

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

Mr. Justice Dr. Tanzil-ur-Rahman CHIEF JUSTICE

Mr. Justice Mir Hazar Khan Khoso Judge

JAIL CRIMINAL APPEAL No.191/L of 1991

Mohammad Siddique son of Dogar, Caste, Changar, resident of Mohallah Sharif Pura, Gojra, District, Toba Tek Singh.	--	Appellant
Versus		
The State	--	Respondent
Counsel for the appellant	--	Sardar Muhammad Ghazi, Advocate.
Counsel for the State	--	Mr. Muhammad Aslam Uns, Advocate.
No. date of FIR & Police Station	--	No.13/89 dt:17-1-1989 P.S. City Gojra.
Date of the order of trial Court	--	12-2-1991
Date of institution of appeal	--	13-7-1991
Date of hearing	--	23-2-1992
Date of decision	--	23-2-1992

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JUDGMENT

DR.TANZIL-UR-RAHMAN, CHIEF JUSTICE.-- This Jail Criminal

Appeal arises out of judgment dated 12-2-1991, passed by learned Additional Sessions Judge, Toba Tek Singh Camp at Gojra, whereby he convicted the appellant under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 (hereinafter referred to as 'the said Order') and sentenced him to life imprisonment with twenty stripes and a fine of Rs.100000/- (one lac). In default of payment of fine the appellant to further undergo R.I., for five years.

2. The facts arising out of the above appeal, briefly stated, are that a police party headed by Malik Muhammad Khan, Inspector, P.W.1, on receipt of information arranged for a raid at the house of Sadiq Changar while the said Sadiq Changar, his mother Mst.Sardaran and the appellant were found on the street outside their house selling heroin. Sadiq and his mother on seeing the police party slipped away leaving there a bag containing 250 grams of heroin. The appellant also tried to escape but was apprehended by the said police raiding party and on his search a poeathine bag containing 1000 grams was recovered from the right pocket of his salooka (vest). The said bag of heroin Exh.P.1, recovered from the possession of the appellant was taken into possession and recovery memo Exh.PA was prepared which was attested by Ghazanfar Abbas,S.I. and Muhammad Iqbal,ASI. One gram of heroin was taken out of it and a sample sent to the office of the Chemical Examiner through Syed Haider Abbas, Constable, for its onward transmission to the office of the Chemical

Examiner on 31-1-1989. On receipt of Chemical Examiner's report EXH.FD in positive a challan against the appellant was submitted in the Sessions Court.

3. The prosecution in all examined five witnesses who have fully supported the prosecution case. The statements of the appellant under sections 342 Cr.P.C., as well as 340(2) Cr.P.C., were also recorded. No defence witness was, however, examined by the appellant.

4. We have heard Mr.Sardar Muhammad Ghazi, learned counsel for the appellant, appointed by the Court, as it is an appeal from Jail and Mr.Muhammad Aslam Uns, learned counsel for the State and also perused the record.

5. Mr.Ghazi, submits that the police let off the other accused namely, Siddique and his wife Mst.Sardaran and apprehended the appellant falsely. The submission is belied by the F.I.R. itself which for the sake of convenience is reproduced as under:-

"امروز میں مع مضمفر عباس انسپکٹر، محمد اقبال اے ایس آئی،"

