

IN THE FEDERAL SHARIAT COURT  
(Appellate Jurisdiction)

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PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

CRIMINAL APPEAL NO.135/I OF 1994.

1. Arshad Ali  
2. Asad Ali  
3. Amjad Ali, sons of  
Rahat Ali Khan, all     ...     Appellants  
residents of Village  
Formulli, Teh. & Distt.  
Attock

Versus

The State     ...     Respondent

For the appellants     ...     Sh.Ahsan-ud-Din, Advocate

For the State     ...

F.I.R. No., date and     ...     277, 31.8.1990 P.S.  
Police Station     Hazro

Date of the Order of     ...     27.4.1994  
the Trial Court

Date of Instituion     ...     26.5.1994

Date of hearing     ...     19.10.1994

Date of decision     ...     26.10.1994

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Abdul Razzaq,

Sub-Inspector/S.H.O., Police Station Hazro had laid a

picket on Shadi Khan Chowk on the night of 31.8.1990.

At about 4.00 a.m. he received information that

Arshad Ali, Asad Ali and Amjad Ali residents of

Formulli, appellants herein, were about to transport

narcotics in their car No.Sialkot 9721 standing in front of

their houses. The S.H.O. raided the place of

occurrence. Appellant Arshad Ali was occupying

the seat of driver of the car while appellant Amjad

Ali was sitting on the seat next to him and appellant

Asad Ali was sitting on the rear seat. Appellant

Arshad Ali fled away on seeing the police party. The

two other appellants were apprehended and search of the

car was carried out. Heroin weighing 500 grams,

chars weighing 4 Kilogram and 31 bottles of liquor

were recovered from the boot of the car. The S.H.O.

took samples from all the narcotics and also sent

written complaint to Police Station, Hazro for registration

of the case.

2. Appellant Arshad Ali was arrested on 25.9.1990.

After investigation all the 3 appellants were sent up for trial before Qazi Habib-ur-Rehman Anjum, Assistant Commissioner/Magistrate Ist Class, Attock exercising powers under section 30 Cr.P.C., who charged them under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, to which all the three appellants pleaded not guilty and claimed trial.

3. 5 prosecution witnesses were examined on behalf of the State. All the 3 appellants made depositions under section 342 Cr.P.C. They also produced defence witnesses and also made depositions on oath.

4. After the conclusion of the trial the learned Magistrate convicted all the 3 appellants under Article 4 of the Prohibition Order and sentenced each of them to undergo rigorous imprisonment for 3 years, to suffer 10 stripes and to pay a fine of Rs.10,000/- or in default to undergo simple imprisonment for 4 months. All the 3 convicts have challenged their conviction and sentence by the appeal in hand.

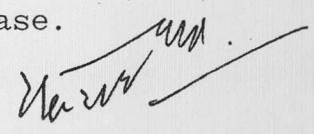
5. The raid was conducted at 4.00 a.m. on 31.8.1990 and appellant Arshad Ali was not apprehended

from the spot. It was the case of prosecution that the other two appellants were apprehended from inside the car and the narcotics were also recovered from its boot. It is significant to note that the car was never produced as case property during the trial. The defence witnesses, who are residents of the same area and lived in the houses close to the house of the appellants, had all deposed on oath that the police party had raided the house of the appellants for carrying out its search for the purpose of recovery of the narcotics. The non-production of the car as case property during the trial would lend credit to the defence version that the police party had raided the premises of the appellants and had carried out search thereof. However, the complainant had not taken two respectable persons of the locality alongwith him for the search proceedings. Consequently he had violated the mandatory provisions of section 103 Cr.P.C. This was an illegality and had rendered the entire search proceedings invalid. Moreover appellant Arshad Ali was not present at the spot at the time of occurrence and he could not be charged for being found in possession

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of any narcotics.

6. Consequently the appeal is accepted. The conviction and sentence of appellants Arsahd Ali, Asad Ali and Amjad Ali sons of Rahat Ali Khan are set aside. They are acquitted of the offence for which they were convicted and sentenced. They shall be set at liberty forthwith if not wanted in any other case.



CHIEF JUSTICE

Announced at Islamabad  
on 26th October, 1994.  
Bashir/\*

Fit for reporting.

