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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

① R566/93-
② 20

PRESENT

MR. JUSTICE MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.

CRIMINAL APPEAL NO. 405/L OF 1992

Abdul Rasheed alias --- Appellant
Eidu s/o Khan Muhammad,
caste Rajput, r/o Nanakpur,
Saddar Kabirwal, District
Khanewal.

VERSUS

The State --- Respondent

Counsel for the --- Mr. Muhammad Aslam Nagi,
appellant Advocate.

Counsel for the --- Mr. Muhammad Akhtar,
State Additional Advocate General
with Kh. Shaukat Ali,
Advocate.

F.I.R. No., date & --- 286/90, 30-8-1990
Police Station Saddar Kabirwala.

Date of the order --- 14-10-1992
of trial court

Date of Institution --- 8-11-1992

Date of admission --- 18-11-1992

Date of hearing --- 14-3-1993

Date of decision --- 14-3-1993



JUDGMENT

MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.- This appeal is directed against the judgment dated 14-10-1992 passed by the learned Additional Sessions Judge, Khanewal, whereby the appellant was convicted for offence under Article 4 of Prohibition (Enforcement of Hadd) Order, 1979 (hereinafter referred to as the Order) and sentenced to suffer R.I. for six years, ten stripes and fine of Rs.2,000/-, in default to undergo R.I. for six months more.

2. It is case of the prosecution that on 30-8-1990 at about 9.00 A.M. the appellant was apprehended by PW.5 Muhammad Khan, S.I. and other police staff. From his possession 240 grams of heroin was recovered. Sample taken from it was certified to be heroin by the expert. After usual investigation the appellant was challaned before the court. The case came up for trial before the court of the learned Additional Sessions Judge, Khanewal, where the appellant did not plead guilty to the charge and claimed trial. The prosecution, therefore, examined PW.1 Abdul Ghafoor, Constable, PW.2 Sultan Mehmood, ASI, PW.3 Muhammad Sharif, Constable, PW.4 Khurshid Ahmad Constable, PW.5 Muhammad Khan, S.I. investigating officer and PW.6 Zafarul Haq, Cosntable.

3. In his statement recorded under section 342 Cr.P.C. the appellant denied the allegation and claimed innocence. he examined DW.1 Abdul Latif and DW.2 Muhammad Sharif in defence. However, the learned trial judge did not believe his defence and while relying

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on prosecution evidence convicted the appellant for the offence and sentenced him for the same as mentioned herein above. Hence this appeal.

4. Mr. Muhammad Aslam Nagi, Advocate, appeared for the appellant and Mr. Muhammad Akhtar, Additional Advocate General with Khawaja Shaukat Ali, Advocate, appeared for the State.

5. The learned counsel for the appellant has raised following grounds in support of his appeal:-

- (i) PW.5. Muhammad Khan, S.I. has not stated before the court that he had handed over the sealed sample to PW.1 Abdul Ghafoor.
- (ii) PW.1 Abdul Ghafoor has not given the date on which he had given the sample to PW.6 Zafarul Haq.
- (iii) Investigation conducted by witness Muhammad Khan, S.I. of C.I.A. is illegal as he was not incharge of Police Station, Saddar Kabirwala.
- (iv) The recovery of contraband material has no nexus with the appellant.

6. The learned counsel for the State vehemently controverted the contentions raised by the learned counsel for the appellant and urged for maintaining the conviction and sentences of the appellant.

7. The first two grounds taken by the learned counsel for the appellant seem to be of superfluous nature. They do not touch the merits of the case at all. The evidence of PW.3 Muhammad Sharif, PW.4 Khurshid Ahmad and PW.5 Muhammad Khan, S.I. is unanimous so far as recovery of contraband material from the appellant is concerned.



No animosity has been shown against them by the appellant. They had no reason to falsely implicate the appellant. Nothing has been brought in cross-examination to discard their positive evidence.

Their evidence as such inspires confidence. The material was kept in safe custody by PW.1 Abdul Ghafoor. He handed over the same to witness Zafarul Haq, who has affirmed that so far the sample remained with him it was not tampered with. Chemical Examiner's report which is positive, therefore, proves that the contraband material recovered from the appellant was heroin. Besides, there is no bar for investigation of the case by PW.5 Muhammad Khan, S.I. of CIA police. Even otherwise, irregularity committed during investigation would not affect the competence or jurisdiction of the court. All the grounds taken by the learned counsel for the appellant, therefore, fail.

In result thereof the appeal is dismissed on merits. However, the sentence seems to be severe. It is reduced from six years' R.I. to three years' R.I., ten stripes are reduced to five stripes and fine of rs.2,000/- is reduced to Rs.1,000/-, in default whereof to suffer R.I. for three months more. The appellant shall also be entitled to the benefit of section 382-B Cr.P.C. With this modification in the sentences the appeal is disposed of accordingly.

H. A. Khoso
(Mir Hazar Khan Khoso)
Chief Justice

Lahore, the
14th March, 1993.
M. Faridun

Fit for reporting.

H. A. Khoso
(Mir Hazar Khan Khoso)
Chief Justice.