

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

18

PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI.

CRIMINAL APPEAL NO.7/L OF 1994.

Sarwar Masih son of Maisa ... Appellant
Masih, r/o Ghala Mandi Gojra,
Toba Tek Singh.

Versus

The State ... Respondent

For the appellant ... Raja Mahmood Akhtar,
Advocate

For the State ... Mr. Munawar Ahmad
Warraich, Advocate.

No. & date of F.I.R
Police Station ... No.18, dt.9.2.1993,
P.S Factory Area, Sargodha

Date of order of
the trial court ... 30.12.1993.

Date of Institution ... 6.1.1994.

Date of hearing
and decision ... 25.1.1994.

111

JUDGMENT

NAZIR AHMAD BHATTI, J.- Appellant Sarwar Masih

was found drunk on a public place near a hospital by Falak Sher, ASI, Police Station, Factory Area, Sargodha at about 6.30 P.M on 9.2.1993. He was got medically examined at about 7.45 P.M on the same day and after receipt of the medicolegal report he was apprehended for being found drunk on a public place. The ASI arrested the appellant and sent written complaint to the police station where F.I.R No.18 was registered at 8.20 P.M.

2. After investigation the appellant was sent up for trial before Mehr Sultan Ahmad, Magistrate Ist Class, Sargodha, who charged him under Article 11 of the Prohibition (Enforcement of Hadd) Order, 1979, to which the appellant pleaded not guilty and claimed trial.

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3. After the conclusion of the trial the learned Magistrate convicted the appellant under Article 11 of the Prohibition Order and sentenced to undergo rigorous imprisonment for 3 years, and to suffer 10 stripes. The appellant has challenged his conviction and sentence by the appeal in hand.

4. I have heard learned counsel for the parties at length and have also gone through the record with their assistance.

5. The learned counsel for the appellant brought to my notice that the stomach wash of the appellant was taken on 9.2.1993 and the same was also entrusted to Muhammad Azam F.C on the same day by P.W.2 Ijazul Haq MHC, for taking to the office of the

15

Chemical Examiner but the same was received in the latter office on Ist of March, 1993 and the same was examined on 3rd of March, 1993. It was the contention of the learned counsel that no evidence was brought on the record as whether the aforesaid Muhammad Azam F.C had kept the parcel in safe custody or not during the period it remained with him for about 3 weeks and whether the same had not been interfered with. It was also contended by the learned counsel for the appellant that the contents of stomach wash usually start fragrantation after 15 days and the report of the Chemical Examiner, who had examined the stomach wash after about 3 weeks had become very doubtful and it could not be relied upon to show that the contents of stomach wash of the appellant contained narcotics or contraband alcohol. The learned counsel for the State had no reasonable explanation regarding the aforesaid objection of the learned counsel for the appellant. The latter had also in this respect relied upon a judgment of this Court, (Muhammad Hafeez Vs. The State) reported as PLD 1984, FSC-57.

6. I have very anxiously considered this aspect of the matter and I agree with the contention of the learned counsel for the appellant that the matter of chemical analysis of the stomach wash had become very doubtful in as much as there was no evidence that it was kept in safe custody for the period it remained in the custody of the aforesaid Muhammad Azam F.C as well as the Chemical Analysis had also become very doubtful.

7. For the aforesaid reason the appeal is accepted.

The conviction and sentence of the appellant recorded on 30.12.1993 by the learned Magistrate Ist Class Okara are set aside and he is acquitted of the offence for which he was convicted and sentenced. He shall be set at liberty forthwith if not wanted in any other case.

Fit for reporting.


J U D G E

Lahore, 25.1.1994.
M.Akram/