The court has to check the reliability and validity of scientific evidence on the one hand and on the other hand, it has to follow rules of evidence and procedure while application of relevant law to the fact of the dispute,[#] and to arrive at a just and fair decision for the dispute. The convergence of science and law is a fascinating experience as well as painstakingly laborious in keeping distinction and furthering the convergence at the same time. This article presents a study of disputes brought under section 9 (c) of the

^{*} Assistant Professor, Law College University of Sargodha, Punjab, Pakistan. Email: dr.atikalohani@gmail.com (*Corresponding Author*)

[†] Assistant Professor, Law College, Government College University, Faisalabad, Punjab, Pakistan.

CNSA 1997 for the crime of possession and transportation of the unlawful substance within the last five years which is 2017-2021. In order to keep the analysis more specific, the cases relating to petitions for leave of appeal in the Supreme Court for the reappraisal of the evidence are considered as part of the analysis. Therefore, the random selection of 27 cases appeared to be part of the analytical and doctrinal research into the role of forensic and scientific expert evidence in the cases brought under NCSA 1997. The analysis of the cases is followed by a discussion and lastly, the conclusion of the research is presented to sum up the critical overview of the research conducted in this paper.

Research Methodology

This is qualitative research related to doctrinal research methodology for analytical legal research. The article demonstrates the application of inductive and deductive research methods. Both primary and secondary research data are used for the purpose of this research paper, such as case laws, law and legislation, textbooks, reference books, research journals, and newspaper articles.

Literature Review

In Pakistan, the legal framework for dealing with the recovery and investigation of the narcotic substance and the trial of such disputes includes important legislative documents which lay down a systematic process of investigation and trial of the possession and transportation of unlawful substances. This includes the Anti-Narcotics Force Act 1997(III of 1997) (hereinafter as ANFA 1997) is promulgated for the purpose of establishment of a Force to inquire and investigate the offences relating to narcotics, trafficking in narcotics by the personnel appointed in the Force. It is to note that superintendence and administration of the Force shall vest in the Federal Government and the Director General, respectively. The Director General will have all powers of the Inspector General of Police under the Police Act, 1861(V of 1861) and all powers under this law. The Force established under this law will also serve to maintain a liaison with national and international Narcotic Forces. In its details, the law also provides for the terms of service and disciplinary proceedings against officers, such as in case of misconduct in service. It is noteworthy that under section 14 of ANFA 1997, the members of the Force, as mentioned there, shall be serving as public prosecutors in respect of all the offences relating to narcotics for trial in a special court or any other court. Its predecessor laws include, firstly,

the Anti-narcotics Task Force Ordinance 1991 (hereinafter as ANTFO 1991) which was replaced by the Anti-narcotics Force Ordinance 1996 (hereinafter as ANFO 1996). This is the Ordinance (ANFO 1996) which was passed to merge the Pakistan Narcotics Control Board in 1973 and the Anti-Narcotics Task Force under Anti-Narcotics Task Force Ordinance 1994 (LXXVI of 1994) and it had declared that all the staff and personnel of the Board and Task Force were to be considered members of the Force under this Ordinance (ANFO 1996). Further, the ANFO 1996 was replaced by ANFA 1997. Additionally, Anti-Narcotics Force (Adaptation and Enforcement) Order 2000 (hereinafter as ANFO 2000) is enforced to extend the ANFA 1997 in its operation to the Northern Areas of Pakistan from 2000 onwards.

It is worth mentioning here the rules relevant to the laws relating to narcotics, such as Anti-Narcotics Force Reward Rules 2000 (hereinafter as ANFRR 2000) which are laid down under section 17(2) (c) of the ANFA 1997 to provide for a percentage of reward and the manner of payment of the rewards such as how rewards are estimated depending on the role of the person in the investigative proceedings, regard will be given to the weight of the recovered material during the investigation (rule 3, ANFRR 2000). These rules also provide for the rewards as 'commendable and meritorious services' of the member of the Force section (rule 9 ANFRR 2000).

