IN THE FEDERAL SHARIAT COURT
(Appelalte Jurisdiction)

PRESENT

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

CRIMINAL APPEAL NO.272/I OF 1994.

Muhammad Banaras son of Muhammad Waris,resident of village Deraza P.O Kag P.S Haripur, Tehsil and District Haripur.	...	Appellant

Versus

The State	...	Respondent
For the appellant	...	Sardar Muhammad Ghazi, Advocate
For the State	...	Mrs.Anwar Raza, Advocate
No.& date of F.I.R Police Station	...	No.184,dt.7.12.1991, P.S Railway Rawalpindi.
Date of order of the trial court	...	3.10.1994.
Date of Institution	...	7.12.1994.
Date of hearing	...	7.2.1995.
Date of decision	...	14.2.1995

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JUDGMENT

NAZIR AHMAD BHATTI,CHIEF JUSTICE.- Sub Inspector Muhammad Yousuf Shah, S.H.O of Railway Police Station Rawalpindi, alongwith a party of police official, was carrying out search of 6-Down Tezro on 7.12.1991 at Railway Station Rawalpindi at 1435 hours. He entered Bogie No.9 of the train. Appellant Muhammad Banaras was sitting on a single seat No.1 of the said bogie and under the seat an iron box was lying which was claimed by the appellant to belong to him. On the direction of the S.H.O the appellant took out a key from his pocket and unlocked the box. Search of the box had carried out by the said S.H.O, who recovered 10 polythene packets each containing one kilogram of heroin. The S.H.O separated 5 grams of heroin powder from each packet for chemical analysis. He made a bulk of the samples in to one parcel. The S.H.O arrested the appellant and sent written complaint to Railway Police Station for registration of the case. He also forwarded the packets of sample and the remaining bulk powder to the police station . The S.H.O had also recovered some other articles from the box and recovery memo was prepared by him which was attested by Rafi Ullah Khan ASI and Allah Bakhsh, IHC. The Chemical Examiner found the sample to be heroin powder which could cause intoxication.

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2. After investigation the appellant was sent up for trial before Additional Sessions Judge Rawalpindi who charged him under Articles 3 and 4 of the Prohibition(Enforcement of Hadd) Order, 1979 to which the appellant pleaded not guilty and claimed trial.

3. After the conclusion of the trial the learned Additional Sessions Judge convicted the appellant for both the offences under Articles 3 and 4 of the Prohibition Order. For the offence under Article 3 of the Prohibition the appellant was sentenced to under rigorous imprisonment for 5 years, to suffer 30 stripes and to pay a fine of Rs.25,000/- or in default to further undergo rigorous imprisonment for 6 months. For the offence under Article 4 of the Prohibition the appellant was sentenced to imprisonment for life, to suffer 30 stripes and to pay a fine of Rs.50,000/- or in default to further undergo rigorous imprisonment for one year. The convict has challenged his conviction and sentence by the appeal in hand.

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

5. The admitted facts are that the appellant was travelling in bogie No.9 of 6-down Tezrao, that he had been allotted seat No.1 which was a single seat and at the time of search of the bogie by the police party he was found sitting on the said seat, that an iron box was also lying under that seat from which 10 packets of heroin powder

were recovered during its search and that some other articles were also recovered from the said box. The plea of the appellant was that he was not owner of the box and articles recovered therefrom did not belong to him. It is also a fact, which is borne out from the contents of the F.I.R and the recovery memo Ex.PC, that on the direction of the complainant ~~that~~ the said iron box was unlocked by the appellant and for that purpose he had brought out key from his own pocket. It was contended by the learned counsel for the appellant that the lock and the key had not been produced in evidence and the prosecution evidence in this respect was doubtful as there was no proof that the appellant had unlocked the box by key which he had brought out from his own pocket. However, this contention does not seriously prejudice the prosecution case for the simple reason that both the F.I.R and the recovery memo clearly indicate that the lock of the box was removed when the key which was taken out by the appellant from his own pocket.Those lock and key were also taken into possession by the complainant through the same recovery memo and the mere fact that those two articles were not produced in evidence would not create any doubt in the prosecution case. The recovery of both the said articles has been mentioned in the F.I.R as well as the recovery memo which would clearly indicate that the box was locked and it was unlocked by the appellant himself by a key which he had in his own pocket.

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6. An other objection raised by the learned counsel for the appellant was that only police officials were made witnesses of the recovery memo whereas passengers and other persons were available. This contention cannot be given serious consideration for the reason that in such matters the attestation of recovery memos by police officials is neither illegal nor invalid. In such circumstances police officials are competent witnesses of recovery and question of violation of section 103 Cr.P.C does not arise.

7. The learned counsel also contended that there was no evidence that the iron box belonged to the appellant. This contention has been rebutted by a very strong evidence produced in the trial. The box was lying under the single seat which was occupied by the appellant and which was also reserved in his name. It was also unlocked by the appellant himself. If the iron box belonged to some other passenger, the appellant could have asked that passenger to remove it from that place as that seat was reserved in his own name.

8. It was also contended by the learned counsel for the appellant that the sample of 5 grams taken out from each packet should have been sealed separately. We do not find any violation of any law or any other illegality in the procedure by the mere fact that the sample powder of all the packets was mixed in one bulk and then sealed and sent to the Chemical Examiner for analysis. Moreover,

definite evidence had come on the record on behalf of the prosecution that sample was taken out from each packet and then a bulk of the sample was made and the whole bulk sample powder was found to be heroin during chemical analysis. Such practice is neither contrary to any law nor it violates any procedure.

9. The appellant in his deposition under section 342 Cr.P.C had denied ownership of the iron box and his plea was that he did not possess identity card and for that reason he had been falsely involved in the matter. He also produced two defence witnesses. Both the said witnesses deposed to the same effect. However, their testimony is not worth much consideration for the reason that their names were only disclosed three years after the commission of the offence. Moreover, both the defence witnesses had boarded the train from a latter station and both of them had seen the iron box lying under the seat occupied by the appellant when they boarded the train. They could also not become competent witnesses about ownership of the box for the simple reason that the same was not brought in the bogie in their presence.

10. The appellant failed to prove any animous of the police against him nor any particular interest of the police to falsely implicate him in the case. No other point was urged by the learned counsel for the appellant.

11. From the prosecution evidence produced during the trial it had been clearly established that 10 packets of heroin powder

were recovered from the iron box which belonged to the appellant and which was lying under the seat reserved in his name and occupied by him at the time when the recovery was made. He was obviously transporting such a huge quantity of narcotic which also belonged to him. Consequently he was appropriately convicted and sentenced.

We do not find any merit in this appeal which is dismissed.

The conviction and sentence of the appellant recorded on 3.10.1994 by the learned Additional Sessions Judge Rawalpindi are maintained.

He shall,however, be entitled to the benefit under section 382-B Cr.P.C.

(Nazir Ahmad Bhatti)
Chief Justice

Fit for reporting.

(Dr.Fida Muhammad Khan)
Judge

Announced on 14.2.1995
at Islamabad
M.Akram/