

IN THE FEDERAL SHARIAT COURT  
(Appellate Jurisdiction)



PRESENT

MR. JUSTICE MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.  
MR. JUSTICE NAZIR AHMAD BHATTI.

CRIMINAL APPEAL NO. 65/P OF 1993  
JAIL CRIMINAL APPEAL NO. 299/I OF 1993.

1. Kenneth s/o Chdoke, ... Appellants  
2. Colline s/o Orji and  
3. Jacob s/o Yokel,  
all residents of Nigeria.

Versus

The State ... Respondent

For the appellants ... M/s Muhammad Tehmash Khan,  
Mr. Tasleem Hussain, Advocates

For the State ... Mr. Shahzad Akbar, Advocate

No. & date of F.I.R  
Police Station ... No. 765, dt. 13.12.1992  
P.S Kabli Peshawar

Date of order of  
the trial court ... 8.9.1993.

Dates of Institution ... 26.9.1993 and 12.10.1993.

Date of hearing  
and decision of  
both the appeals ... 27.10.1993



JUDGMENT

NAZIR AHMAD BHATTI, J. - Ghulam Muhammad

Inspector CIA Headquarter Peshawar received information on 13.12.1992 that some foreigners will transport huge quantity of narcotics from tribal area. The said Inspector formed a raiding party consisting of police officials and under the supervision of Shah Wali Khan DSP CIA laid a picket near bus stand of Nazar Bagh, Peshawar. At about 5.00 A.M three foreigners named Jacob s/o Yokel, Collins s/o Orji and Kenneth s/o Chdoke came having six large bags and three small bags with them. They were loading the same in a Datsun Pick Up No. PRG-357. All the three were apprehended by the police party and their luggage was checked. During checking the three small bags were found containing clothes of the accused while the six large bags contained 18 cartons of type writer ribbons total numbering 5184. The ribbons in the cartons were opened and 3030 cartons were found containing heroin powder in plastic bags. The powder of all the plastic bags was weighed and it came out 35 kilograms. The Inspector separated one gram of powder from all the packets for chemical analysis. He apprehended



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all the three accused and sent written complaint to Police Station Kabli Peshawar where F.I.R No.765 was recorded on the same day. Accused Jacob made a confession on 24.12.1992 before P.W.6 Mr.Ajmal Khan Magistrate Ist Class wherein he stated that the heroin powder was given to him by one Sikandar of Peshawar city for taking it to Karachi and that his other co-accused had nothing to do with it.

2. After investigation all the three accused were sent up for trial before the Additional Sessions Judge-I Peshawar who charged them under Articles 3 and 4 of the Prohibition(Enforcement of Hadd) Order, 1979.

All the three accused pleaded not guilty to the charges and claimed trial.

3. After the conclusion of the trial the learned Additional Sessions Judge convicted all the three accused under Articles 3 and 4 of the Prohibition Order and sentenced them as follows:-

- |   |   |
|---|---|
| 1. Under Article 3 of the Prohibition Order | to undergo rigorous imprisonment for 20 years, to pay a fine of Rs.20,000/- or in default to further undergo simple imprisonment for 2 years and to suffer 10 stripes each. |
| 2. Under Article 4 of the Prohibition Order | to undergo rigorous imprisonment for 20 years to pay a fine of Rs.20,000/- or in default to further undergo simple imprisonment for 2 years and to suffer 10 stripes        |



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Both the substantive sentences of imprisonment were ordered to run concurrently. Appellants Kenneth and Collins have challenged their conviction and sentence by Cr.A.No.65/P of 1993, while appellant Jacob has sent his appeal from jail which was registered as J.Cr.A.No.299/I of 1993. Since both the appeals have arisen from the same matter, Judgement written in Cr.A.No.65/P of 1993 will also dispose of the other aforesaid jail criminal appeal.

4. The State had produced evidence to show that all the three appellants were travelling together, that they were staying together, that their baggage was also common, that they had commonly engaged Datsun Pick Up No.PRG-357 for taking them to Islamabad and that they all were in actual common possession of the heroin powder when they were apprehended by Inspector Ghulam Muhammad. P.W.3 Sajjad Manager of the Galaxy Hotel Peshawar had stated that three foreigners came into the hotel on 6.12.1992 and asked for a room and he allotted them room No.53. He further stated that they checked out on 8.12.1992. He remembered that the foreigners were Nigerians. He denied the suggestion that the three appellants had not come together.