Among the rules laid down for the narcotics related laws include the Disposal of Vehicles and Other Articles (Involved In The Narcotics Cases) Rules 2013 (hereinafter as DVOA 2013). These rules are made under section 77(I) and section 33(2) of the Control of Narcotic Substances Act 1997(XXV of 1997) (hereinafter as CNSA 1997). These rules are to provide details about the decaying substances which are seized during the investigation and recovered vehicles used for transportation of such unlawful substances of narcotic character and lay down the procedure to adopt about the manner of their disposal (DVOA 2013).

As to scientific and chemical examination of recovered narcotic substances, the law relating to laboratories is named as 'Narcotics Testing Laboratories for the Purpose of the Act of 1997' (hereinafter as ANFO 2000). This law has two stages; in the first stage, on 7th August 1997, it was notified under section 34 of the Control of Narcotic Substances Act 1997 (XXV of 1997) (CNSA 1997) that the Pakistan Council of Scientific and Industrial Research Laboratories (PCSIR) Lahore, National Institute of Health Laboratory Islamabad, Sindh Laboratory of Chemical Analysis Karachi, PCSIR Laboratory Karachi,

PCSIR Laboratory Peshawar, Central Drug Laboratory Karachi, and all Narcotics Testing Laboratories set up under Provincial Governments are to be the Federal Narcotics Testing Laboratories for the Purpose of the Act of 1997 (ANFO 2000). Moreover, in the second stage, on January 11 2000, it was notified under section 34 of CNSA 1997 that two more laboratories were to be the Federal Narcotic Testing Laboratories for the purpose of the Act of 1997 which included Drug Testing Laboratory Sindh and Government Public Health Laboratory Quetta. There is an even more important rule making authority exercised in respect of Government Analyst which is the Control of Narcotic Substances (Government Analysts) Rules (hereinafter as CNSR 2001). On November 28 2001, under sections 35 and 36 of CNSA 1997, the rules were laid down. This law is important for the topic of the discussion of the paper underhand, where the law defines the Government analyst under 2(c) (CNSR 2001), and it also provided for qualifications of Government analyst under rule 3 (CNSR 2001). Rule 6 of the CNSR 2001 provides for the legal requirement for the preparation and presentation of the Government Analyst's expert evidence (CNSR 2001). The definition of a Government Analyst is an analyst who is appointed under section 35 of CNSA 1997 by federal or provincial governments (CNSR 2001). The qualification under rule 3 is provided as that a person having a degree in Pharmacy or Pharmaceutical Chemistry or Medicine from a recognized University along with 3 years of postgraduate experience in the test and analysis of drugs (CNSR 2001). These rules are proper legal information which is in the form of detailed legal requirements to be met by the scientific and chemical examiner, such as how to dispatch samples for test or analysis (rule 4), receipt in the laboratory and examination of the sample with reference to test memorandum (rule 5), report of the result of test or analysis (rule 6), prohibition of disclosure of information (rule 7), the signature of certificates (rule 8) (CNSR 2001).

The section below discusses the relevant rules under CNSR 2001 for the expert evidence in the context of disputes brought before the court under section 9(c) of the CNSA 1997.

Analysis

In *Naseem Khan vs State* (2021 SCMR 1771), the prosecution initiated a criminal proceeding for possession and transportation of 3 kilograms of cannabis under sections 9(b) and 9(c) CNSA 1997 and the accused applied for leave to appeal in Supreme Court for the reappraisal of evidence. The court

observed that the forensic examination was conducted disregarding the settled procedure because despite sending samples separately from all the packets recovered, the prosecution has sent a single consolidated sample from all the packets. On the other hand, the prosecution has, in their own claim, alleging the possession of 3 kilograms of cannabis wrapped in three different packets. The court decided for a reduction in the sentence due to considering the antecedents of the accused in that he was found to be an adolescent having no previous conviction. The Supreme Court reduced 3 years' rigorous imprisonment to the term already spent during the trial and ordered a reduction in fine to Rs. 5000 as well.

