

(13)

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO.46/I OF 1995  
CRIMINAL APPEAL NO.50/I OF 1995

1. Muhammad Zahoer son of  
Muhammad Sarwar, r/o  
Matolimi, Distt.  
Abbottabad

... Appellants

2. Manzoor Ahmad son of  
Mansab Khan, r/o House  
No.BB/1003, Dhok Jala,  
Rawalpindi

Versus

The State

... Respondents

for the appellants

... Mr.Muhammad Aslam Uns,  
Advocate

For the State

... Mrs.Anwar Raza, Advocate

F.I.R. No., date and  
Police Station

... 28, 21.1.1994 P.S. Gujarkhan

Date of the Order of  
the Trial Court

... 27.2.1995

Date of Institution

... 7.3.1995 and 15.3.1995  
respectively

Date of hearing

... 30.4.1995

Date of decision

... 12.7.1995

Cr.A.No.46/I of 1995  
Cr.A.No.50/I of 1995

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Ghulam Abbas,

Sub-Inspector, Police Station, Gujarkhan received information on 21.1.1993 that huge quantity of liquor will be transported by truck No.GLT 3907. At about 3.00 a.m. on 22.1.1994 the said truck appeared near Police Check Post, Missa Kaswal where it was signalled to stop by the police party which had set up a picket there under the supervision of the said Sub-Inspector. However, the truck did not stop and it was chased. At about 3.30 a.m. the truck was made to stop near Sarwar Shaheed College. In the meantime Manzoor Ahmad owner of the truck and Kala Khan, conductor escaped and disappeared in the forest. But Muhammad Zahoor, driver of the truck, was apprehended at the spot. Upon the search of the truck 50 cartons of liquor each containing 50 bottles were recovered. A small quantity of liquor from every bottle was separated for chemical analysis which was collected in 25 bottles. The complainant/Sub-Inspector prepared two separate recovery memos one for the samples and the other for the remaining liquor contained in other bottles. The complainant sent written complaint to Police Station, Gujarkhan for registration of the case.

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2. Manzoor Ahmad, owner of the truck, who had escaped in the night of occurrence, was also arrested. After investigation both the accused were sent up for trial before Chaudhry Ghazanfar Zia, Assistant Commissioner/Magistrate Ist Class, Gujarkhan, who charged both of them under Articles 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979 to which they pleaded not guilty and claimed trial. In all 5 witnesses were produced during the trial by the State as prosecution witnesses. Both the accused made depositions under section 342 Cr.P.C. but none of them made any deposition on oath nor produced any defence evidence.

3. After the conclusion of the trial the learned Magistrate convicted both the accused under Articles 3 and 4 of the Prohibition Order. For the offence under Article 3 of the Prohibition Order each of the accused was sentenced to undergo rigorous imprisonment for  $2\frac{1}{2}$  years and to pay a fine of Rs.500/- while for the offence under Article 4 of the Prohibition Order each of the accused was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-. The sentence of imprisonment for non payment of fine was simple imprisonment for 6 months. Convict Muhammad Zahoor has challenged his conviction and sentence by criminal appeal No.46/I of 1995 in hand whereas convcit Manzoor Ahmad has challenged his conviction and



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sentence by criminal appeal No.50/I of 1995. Since both the appeals have arisen from the same judgment they are being disposed of by single judgment which is written in criminal appeal No.46/I of 1995.

4. I have heard learned counsel for the parties at length who also led me through the entire record of the case.

5. The recovery of 2500 bottles of liquor was made from the truck which was being driven by Manzoor Ahmad appellant in criminal appeal No.50/I of 1995. The sample parcel was also prepared at the spot by the complainant/Sub-Inspector and the recovery memo in this respect was attested by P.W.3 Zahid Naeem, H.C. and P.W.4 Muhammad Hayat, L.H.C. P.W.1 Riaz Ahmad, A.S.I. was entrusted with the parcels of sample and the remaining liquor who kept the same in Malkhana and handedover the sample parcel to P.W.2 Munawar Hussain, F.C. on 23.1.1994 for taking it to the Office of the Chemical Examiner. The latter deposited the said parcel in the said office on the same day and nobody interfered with it during all this period. In rebuttal there is only the oral denial of the commission of any offence by both the appellants.

6. From the evidence produced during the trial it was established that such a huge quantity of liquor was recovered from

the aforesaid truck which was being driven at that time by appellant Manzoor Ahmad. It was also established that the said truck belonged to Muhammad Zahoor who was also sitting on the front seat at that time and who escaped in the darkness at the time of raid by the police party.

7. The learned counsel for the appellants urged that the report of the analysis had said that the samples contained alcohol which was not an intoxicating liquor in accordance with the provisions contained in clause (h) of Article 2 of the Prohibition Order. His contention was that neither the spirit found in the samples was spirit of wine nor it contained alcohol which was normally used for the purpose of intoxication. In this respect he also relied upon an earlier judgment of this Court made on 9.2.1983 in criminal appeal No.147/I of 1982 (Mazhar Hussain and two others Vs. The State) wherein it was held that alcohol was not an intoxicating liquor. However, I have very minutely perused the report of the Chemical Examiner which clearly states that the sample bottles contained coloured diluted rectified spirit which could be used to cause intoxication. There has come much case law by now to show that rectified spirit could be used as an intoxicating liquor and it can be said without any fear of contradiction that rectified spirit is not only alcohol. I, therefore, hold that the bottles of liquor seized by the complainant from the truck in question contained rectified spirit which could cause intoxication and it was an intoxicating liquor

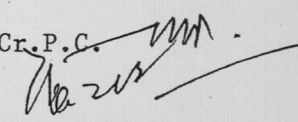
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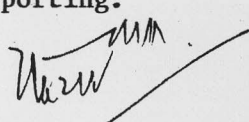
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Both the appellants had committed the offence of transporting intoxicating liquor. However, they had not committed any offence under Article 4 of the Prohibition Order.

8. The net result of the above discussion is that the conviction and sentence of both the appellants under Article 4 of the Prohibition Order is set aside and they are acquitted of that offence. However, their conviction and sentence under Article 3 of the Prohibition Order is maintained. Both the appeals are disposed of accordingly. Both the appellants shall be entitled to the benefit under section 382-B Cr.P.C.

Fit for reporting.

  
CHIEF JUSTICE

  
Announced on  
12.7.1995 at Islamabad.  
Bashir/\*

