IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE SARDAR MUHAMMED DOGAR.
MR.JUSTICE CH.EJAZ YOUSAF.

CRIMINAL APPEAL NO.50/Q OF 1997.

Rasool Bakhsh son of Khuda Bakhsh
resident of Bar-aab Chah Dalbandin.

... Appellant

Versus

The State	...	Respondent
For the appellant	...	Raja Muhammad Afsar, Advocate
For the State	...	Mr.Ziaullah Khan, Advocate
No.& date of F.I.R Police Station	...	No.21/22/95,dt.18.8.1995 P.S Tehsildar Dalbandin, District Chaghai.
Date of judgment of trial court	...	20.5.1996
Date of Institution	...	8.7.1997
Date of hearing and decision	...	3.5.2000.

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The recovered opium was sealed on the spot and taken into possession vide the recovery memo Ex. P/1-A. F.I.R bearing No.21/22/95 was registered at the Levies Station Tehsil Dalbandin and investigation was carried out in pursuance thereof. On the completion of investigation the appellant was challaned to the court for trial.

3. Charge was accordingly framed to which the accused/appellant pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to prove the charge and substantiate the allegation levelled against the accused/appellant produced three witnesses, in all. P.W.1 Haji Safar Khan is the complainant. He,at the trial, while reiterating the version contained in the F.I.R deposed that in his presence the contraband material alongwith certain arms and ammunition were recovered from the possession of the appellant which was taken into possession by the levies authorities vide recovery memo Ex.P/1-A, in his presence. He added that the contraband material was transported by the appellant and brought into Pakistan Territory from Afghanistan. In the course of his cross-examination he admitted the suggestion as correct that the contraband material was not weighed on the spot and instead it was weighed on the levies check post, in the presence of Assistant Commissioner. He refuted the

mountain is situated adjacent to Bar-aab-Chah. In answer to the question as to why any independent witness of the area was not taken to witness the recovery he stated that since the area of Bar-aab-Chah is not inhabited therefore, it was not possible for them to associate any independent witness. He also refuted the suggestion as incorrect that the appellant was implicated in the case falsely,on account of enmity with levies personnel.

5. On the conclusion of the prosecution evidence the accused/appellant was examined under section 342 as well as 340(2) Cr.P.C. In his statements, he denied the charge and pleaded innocence. His case before the trial court was that he in the night of occurrence, had stayed in the house of P.W.1 Majeed in the area of Dokechi and his minor son,who was ill was with him. After morning prayers, he left the house of said Majeed. At a distance of about half a mile met the complainant and one Nabi Dad levies sepoy who asked him to accompany them to the road. There he saw two persons namely Mahmood and Karim who gave a sum of Rs.40,000/- to Nabi Dad. The appellant was arrested and falsely implicated in the case. He produced two witnesses D.W.1 Abdul Majeed and D.W.2 Shabbir-Ahmad,in his defence. D.W.1 Abdul Majeed deposed that a day prior to the occurrence appellant had come to his house,

6. After hearing arguments of the learned counsel for the parties the learned trial court convicted the accused/ appellant and sentenced him to the punishment as mentioned in the opening para hereof.

7. We have heard Raja Muhammad Afsar,Advocate, learned counsel for the appellant, Mr.Ziaullah Khan,Advocate, for the State and have also perused the entire record with their help.

8. Raja M.Afsar,Advocate,learned counsel for the appellant has raised the following contentions:-

i) That solitary statement of the complainant was not sufficient to warrant conviction of the appellant and due to non-examination of Nabi Dad levies sepoy,who was allegedly accompanying the complainant at the time of occurrence,an adverse inference ought to have been drawn against the prosecution by the trial court.

ii) That the challan was not routed through S.P concerned,in clear violation of section 173 Cr.P.C, therefore, the defect had vitiated the trial.

iii) Additionally it was also submitted by him that the appellant being first offender and sole bread earner of his family,which in his absence has been subjected to poverty,may be delt with leniently.

9. Mr.Ziaullah Khan,Advocate,learned counsel for the State, on the other hand,while controverting the contentions raised by the learned counsel for the appellant urged;-

He submitted that since the offence with which the appellant was charged was punishable with imprisonment for life, therefore, appellant could not have been convicted on the solitary statement of P.W.1 particularly when the recovery was not corroborated by any other piece of evidence. Learned counsel for the appellant maintained that in the circumstances an adverse inference ought to have been drawn by the learned trial court against the prosecution for non-production of the other witness of the crime.