In the same line, in *Aijaz Ali Rajpar vs State* (2021 SCMR1773), the reappraisal of evidence was prayed for the allegation of possession and transportation of 1920 grams of cannabis. The petition for leave to appeal was unsuccessful and the sentence of the accused was maintained. The court noted down that the alleged false implication of the accused in the case was found to be incorrect. It was considered that circumstantial evidence supported by the forensic report and proof of further details corroborating the forensic examination report leads to the conclusion that the trial court and High Court both have reached the just conclusion in convicting the accused. It was also affirmed that circumstances such as incorrect allegation levelled on the police of false implication of accused in the case, avoidance of accused to present himself for witness box to defend his innocence in the case, the questionably huge amount of contraband quantity recovered, have highlighted the weakness of accused's plea. Conversely, the strength of the prosecution case counts on the fact that the recovery officers presented themselves as a witness and they consistently maintained their integrity all through the rigorous cross examination with no past hostility with the accused. Moreover, the forensic examination and the report of such examination were prepared following all necessary circumstances vital for the admissibility of expert evidence. The safe custody and transmission of samples were securely recorded by the recovery officer's record. The sentence was maintained. The court accepted the forensic report in *Haroon-ur-Rasheed vs State* (2021 SCMR 1106). The criminal proceeding for possession and transportation of 10 kilograms of cannabis was challenged and the accused filed a petition for the reappraisal of evidence and prayed for a reduction in sentence and fine. The court maintained the convictions and noted that the testimony of prosecution witnesses was unimpeachable as to details of recovery, such as the arrest of the accused jointly with others, the detail of

the vehicle they were travelling in, and the recovery of contraband, all leading to their conviction as a just decision of the trial court. Along with this evidence, the forensic report presented following all lawful requirements of providing all the details of the procedure adopted by the scientific examiner, the time when he started the examination, and how the examination was conducted, the conclusion of the examination was drawn clearly confirming narcotic character of the seized material, and the oral evidence of the expert witnesses was also supporting this conclusion of a scientific report. Therefore the sentences were reduced. Conversely, the prosecution was criticised for non-compliance with CNSR 2001 and established procedure for scientific evidence in *Zubair Khan vs State* (2021 SCMR 492), where rule 6 of CNSR 2001 was discussed which is about the chemical examiner in narcotics disputes. The rule lays down a standard procedure to be followed by the chemical examiner in narcotics cases. In this case, the duplicate forensic report presented by the prosecution was challenged on the ground of non-compliance with the rules under CNSR 2001. The alleged crime of possession and transportation of illegal substances was linked to the considerable amount of 80kg of *charas*. The accused filed petition for leave to appeal for the reappraisal of evidence which was successful and the accused was exonerated from the charge under CNSA 1997. The non-compliance with rule 6 CNSR was considered by the court as a weakness of the prosecution's case and the court declared such report as inadmissible when it is a duplicate, not the original. The circumstances that were counted as weaknesses in the prosecution's case included the lack of proof of safe custody and safe transmission of samples of narcotics from police to the chemical examiner and duplicate forensic reports. The relevant officer who transmitted the sample was not brought to the court to testify his role and the detail of the transmission was missing evidence. In the absence of proof of these facts, the examination report could not be considered to prove the guilt. However, in this case, the prosecution was even more negligent in presenting a duplicate of the chemical examiner's report which is of no probative value. The court noted that due to these gaps in the prosecution's case, the facts as they are presented leave no room for the court to consider acquittal of the accused and that is for the mistakes of the prosecution. Similarly, leave to appeal was refused in case of a request for grant of bail, as in *Bilal Khan vs State* (2021 SCMR 460), the prosecution lodged a case for the possession and transportation of 1200 grams of amphetamine. The accused filed the petition for leave to appeal and prayed for a grant of bail order which was

