

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

11

PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.184/I OF 1994

Ghulam Mustafa son of
Ghulam Rasool, r/o
Malilpura, Distt.
Abbottabad

... Appellant

Versus

The State

... Respondent

For the appellant

... Khan Mushtaq Khan, Advocate

For the State

... Syed Amjad Ali, Advocate

F.I.R. No., date
and Police Station

... 279, 10.5.1990 P.S.
Cantt. Abbottabad

Date of the order of
the Trial Court

... 11.12.1993

Date of Institution

... 10.8.1994

Date of hearing

... 26.10.1994

Date of decision

... 26.10.1994

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Ali Akbar

Khan, S.H.O., Police Station Cantt. Abbottabad was on patrol duty of the area alongwith some police officials on 10.5.1990. At about 1800 hours he was patrolling the area of Lunda Bazar near Town Hall when he recovered heroin weighing 11 grams wrapped in a paper from the side pocket of the shirt of appellant Ghulam Mustafa. He separated one gram from the bulk as sample, sent both the parcels and written complaint to the Police Station and also arrested the appellant.

2. After investigation the appellant was sent up for trial before the Sessions Judge, Abbottabad, who charged him under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, to which the appellant pleaded not guilty and claimed trial.

3. 6 prosecution witnesses were examined on behalf of the State. The appellant made a statement under section 342 Cr.P.C. but he neither produced any defence evidence nor made any deposition on oath. After the conclusion of the trial the learned Sessions Judge convicted the appellant under Article 4 of 181

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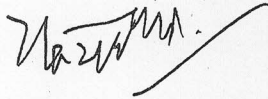
the Prohibition Order and sentenced him to undergo rigorous imprisonment for 5 years, to suffer 5 stripes and to pay a fine of Rs.one thousand or in default to undergo simple imprisonment for 2 months. The convict has challenged his conviction and sentence by the appeal in hand, sent from jail.

4. The learned counsel for the appellant pointed out to me that although the recovery was allegedly made on 10.5.1990 but the parcel was sent to the Office of the Chemical Examiner on 16.9.1990 and no reason has been brought on the record for such inordinate delay in sending the parcel. I have minutely perused the record of the case and I find that the contention of the learned counsel for the appellant is correct. No reason could be found in the record to justify such a long delay in sending the parcel to the Office of the Chemical Examiner. This circumstance and the fact that a very small quantity of heroin, only weighing 11 grams, was allegedly recovered from the possession of the appellant would create a strong doubt in the entire recovery proceedings.

5. Consequently the appeal is accepted. The

conviction and sentence of appellant Ghulam Mustafa
son of Ghulam Rasool recorded on 11.12.1993 by the
learned Sessions Judge, Abbottabad are set aside. 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.



CHIEF JUSTICE

Islamabad,
26th October, 1994.
Bashir/*