انور علی ایچ سی/۴۷۹، محمد سعید ایچ سی/۳۲۳ محمد بوٹا، مقصود احمد

۴۹۸، محمد صدیق ۳۲۶، محمد صدیق ۵۳۷، محمد رفیق ۵۷، غلام دستگیر

بشیر احمد ۵۱۵، کنستبلان بسلسلہ گشت اٹا لاریاں گوجرہ موجود تھا

کہ مخبر نے اطلاع دی کہ محلہ شریف پورہ میں صادق چنگڑ وغیرہ

ھیروئین فروخت کر رہے ہیں - جس پر میں نے ریڈنگ پارٹی تیار کر کے

مع ہمراہیاں صادق چنگڑ کے مکان پر ریڈ کیا تو گلی میں صادق چنگڑ ولد

شفیع چنگڑ - محمد صدیق ولد ڈوگر چنگڑ، مسماں سرداراں زوجہ شفیع چنگڑ

ھیروئین فروخت کنڈاں موجود پائے۔ محمد صدیق مذکور کو باامداد
 ہمراہیاں قابو کر لیا گیا۔ جس نے بوقت جامہ تلاشی شورٹل مچانا
 شروع کر دیا، جس پر محلہ کے کافی مرد و زن و بچگان اکٹھے ہو گئے۔
 اس جگہ سے فائدہ اٹھاتے ہوئے، محمد صادق چنگڑ لفافہ مومی
 معمولہ ہیروئین ۲۵۰ گرام گو اور مسماۃ سرداراں مذکورہ ایک
 لفافہ مومی معمولہ ہیروئین وزنی ۲۵۰ گرام کو موقع پر چھوڑ کر
 بھاگ جانے میں کامیاب ہو گئے۔ محمد صدیق کی جامہ تلاشی پر سلوکیہ
 کی سامنے والی دائیں جیب سے ایک لفافہ مومی معمولہ ہیروئین وزنی
 ۱۰۰۰ گرام برآمد ہوئی۔ جو اس میں سے ایک گرام بطور نمونہ نکال
 کر نمونہ و بقایا ہیروئین کے پارسل سریمہر اسمی ایم/سی تیار کر کے
 بذریعہ فرد قبضہ پولیس میں لی گئی ہے۔ ہیروئین و اگڑا شدہ صادق
 چنگڑ، سرداراں کے لفافہ جات کو علیحدہ علیحدہ بذریعہ فردات قبضہ
 پولیس میں لیا گیا۔ اور علیحدہ علیحدہ استغاثہ جات مرتب کر کے
 ارسال تھانہ ہونگے۔ محمد صدیق ملزم نے ہیروئین برائے فروخت قبضہ
 میں رکھ کر جرم زبردفعہ ۳/۲ امتناع منشیات آرڈینینس کا ارتکاب
 کیا ہے لہذا استغاثہ ہذا بمراد قائمی مقدمہ بدست بشیر احمد ۵۱۵ ارسال
 تھانہ ہے مقدمہ درج رجسٹر کر کے نمبر مقدمہ سے اطلاع دی جائے میں
 مصروف دریافت ہوتا ہوں۔

6. Learned counsel further submits that no recovery of heroin
 is established from the possession of the appellant. The reliance is placed by
 him on the statement of the appellant that no heroin was recovered from him.
 The plea is unfounded. It seems pertinent to reproduce the entire statement
 made on oath by the appellant:-

"I was personal servant of Mst. Sardaran and Mohammad Sadiq, accused in other cases of heroin. Police conducted a raid and recovered heroin P.1 and some other from the possession of the said persons and wrongly planted upon me. I ran away at the sight of police party to save myself but I was apprehended by the Police.

XXX by A.D.A

I remained the servant of Mst. Sardaran and Muhammad Sadiq for about one year. It is correct that Sardaran accused used to bring heroin from outside and to hand over the same to Mohammad Sadiq for selling it out. I did not produce any witness in my support, during investigation, before the police. It is incorrect to suggest that heroin P.1 was recovered from me."

7. From the above statement, besides the prosecution evidence, it stands proved that the appellant had been indulging in narcotics' trade as servant of Sadiq and Mst. Sardaran against whom the separate cases under F.I.R. No. 14 and 15 were registered on the same day. It is also proved that the appellant was present on the day, time and place of occurrence. It is admitted by the appellant himself that he ran away on seeing the police party to save himself but he was apprehended by the police and thus his attempt to slip away from the scene of occurrence was foiled.

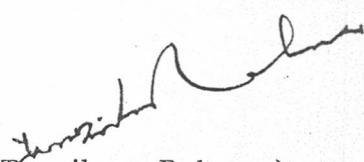
8. As regards the recovery it stands proved by the prosecution witnesses whose evidence could not be shaken in cross-examination. We would, therefore, uphold the conviction of the appellant.

9. Learned counsel lastly prayed for reduction of sentence. He referred to a case wherein this Court had upheld the conviction under Article 4 of the said Order and sentenced to five years' R.I., for recovery

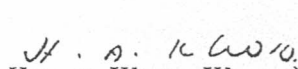
of 500 grams of heroin. Learned counsel for the State submits that the life imprisonment seems to be harsh in the case and the ends of justice would be met if the sentence is reduced to ten years' R.I. In our opinion the mere quantity of contraband article involved in the case should not be the yardstick for the quantum of punishment. All attending circumstances of the case have to be taken into consideration. In the instant case the appellant is shown to be a servant of some drug-traffickers who were challaned separately. We would, therefore, reduce the sentence from life imprisonment to ten years' R.I. The other sentences will remain intact.

10. Learned counsel further requests for the benefit of section 382-B Cr.P.C. Since we have reduced the sentence we do not think it proper to grant benefit of section 382-B Cr.P.C.

11. Before parting with the case we would like to bring this fact on record that Abdul Hafeez, A.S.I., P.S. Gojra, who is present in Court has submitted in writing that in F.I.R. No. 14 and 15 dated 17-1-1989, P.S. City Gojra under Articles 3/4 of the said Order, Muhammad Sadiq son of Muhammad Shafi and Mst. Sardaran have also been convicted and sentenced by the learned Additional Sessions Judge by separate judgment dated 12-2-1991.


(Dr. Tanzil-ur-Rahman)
Chief Justice

Approved for reporting


(Mir Hazar Khan Khoso)
Judge

CHIEF JUSTICE

Islamabad,
23rd February, 1992
ABDUL RAHMAN /****