declared unsuccessful. The accused was arrested with lethal contraband, confirmed by the forensic report and the case was brought under the purview of section 51 of CNSA 1997, the unproven claim against the police for involving the accused in the present case under an unlawful and false implication, was not considered as plausible claim in the absence of proving the allegation during the trial. Therefore bail was refused. However, the court heard about the prosecution's stance on the new inventive method to commit a crime in *State vs. Aurangzeb* (2021 SCMR1552) where the possession of 18.6kg of methamphetamine comprised of 34000 tablets was alleged. The prosecution contended that the CNSA 1997 has a broad scope to include a range of narcotic drugs, psychotropic substances or controlled substances manufactured, marketed and administered through various mediums other than usual chunks of shaped pieces. The petitioner, the prosecution, in this case, contended that the shape of contraband recovered as in this case comes under the purview of CNSA 1997. However, the Supreme Court allowed the petition and reduced the sentence and fine. In another case, *Ibrar Ullah vs State* (2021 SCMR128), 3500 grams of cannabis were recovered. The petition for leave to appeal in Supreme Court prayed for the reappraisal of evidence and the petition was unsuccessful and dismissed by the court. There was no motive of animosity or grudge between the arresting officials and the accused. The unimpeachable testimony of officials who were involved in the arrest and recovery of substance and regarding details of event of arrest search and recovery, moreover forensic report containing the relevant details of the procedure followed by the chemical analyst has further strengthened the proof that the material recovered was narcotic in character. The conviction and sentence were maintained by the Supreme Court. On the other hand, the chemical examiner's report was declared admissible in *Mushtaq Ahmad vs State* (2020 SCMR 474), where the crime of the possession of narcotics was alleged by the prosecution and a report of the Government analyst was presented which was prepared following protocols and procedures established for that purpose in compliance with rule 6 of the CNSR 2001; which requires it as compulsory for the analyst to give reference of the test applied for analysis of narcotics. Therefore, in this case, such a report was prepared as per the legal requirements to the extent that report has clearly mentioned a separate section in writing as details of 'the test performed on received items of evidence'. Furthermore, in noting the details of the procedure and tests applied, the expert did comply with the standard protocol under rule 6 CNSR 2001. Therefore the court turned down the

petition for leave to appeal, which was dismissed and refused. In another case, the court accepted the chemical examiner's report where in *Shazia Bibi vs State* (2020 SCMR 460) accused had taken a plea that the report of the analyst was not according to established protocols mentioned in rule 6 of CNSA 2001. The court, however, maintained that the plea of the accused is not maintainable because the details of tests carried out by the analyst were prepared in compliance with the rule 6, with a clearly marked section of 'test performed on received items of evidence' and the report also mentioned further details in a section marked as 'results and conclusions' and these details under rule 6 CNSA 2001 are sufficient to sustain the scientific evidence which is admissible and does meet the required qualifications of law and the conviction was maintained. However, retraction of confession was declared inappropriate when in *Izzat Ullah vs State* (2019 SCMR 1975), the prosecution brought the case for possession and transportation of unlawful narcotic substances. The defendant's petition for leave to appeal for the reappraisal of evidence was dismissed. It was contended that the retraction of evidence was not to be considered when guilt is proved in the presence of facts other than the confession. Among other facts, it was proved that the accused were arrested in possession of 20 packs of heroin and each pack weighed 1050 grams, and the packets were recovered from the secret cavity of their vehicle. The Supreme Court analysed that the confession before the judicial magistrate, even if it is retracted subsequently, is not considered a secure piece of evidence to convict or to release an accused. However, other circumstances corroborating or proving the allegation might lead to conviction in any given case. However, other independent evidence proved the guilt sufficiently which included a forensic report confirming the lethal nature of the substance and the amount of the unlawful substance also supports the guilty of the accused. In that regard, the Supreme Court maintained the convictions and the sentences. Conversely, the chemical examiner's report was not accepted in *Mst. Razia Sultana vs State* (2019 SCMR 1300) The court allowed the appeal and ruled out the conviction and sentence of the accused. The Supreme Court noted that the report of the Government analyst under CNSR 2001 requires that all the related circumstances, including the proof of safe custody and safe transmission of samples of the unlawful substance to the examination the laboratory, should be noted down by the concerned investigative personnel. However, where such a chain of custody has lost track of it, the report of the chemical examiner is of no significance for the court proceedings as it will be