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P.W.4 Shah Wali Khan DSP CIA was a member of the raiding party and he was present when the narcotics was recovered from the baggages of the appellants. P.W.1 Madad Khan Sub Inspector CIA deposed that he was also a member of the raiding party and in his presence on 13.12.1992 Inspector Ghulam Muhammad had recovered narcotics from the baggage of the appellants. This witness further stated that the aforesaid Inspector had weighed the heroin powder in his presence and had taken out one gram from each packet for chemical analysis, that he had signed in the recovery memo of the heroin powder and memo of sample as a marginal witness. P.W.5 Noor Khanud Din driver of Datsun Pick Up No.PR-357 stated that all the three appellants had engaged him to take them and their baggage to Islamabad, that they started loading their luggage in the Pick Up and had actually loaded three bags and rest were lying on the ground when the police came and arrested them and took into possession their luggage. This witness further stated that the police had opened the luggage and found contraband in it. P.W.6 Mr.Ajmal Khan Magistrate Ist Class Peshawar stated that accused Jacob was produced before him



on 24.12.1992 by the local police for recording his confessional statement. The Magistrate further deposed that he removed the hand cuffs of the accused, explained to him all the legal effects of making confession, gave him sufficient time to think over the matter and after satisfying himself that the accused was voluntarily making the confession, he recorded the same.

P.W.7 Inspector CIA Ghulam Muhammad corroborated the contents of the complaint which he had sent to the police station after apprehending all the appellants.

He

He stated that he had himself carried out search of luggage of the appellants and had recovered 18 cartons of type writer ribbons containing 35 kilograms of heroin and he had separated one gram of powder from each packet for chemical analysis. This witness further stated that he had weighed the packets and the total weight was 35 kilograms and that he prepared recovery memo of the recovered heroin powder and of sample and obtained signature of the marginal witness on the recovery memo.

5. All the three appellants in their statement recorded under section 342 Cr.P.C denied the commission of the offence. Appellant Jacob further stated that his two co-accused were strangers to him and were not his





accomplices nor they had any knowledge of any contents of the bag. He further stated that all the bags from which heroin powder was recovered belonged to him.

He further stated that his confession was obtained under coercion. ~~noted~~. He further stated as follows:-

72 "As already stated I am a tourist as well as a small business man and the sole bread earner of my family comprising of an aged mother of 90 years wife and 6 children. I was looking for some items which I would purchase in Peshawar or any other part of Pakistan and could legally take along to my country and sell it for profit. One Sikandar a Pakistani met me and he asked me that if I could take his luggage upto Rawalpindi he will bear my travelling expenses and will pay me some wages. I was, as such, cheated by Sikandar. I am a poor man and have never before been involved in similar illegal act and on that count I leave myself at the mercy of the court."

The appellants ~~neither made any deposition on oath nor they~~ produced any defence.

6. The evidence produced by the State had clearly established that all the three appellants were companions, that they were travelling together, that they stayed in the hotel in one room and that they were known to each other. The heroin powder was recovered from their common baggage. They had commonly engaged a Datsun Pick Up No.PRG-357 of P.W.5 Noor Khanud Din for taking them to Islamabad.



Although appellant Jacob stated that the confessional statement had been obtained from him under coercion but there are no circumstance on the record to show that he was subjected to any mal-treatment for obtaining the confessional statement from him. He had voluntarily made the confession but it is wrong that the other appellants were not his companions.

7. The evidence produced by the State had clearly established that all the three appellants were found transporting of heroin weighing 35 kilograms when they were apprehended by the police party. More than sufficient evidence was brought on the record to prove that the appellants were guilty of transporting such a huge quantity of heroin and the offence under Article 3 of the Prohibition Order was proved against each of them. However, offence under Article 4 of the Prohibition Order could not be proved against them.

8. Consequently the appeal is partly accepted. The conviction and sentence of all the three appellants under Article 4 of the Prohibition Order is set aside and they are acquitted of that charge. However, their



Cr.A.No.65/D of 1993  
J.Cr.A.No.299/I/1993

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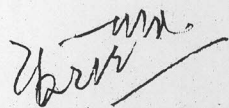
conviction and sentence under Article 3 of

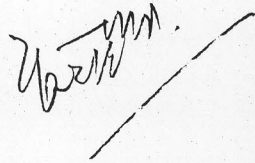
the Prohibition Order is maintained. All the

three appellants shall also be entitled to the

benefit under section 382-B Cr.P.C.

Fit for reporting.

  
(NAZIR AHMAD BHATTI)  
JUDGE

  
✓ H. A. 116010  
(MIR HAZAR KHAN KHOSO)  
CHIEF JUSTICE

Peshawar, 27.10.1993.  
M.Akram/