It appears that the learned counsel for the appellant has raised this objection, perhaps under a misconception because firstly; by now, it is well settled that prosecution is not bound to examine each and every witness of the crime and neither adverse inference can be drawn on account of non-production of some or any of the P.Ws nor can it, in any manner, effect the credibility of those witnesses who have been examined. The only question relevant is "as to whether evidence produced at the trial actually, was sufficient to prove the charge?. Reference in this regard may usefully be made to the following reported judgments:-

1) Muhammad Ashraf Vs.The State (2000 SCMR-741)

2) Muhammad Akhtar Ali Vs.The State (2000 SCMR-727)

vii) Muhammad Ashraf Vs.The State
(1971 SCMR-530)

viii) Muhammad Siddique alias Ashraf and three others Vs.The State
(1971 SCMR-659)

ix) Mali Vs.The State
(1969 SCMR-76) and

x) Ali Ahmad alias Ali Ahmad Mia Vs.The State
(PLD 1962 SC-102)

And thirdly; it is wrong to say that in the instant case no corroboratory piece of evidence was available. In our view, recovery of huge quantity of narcotics i.e 75 k.gs of opium (which was supervised by the Assistant Commissioner) and arrest of the appellant from the place of occurrence lend sufficient support to the testimony of P.W.1. The contention therefore, has no force.

12. As regards the next contention that since the challan was not routed through the Superintendent of Police concerned, therefore, the 'defect' had vitiated the trial, it may be pointed out here that even prior to the amendment made in section 173(1) through the Code of Criminal Procedure Amendment Act(XXV of 1992) w.e.f 1.12.1992, whereby it was provided that thenceforth, reports under section 173 Cr.P.C shall be forwarded to the court through Public Prosecutors,there was no such legal requirement that report be routed through the Superintendent of Police. A bare perusal of section 173 Cr.P.C which is reproduced herein below for ready reference and

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may,pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

(3).....

(4).....

(5).....

It would not be out of place to mention here that in the cases of transportation or possession of narcotics which are crimes against the society,technicalties, procedural or otherwise, should not be given serious thought, if the case stand otherwise proved. In this view we are fortified by the observations of the Hon'ble Supreme Court of Pakistan in the case of Munawar Hussain and other Vs. The State reported as 1993 SCMR-789 wherein it has been laid down that in narcotics cases approach of the court should be dynamic and technicalities should be over looked in the larger interest of the country and the public at large and while deciding the case the court should consider the entire material as a whole and if it is convinced that the case is proved then conviction should be recorded notwithstanding such procedural defect. It would be advantageous to reproduce herein below the relevant observations which read as under:-

who had also supervised the recovery, corroborates him on all material points i.e regarding the place and time of arrest of the accused, recovered quantity of opium and preparation of memoes as well as the parcels. Chemical - Examiner's report i.e Ex.P/2 confirms that the contraband material recovered from the possession of the appellant was "opium". Though appellant has disputed that contraband material was recovered from his possession and his plea before the trial court was that it was implanted upon him at the instance of two persons namely Mahmood and Karim yet, a careful perusal of record shows that the defence plea was a sham. Unresonence thereof is ascertainable from this fact alone that in his statement on oath, the appellant has pleaded that he had left D.W's house at morning prayers time and after covering a distance of about half a mile, he met the complainant as well as said Nabi Dad whereafter, they proceeded towards the road and there, Mahmood and Karim alelgedly gave Rs.40,000/- to Nabi Dad so that the appellant may be falsely roped in the case, whereas D.W.1 Majeed deposed that when he reached the Bar-aab Chah Check Post (which is quite a distinct and separate place) at about 8 or 8.30 A.M, Mahmood and Karim both were also present there and in his presence, they handed over a sum of Rs.40,000/-

We, therefore, keeping in view the submissions made by the learned counsel for the parties and facts of the case, while maintaining conviction of the appellant under Article 3(2) of the Prohibition Order,1979 are inclined to reduce sentence of imprisonment recorded against the appellant by the learned trial court in the hope that the indulgence shown to him would bring out of him a law abiding and respectable citizen. Accordingly, sentence of imprisonment recorded against the appellant under Article 3(2) of the Prohibition Order,1979 is reduced from fifteen years R.I to that of ten years R.I. The sentence of fine is also reduced from Rs.three lacs to that of Rs.one lac, in default whereof the appellant shall further undergo S.I for two years. Benefit of section 382-B Cr.P.C shall remain intact. The sentence of stripes is however, set aside/ remitted under the Abolition of Punishment of Whipping Act,1996.

With the above modification in the sentences of imprisonment as well as of fine, this appeal is hereby dismissed.

(CH.EJAZ YOUSAF)
JUDGE

(SARDAR MUHAMMED DOGAR)
JUDGE

(APPROVED FOR REPORTING)

Quetta, 3.5.2000.
M.Akram/

JUDGE