excluded because it is inadmissible for the purpose of conviction. In this case, anti-narcotics personnel were sent to hand over the sample to the government's analyst but the said transmitter was not produced in the witness box for verification of his role for the purpose of proving the chain of custody. Consequently, the conviction and sentence of the accused were set aside. Similarly, the benefit of doubt was granted to the accused in *Muhammad Adnan vs State* (2018 PLD 823) It was noted that the trial court and the High Court have mistakenly considered the accused of the allegation of section 9(c) CNSA 1997 and they did not ascertain his age for the application of rules of law for the trial of juveniles. The recovery witnesses and recovery documents did not support the prosecution's case in establishing the guilt of the accused. It was further transpired that one of the recovery officers had even refused to sign the recovery memo, while other officer although did sign the document but he had denied the attached annexure with memo which has turned down the evidence and the memo resulted as an unreliable testimony of both prosecution case, and the report presented by the prosecution for its case. The absence of signature and the lack of testimony of recovery officers do support the stance of the accused's benefit of the doubt. Yet again, the court admitted the forensic evidence in *Muhammad Sarfraz vs State* (2017 SCMR 1874). The petition for leave to appeal was dismissed after a reappraisal of evidence in the Supreme Court. The accused was arrested for having charas narcotics in 5kg contained 5 packs. Some quantity is taken from each bag in five different sample parcels were sent to government analysts for analysis in forensic science agency. The report turned out to be positive fixing the narcotic character of the substance. The court observed unimpeachable testimony of recovery witnesses which showed no contradiction as to the detail of the arrest, recovery and furthermore, the safe transmission of the material for examination was also proved. Consequently, the conviction and the sentence were maintained. On the other hand, in *Mst. Sakina Ramazan vs. State* (2021 SCMR 451) the court maintained that report of chemical examiner is only admissible after corroboration if the chain of safe custody and safe transmission of sample from police to the chemical examiner is established by signature verification and the oral evidence in the witness box. The chain of custody starts from the recovery of the substance to separation of samples from whole of the recovered material, and the dispatch of the sample to the officer of chemical examiner for testing. Any gap or break in the chain of custody would create doubt for the chemical examiner's report and it will lead to the

exclusion of such evidence. It was held that the chain of the custody was broken as the prosecution did not prove their assertion that 43 samples were forwarded to chemical examiner but the officer who noted this process in memo was never produced in the court for oral testimony. Therefore, in the absence of these statements the proof of chain of custody is doubtful and the chemical examiner's report cannot be admissible. The court has further noted that the proof of chain of custody should include the proof of the facts such as where the samples were deposited and by whom the samples were deposited, when and who collected samples from warehouse, and who delivered them by hand to examiner. These are all important facts before the report of examiner is considered. In the circumstances of the case the court ordered for acquittal of the accused and quashed the sentence. In another instance, the accused was acquitted in *Gulzar vs. State*(2021 SCMR 380) the criminal proceeding for the possession of cannabis was challenged in Supreme Court praying for reappraisal of evidence. The court averred that safe custody was not established by the prosecution, and it will result in lesser probative value of the chemical examiner's report, no matter what the result was mentioned therein. The recovery officer was although present in the court, but he did not undertake to confirm his role in recovery or to depose the fact of being involved in transmit of the sample to examiner. In these circumstances the court ruled that the report is inadmissible. Yet again the accused was acquitted in *Shah Nawaz Khan vs. State* (2021 SCMR 373) the allegation of transportation and possession of 12070 grams of cannabis was levelled against the accused and petition for leave to appeal was maintained and accused was acquitted. In the present case keeping aside the confessional statement, the other facts regarding commission of the crime have proved the guilt independently of confession. The court maintained the importance of the proven facts like huge amount recovered as illegal substance, concealment in secret cavity of vehicle, unimpeachable evidence of recovery officer and other officers testifying as to truth of evidence, proof of safe custody of contraband and safe transmission of samples to the chemical examiner which was established from the record and oral evidence of concerned officials. The conviction and sentence were maintained. In the same line, the chemical examiner's report was not considered in *Qaiser Khan vs. State*(2021 SCMR 363). Court observed that the report of the government analyst is admissible in case if safe custody and safe transmission of samples of narcotics from the police to chemical examiner are established. Thus, in the absence of this proof report is inadmissible. Hence, the

