

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

56 (22)

PRESENT

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

CRIMINAL APPEAL NO.55/P OF 1994.

Atlas Khan son of Faizullah ... Appellant
resident of Nauthia Jadeed,
Peshawar.

Versus

The State ... Respondent

For the appellant ... Mr.Abdul Samad Khan,
Advocate

For the State ... Mr.Ashab Ali Bangish,
Advocate

No.& date of F.I.R ... No.294, dt.15.11.1992,
Police Station P.S Railway Police
Peshawar Cantt.

Date of order of ... 4.5.1994.
the trial court

Date of Institution ... 27.6.1994.

Date of hearing ... 2.4.1995.

Date of decision ... 12.7.1995.



JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Khalid Hussain,

acquitted accused, a minor boy aged about 12/13 years, went to Parcel Office in Railway Station Peshawar Cantt on 15.11.1992 at 1930 hours and wanted to book furniture for Karachi. The furniture consisted of two dressing tables without mirrors and four sides of a bed. He was having identity card No.135-54-05100 issued in the name of Atlas Khan son of Faizullah, appellant herein. Muhammad Anees, Parcel Clerk booked the furniture but he suspected some foul play as the person booking the furniture was new and had never come before. The parcel clerk informed Muhammad Sadiq Khan Inspector/SHO Police Station Railway Peshawar Cantt who went to the booking office and inspected the furniture and recovered 20 plastic bags each containing one kilogram of heroin from the secret cavities in both the dressing tables, 10 packets from each dressing table. The Inspector separated 10 grams of powder from each packet for chemical analysis. He arrested Khalid Hussain and sent written report to the police station for registration of the case.

2. Acquitted accused Khalid Hussain made a confessional statement on 16.11.1992 before P.W.1 Mian Salim Khan Magistrate Ist Class who recorded the same after observing all the legal formalities. Appellant Atlas Khan was



arrested on 12.1.1993 when his application for bail before arrest was dismissed.

3. After investigation both the accused were sent up for trial before Additional Sessions Judge Peshawar who charged both of them under Articles 3 and 4 of the Prohibition(Enforcement of Hadd) Order, 1979 to which both of them pleaded not guilty and claimed trial.

4. During the trial 5 witnesses were produced by the State in proof of the prosecution case. Both the accused made depositions under section 342 Cr.P.C but none of them made any deposition on oath. However, acquitted accused Khalid Hussain produced two defence witnesses.

5. After the conclusion of the trial the learned Additional Sessions Judge acquitted accused Khalid Hussain and convicted appellant Atlas Khan under Article 3 of the Prohibition Order and sentenced him to undergo life imprisonment, to suffer 10 stripes 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.

6. We have heard learned counsel for the parties at length who ~~have~~ also led us through the entire record of the case.

7. P.W.2 Muhammad Anees Railway parcel clerk deposed

that on 15.11.1992 he had booked two dressing tables without mirrors and 4 side planks of a bed for Karachi city against National Identity Card No.135-54-05100 issued in the name of appellant Atlas Khan.

The said identity card was produced by Khalid Hussain who told the parcel clerk that he was a minor and that the furniture belonged to his co-accused. The parcel clerk booked the furniture and being suspicious he called the S.H.O Railway Police Station. The latter carried out search of the furniture and recovered 20 packets

from the cavities in the dressing tables each containing one kilogram of heroin. He further stated that he had been informed by Khalid Hussain that the furniture had been given to him by his co-accused

W for booking in the Railway Station. This witness further stated that he had asked Khalid Hussain to produce the owner of the furniture as he was a minor but the appellant did not appear before him. P.W.4 Muhammad Karim Khan ASI was marginal witness of the recovery as well as the memo prepared for the sample powder.

P.W.1 Mian Salim Khan Magistrate Ist Class deposed that he had recorded the confessional statement of Khalid Hussain on 16.11.1992 after observing all the legal formalities. The confessional statement narrates that accused Khalid Hussain was employed with Atlas Khan who was a furniture maker and he was his pupil, that the appellant manufactured the furniture and asked him to take the same to Railway Station Peshawar Cantt for booking for Karachi whereupon he



took the same to Railway Station Cantt Peshawar where the booking clerk demanded identity card, that he brought the identity card of his employer and produced the same but he was arrested by the police who recovered 20 packets of heroin powder from the furniture and arrested him but his employer escaped. P.W.5 Muhammad Sadiq Khan Inspector deposed that he had recorded the complaint of parcel clerk and had then carried out search of the furniture and had recovered from the dressing tables 20 packets each containing one kilogram of heroin. He separated 10 grams as a sample and he arrested Khalid Hussain who voluntarily made the confession on the next day.

