

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

(19)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.
MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN.

CRIMINAL APPEAL NO.189/L OF 1994
CRIMINAL SUO MOTO NO.6/L OF 1994.

Muhammad Akram Khan son ... Appellant
of Zaman Khan, resident
of Peoples Colony,
Faisalabad.

Versus

The State 2... Respondent

He

For the appellant ... Mr.S.M.Masud,
Advocate

For the State ... Mr.Muhammad Aslam Uns,
Advocate

No.& date of F.I.R ... No.153/91, dt.29.5.1991
Police Station P.S Khushab

Date of order of ... 26.5.1994.
the trial court

Date of Institution ... 27.6.1994.

Date of hearing ... 23.4.1995.
and decision

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant

Zafar Abbas H.C Police Station Khushab and a party of other police officials were present in New Bus Stop Khushab for traffic checking on 29.5.1991. At about 5.00 P.M Car No.BRA 7860 came from Mianwali side which was made to stop. Appellant Muhammad Akram Khan, who was sitting on the front seat of the car came out and started running. He was followed and apprehended near Fowara Chowk and from his personal search a polythene bag containing 700 grams of heroin was recovered from his right side trouser-fold. The complainant separated one gram from the bulk for sample. He arrested appellant Muhammad Akram Khan and accused Sultan Khan driver of the car and sent written complaint to the police station for registration of the case. On the next day the complainant deposited the sample parcel in the police station.

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2. P.W.3 Muhammad Nawaz Sub Inspector of Police Station City Khushab carried out investigation, prepared site plan and also arrested both the accused. The latter was sent up for trial before Additional Sessions Judge Khushab who charged appellant Muhammad Akram Khan under

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Articles 3 and 4 of the Prohibition(Enforcement of Hadd) Order,1979 and accused Muhammad Sultan Khan under Article 3 thereof. Both the accused pleaded not guilty to the charges and claimed trial.

3. Five witnesses were produced in proof of the prosecution case whereas both the accused made deposition under section 342 Cr.P.C but none of them made any deposition on oath nor produced any defence evidence.

4. After the conclusion of the trial the learned Additional Sessions Judge acquitted accused Muhammad Sultan Khan and convicted appellant Muhammad Akram Khan under Article 3 of the Prohibition Order and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.20,000/- or in default to further undergo rigorous imprisonment for one year. The convict has challenged his conviction and sentence by the appeal in hand.

5. We have heard learned counsel for the parties at length and have also gone through the entire record of the case.

6. The learned counsel for the appellant challenged the impugned judgment on two fold grounds; firstly, that although complainant Zafar Abbas H.C had taken sample on 29.5.1991 and the investigation had also started on the same day but he did not hand over the sample to the investigating officer P.W.3 Muhammad Nawaz Sub Inspector on the same day but himself deposited the same in the police station on the next day and as such there was no guarantee that the sample parcel had not been tampered with; and secondly, that it had been established that complainant Zafar Abbas H.C had personal enmity with the appellant and had, therefore, falsely implicated him in the case.

7. In so far as the first point is concerned, it had been established from the evidence that the complainant had not handed over the sample parcel to the investigating officer although investigation had started on the same day but kept the same in his personal custody and deposited the same in the police station on the next day. This clearly indicated that the sample parcel remained in the personal custody of the complainant for one day and no evidence was

brought on the record to show that it was not tampered with.

8. In so far as the second objection of the learned counsel for the appellant is concerned, in this connection the following statement was made by the appellant:-

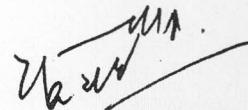
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"The police falsely involved me in the present case at the instance of my enemy Aadam Khan r/o Qaid Abad who was also Chairman of Town Committee Qaidabad. Said Aadam Khan is friend of Muhammad Nawaz ASI and Zafar H.C who have appeared prosecution witnesses against me. Said police officers with the connivance of said Aadam Khan implicated me in the present case. Police sent only one gram heroin for chemical analysis. Without confession the only one gram sent to Chemical Examiner can be treated as recovery which was also obtained from some-where else for getting a positive report against me whereas in respect of remaining heroin 699 grams there is no report that it was heroin powder."

Not only that the question about enmity was asked from every witness, yet it was denied but this was the contention of the appellant from the very beginning, hence the authenticity of the allegation of enmity could not be ignored.

9. Much doubt had been created in the whole affair and there was no authentic evidence that the sample parcel was not tampered with.

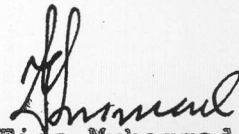
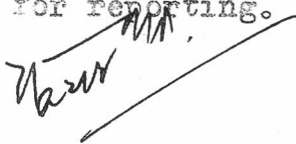
10. Consequently the appeal is accepted. The conviction and sentence of the appellant recorded on 26.5.1994 by the learned Additional Sessions Judge Sargodha camp at Khushab are set aside and he is acquitted of the offence for which he was convicted and sentenced. He shall be set at liberty forthwith if not wanted in any other case.

As a consequence of acceptance of this appeal the suo moto notice is discharged.



(Nazir Ahmad Bhatti)
Chief Justice

Fit for reporting.



(Dr. Fida Muhammad Khan)
Judge

Islamabad, 23.4.1995.
M. Akram/