accused was acquitted. In *Faheem Ullah vs. State*(2021 SCMR 1795) the chemical report was recognized where prosecution charged accused for 5080 grams of cannabis and a petition for leave to appeal for reappraisal of evidence was filed in the Supreme Court. However, the leave was dismissed and conviction was maintained. The court analysed the fact that the accused was arrested with 5080 grams which was recorded in daily diary. Moreover, the entry was proved with site plan of raid, and inspection note was also supporting the details of the recovery as per record. Additionally, the safe custody and safe transmission of sample was also proved. The chemical examiner's report was positive with unimpeachable statement of the recovery officials in the witness box. It was held that the prosecution's case was proved beyond reasonable doubt. However, in *Haji Nawaz vs. State*(2020 SCMR687) the leave to appeal was allowed in Supreme Court where it was maintained that the safe custody of the recovered substances at the police, and safe transmission of samples from police to chemical examiner was not established. Therefore, the acquittal was allowed and conviction was over turned. On the other hand in *Hussain Shah vs. State*(2020 PLD 132) possession of narcotic substance was charged. Accused filed petition for leave to appeal and requested for reappraisal of evidence. The Supreme Court dismissed the petition and retained the conviction and sentences both. In the trial court, it was ordered to take fresh samples from the recovered substance which was challenged in leave to appeal petition. The court observed that the guilt of accused could not be denied and it is established beyond reasonable doubt by unimpeachable evidence of recovery and transmitting officers along-with the result of chemical examiner's report showing a positive result the reason that prosecution case is proved beyond reasonable doubt. Conversely, in *Faizan Ali vs. State*(2019 SCMR 1649) the case was challenged in appeal for reappraisal of evidence and the Supreme Court allowed the petition and conviction and sentence were set aside. The court ordered the acquittal for the reason that the prosecution's case is not proved beyond a doubt. It was noted that the safe custody of contraband by police was not established. Neither the safe transmission of sample was proved by the prosecution. Court noted that the FIR and memorandum of recovery both alleged that ten packets of charas one kg each had been recovered from custody of accused and the prosecution also maintained that from each packet each sample was separated from recovered substance. However, as to oral evidence of officials appeared such that one of the police official said that each of the packet has only slab in it and when the court wanted to

confirm the statement and called for the bags and it was observed that court found 96 slabs. It was also alleged by the prosecution that the mark as 's,k' was written on each packet but on verification it was appeared that there was nothing on record of recovery memorandums regarding this fact. The Supreme Court noted that the prosecution's case was full of doubts therefore ordered for acquittal of the accused. Similarly in *Mst. Razia Sultana vs. State* (2019 SCMR 1300) the appeal was allowed and it was observed that the chain of custody was compromised and proof of safe custody and safe transmission was not proved so the court turned down the conviction and sentence was set aside. In the same line, in *Kamran Shah vs. State* (2019 SCMR 1217) the accused filed a petition for leave to appeal and requested for the reappraisal of evidence in Supreme Court. The court granted the leave and determined that the convictions and sentences are set aside and ordered for acquittal of the accused for lack of proof of safe transmission of samples to chemical examiner. The constable who delivered the samples to the chemical examiner did not appear in the court for oral evidence and cross-examination of his statement. Thus benefit of doubt was given to accused. A similar decision made in *Abdul Ghani vs. State* (2019 SCMR 608) where the conviction under section 9 (c) CNSA 1997 was challenged in petition for leave to appeal in Supreme Court. It was observed that the prosecution was failed to prove their case beyond reasonable doubt. The safe custody and safe transmission was not proved, where the SHO was the complainant and he stated in the trial court that he had deposited recovered substance at the malkhana of the local police station, but to prove his statement the moharrir had not been produced before the court to give evidence as to this effect of transmission. The head constable who transmitted samples to the chemical examiner was not produced for evidence in the court. Keeping in view this detail the court ordered to set aside the convictions and sentences were quashed. The report of the chemical examiner was ruled to be deficient in *Muhammad Naeem vs. State* (2019 SCMR 608) where conviction and sentence for the offence under section 3 and 9(c) of CNSA 1997 was ruled out by the Supreme Court. The court stated that the intoxicating liquid and the report of chemical examiner has been unsuccessful to mention the words 'morphine' form the report, and its percentage in intoxicating substance was also missing from the report. The court criticised that it is disastrous omission in the report of chemical examiner and declared that the report is inconclusive, and unreliable to convict the accused and quashed the sentence. On the contrary, in *The state ANF vs. Muhammad Arshad* (2017 SCMR 283) the conviction