8. In rebuttal the appellant denied his ownership over the furniture. He also did not admit that he was a furniture maker and his co-accused Khalid Hussain was employed with him. The two defence witnesses had deposed in favour of Khalid Hussian. The latter had deposed that the furniture belonged to his co-accused who had directed him to take the same to Karachi by getting it booked in the Railway. His father, appearing as D.W.1, deposed that his son was employed with appellant Atlas Khan during the days of occurrence.

9. The admitted facts are that acquitted accused Khalid Hussain had brought furniture for booking at Railway Station Peshawar Cantt and the investigating officer had recovered 20 packets concealed in the dressing tables and each containing one kilogram of heroin, that acquitted accused

Khalid Hussain was a minor boy of 12/13 years old and he had produced the identity card of the appellant to the parcel clerk for getting the furniture booked, that the appellant was a furniture maker and acquitted accused Khalid Hussain was employed with him. It shall thus be seen that the furniture which was produced at the Railway Station Cantt for booking for Karachi and which contained 20 packets of heroin concealed therein had been produced by the acquitted accused Khalid Hussain and the identity card showed that it was entrusted to him by the appellant for booking and for taking the same to Karachi.

10. There is no other evidence on the record except the confessional statement and deposition under section 342 Cr.P.C of acquitted accused Khalid Hussain to connect the appellant with the commission of the offence for which he was convicted and sentenced. It is now to be seen whether the conviction of the appellant could be sustained on the strength of the confessional statement of the co-accused. The minute perusal of the confessional statement would show that the acquitted accused had confessed that the furniture was taken to the Railway Station by him and he had booked it and for that purpose he had produced the identity card of the appellant. This part of his confessional statement is also corroborated by the Parcel clerk who appeared as P.W.2 during the trial. There are reasonable grounds to believe that the identity card was given to him by the appellant



and since he was a furniture maker, the furniture was also made by him. The acquitted accused was a minor boy of 12/13 years old and it is impossible that he could procure such a huge quantity of heroin and then conceal it in the furniture. Obviously all this was done by the appellant.

The confessional statement is thus inculpatory and it can be believed as against the appellant as well. The latter had knowledge of all that exercise of concealing the narcotics in the secret cavities of the furniture and he had sent the acquitted accused with the furniture to Railway Station assuming that no body would suspect him of any foul play.

11. There was brought very strong circumstantial evidence on the record to show that the furniture had been manufactured by the appellant who had also concealed packets of heroin in the secret cavities of the dressing tables and had then asked the acquitted accused to get it booked in the Railway Station and then take it with him to Karachi. No body would have suspected that such a minor boy could be indulging in transportation of narcotics, but unfortunately for the appellant the parcel clerk became suspicious whereupon the offence was discovered.

12. The learned counsel for the appellant has contended that in Islamic Criminal Law the confession of an accused against co-accused was not acceptable and if there is no other proof

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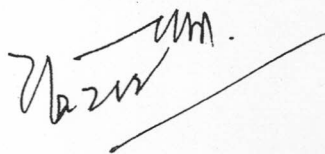
against him he will not be punished on the said confession and in support of this contention he has relied upon the case of Arif Nawaz Khan and 3 others Vs.The State (PLD 1991 FSC 53). However it has been held in the same judgment that such a confession could be accepted as circumstantial evidence for conviction and Tazir. The learned counsel has also contended that Article 43 of Qanun-e-Shahadat, 1984, explicitly excludes from consideration an exculpatory judicial confession of an accused as against his co-accused and in this respect he has relied upon the case of Spin Bacha and another Vs.The State (PLD 1990 FSC 57). We have very minutely considered these contentions and we do not agree with the learned counsel for the reason that under the provisions of Article 43 of Qanun-e-Shahadat the court can take into consideration a confession made by one person against the person making it and can also take it into consideration as circumstantial evidence against other person. The confession, which had been corroborated by other evidence, made by acquitted accused being inculpatory could also be lawfully used against the appellant.

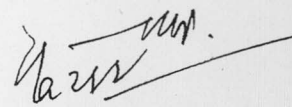
13 After taking into consideration all the aforesaid circumstances we have come to the conclusion that the narcotics recovered from the furniture belonged to the appellant and he had made arrangement for transportation of the same through acquitted

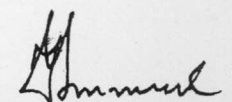
accused Khalid Hussain. The appellant was, therefore, guilty of transporting a huge quantity of narcotics.

He has been appropriately convicted and sentenced by the learned Additional Sessions Judge Peshawar. There is no merit in this appeal which is dismissed. The conviction and sentence of the appellant recorded on 4.5.1994 by the learned Additional Sessions Judge Peshawar are maintained. He shall be entitled to the benefit under section 382-B Cr.P.C.

Fit for reporting.




(NAZIR AHMAD BHATTI)
CHIEF JUSTICE


(DR. FIDA MUHAMAMD KHAN)
JUDGE

Announced on 12.7.1995.
at Islamabad.
M.Akram/