and sentence for involvement in smuggling heroin abroad was challenged for reappraisal of evidence in Supreme Court. The Court allowed the leave to appeal and after considering the evidence presented in trial court, court decided that the trial court's conviction and sentence should be restored. The accused had swallowed 50 capsules of 550 grams of heroin and he attempted to smuggle these abroad. The trial court convicted and sentenced him along with fine. High Court acquitted the accused, considering the fact that accused was arrested at airport and he was taken to hospital, where his stomach x ray was taken. The radiologist showed that x-ray confirms the foreign bodies in his stomach. The x-ray and receipt of hospital was produced in the court as a proof of the whole episode of arrest, examination and x-ray in the hospital. It was noted that the accused was taken to another hospital for administration of medicine so to clean his stomach. The court observed that the testimony of doctor was sufficient evidence along with the positive report and it could be relied to conclude the case of guilt. The conviction and sentence of trial court was restored accordingly. Likewise, in *Muhammad Akhtar vs. State* (2017 SCMR 161) the accused filed a petition to consider bail application, his bail was refusal. The court observed that the accused was found in possession of Poast weighing 30 kg and report of chemical examiner has concluded that the test was positive for narcotic characteristics of the substance recovered. Due to unimpeachable prosecution evidence the court was of the view that bail was refused.

To conclude the analysis of 27 cases from 2017-2021, decided by the Supreme Court in petitions for leave to appeal for the disputes contested under section 9(c) CNSA 1997 shows one observation, among many others, that in 14 cases out of 27 the Superior Court has maintained the conviction and sentence of the accused. However, in 13 out of 27 cases the accused were acquitted. The varied reasons for acquittal as noted from the analysis, as in the section above, include inadmissible expert evidence for non-compliance with CNSR 2001, lack of proof of chain of custody, safe custody, and safe transmission of recovered narcotic substance. It is also noted that the judicial policy for decision-making in disputes under NCSA 1997 regarding scientific or forensic evidence is to accept expert evidence along-with other corroborating evidence. The analysis above has underpinned the judicial policy for scientific evidence in these cases in that the expert evidence will be excluded if relevant corroborating evidence is not available. Conversely, in case of absence or inadmissible report of scientific or chemical examiner, if the guilt of the accused is

sufficiently proved by other facts relevant to commission of crime, the judicial policy is to rely on the unimpeachable oral and documentary evidence and to convict an accused. It is worth noting that the conviction on the basis of sole evidence of forensic expert or chemical examiner is not the part of judicial policy.

Discussion

The analysis of role of report or evidence of scientific expert or chemical examiner, as in the section above, has been conducted by taking an overview of the legal regime available for the specific category of crimes which is crimes prosecuted under CNSA 1997. The choice of this category of the cases for analysis was purposeful in that firstly, the cases involving unlawful or narcotic substances under CNSA 1997 involve forensic, scientific, or chemical expert evidence. Therefore, in the context of role of scientific evidence in Pakistan this category of dispute served the best possible ground of analysis. Secondly, the legal framework available in Pakistan for dealing with cases involved in narcotic substances is of considerable importance, as it can be seen in the section above for literature review. The laws enforced for this category of cases, provide a wide ranging legal support in almost all the matters which are somehow held missing legal protection or regarded as deficient in other categories of cases brought before the criminal or civil courts such as murder, property, paternity and so on. The legal framework applicable to narcotic cases, among other general laws of criminal procedure, includes law relating to establishment of Narcotic Force (ANFA 1997), the empowerment and expertise of member of this Force to perform the role of prosecution when law allows so, the law to lay down detailed legal requirement for the report of forensic or chemical examiner (CNRA 2001), law relating to notification of specialised chemical, medical, or forensic laboratories (ANFO 2000), law providing for the reward of the persons involved in the investigation or prosecution of the cases (ANFRR 2000).

It can be observed that this legal framework has lot to do with the outcome of the analysis, as conducted in the section above, in that more than 50% cases the guilt was proved and the conviction was maintained. It is also important to note here that research shows that if more cases involving expert evidence are prone to be challenged and overturned in appeal cases against the decision of trial court it is taken to believe that the role of scientific evidence by the forensic or chemical expert has been negative affecting future appointment of such person as an expert (Gross and Mnookin 2003).

Another observation from the analysis above is to note that the courts have shown a tendency to criticise the role of prosecution and chemical examiner in not considering preparation of their case in compliance with the rules and legal requirement for the cases as prescribed by the law (Naseem Khan vs. State 2021 SCMR 1771; Zubair Khan vs. State 2021 SCMR 492; Muhammad Naem vs. State 2019 SCMR 608). It is to argue here that the courts might adopt judicial policy to further discourage the waste of time and to consider giving relief to financial and emotional agony faced by the accused in cases where prosecution did not prove the case beyond doubt for lack of proof of chain of custody, safe custody and safe transmission of samples to the chemical examiner and non-compliance with the CNSR 2001 of expert evidence. It is to suggest that the Third Party Cost Order (hereinafter as TPCO) (Freer 2020) might be considered by the court to overcome this non-compliance attitude of forensic or chemical experts. In the same line, if the deficiency in investigation or prosecution of the case has undermined the role of forensic or scientific expert resulting in exclusion of scientific evidence, in that case the Waste Cost Order (hereinafter as WCO) (Freer 2020) can be used for discouraging negligent attitude of prosecution or investigative wing.

This is also observed that the law relating to detailed legal requirements for forensic or chemical expert report (CNSR 2001) is in line with the recent standards established by judicial considerations in Daubert case (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993) which seems to be affirmed in practice by legislative and judicial policy in Pakistan. It is to note that the Daubert case is cited for the requirement of considering reliability, validity, and admissibility of scientific evidence by considering data, methodology of the scientific examination, validity of application of methodology on the facts (or sample in case of control of narcotics cases), peer review of the method chosen for examination, mention of rate of percentage of risk or error in the scientific method involved (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993). It is also settled principle of judicial policy to consider weighing the probative value of the scientific evidence which shows that the scientific evidence by merely complying with Daubert standards cannot exclusively taken to decide the dispute, instead the oral evidence of expert, their cross-examination, proof of circumstantial evidence corroborating the chain of crime scene generally and chain of custody, safe custody, safe transmission of sample to the chemical examiner in case of control of narcotics are important to weigh the probative value of the scientific or forensic expert evidence. The analysis above also confirms that

judicial policy in cases of control of narcotic substances in Pakistan is in line with judicial policy as observed in other jurisdictions (Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993) (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993). However, the judicial policy in Pakistan is not advanced to consider standards of duties, obligations, and responsibilities of forensic or chemical expert has not been marked in practice, as it is laid down in the *Ikarian Reefer (National Justice Campania Naviera, S.A. vs. Prudential Assurance Co. Ltd 1993)*.

It is also observed from the analysis above, that the adversarial expert (Kovera and Austine 2015; Gross and Mnookin 2003) evidence is not the trend in almost

all the cases as mentioned above in the section relating to analysis.

Conclusion

To conclude it could be stated that the legal framework dealing with control of narcotics is developed and detailed for the purpose of providing for legal requirements for investigation and prosecution. In that perspective the judicial policy is to consider the expert evidence in corroboration of other material facts. The conviction does not lie on the expert evidence alone, however, the unimpeachable oral evidence and other evidence proving the guilt are considered sufficient to convict the court in the absence of report of chemical examiner.

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