

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.32/K OF 1994

Arbab Ali son of
Muhammad Paryal Dahani,
r/o Gajanpur Mohallah, ... Appellant
Larkana

Versus

u The State ... Respondent

For the appellant ... Mr.Masood Shaharyar,
Advocate

For the State ... Mr.Wakeel Ahmad Qureshi,
Advocate

F.I.R. No., date and ... 4/93, 23.1.1993 P.S.
Police Station Larkana

Date of the Order of ... 16.5. 1994
the Trial Court

Date of Institution ... 22.6.1994

Date of hearing ... 20.12.1994

Date of decision ... 27.12.1994

JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Appellant

Arbab Ali was convicted by IV-Additional Sessions Judge, Larkana by judgment dated 16.5.1994 under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 and was sentenced to undergo rigorous imprisonment for 3 years, to suffer 10 stripes and to pay a fine of Rs.30,000/- or in default to further undergo rigorous imprisonment for 6 months. The convict has challenged his conviction and sentence by the appeal in hand, sent from jail.

2. Sadarudin Pechuho, Assistant Excise and Taxation Officer, Larkana was on patrol duty alongwith some other officials of the Excise and Taxation Department, on 23.1.1993. At about 1400 hours the complainant was present in Mohallah Gajanpur near the house of Muhammad Parial Dahani when he saw the appellant trying to sneak away and finding his movements suspicious, the complainant, Excise and Taxation Officer apprehended him and carried out search of his person. The

-3-

complainant recovered 30 grams of heroin powder contained in a plastic bag from the right side pocket of his shirt. The complainant wrapped the plastic bag containing heroin powder in a white paper and after weighing the same prepared a parcel for chemical analysis. He also arrested the appellant and sent written complaint to Police Station, Larkana.

3. After investigation the appellant was sent up for trial before the IVth Additional Sessions Judge, who charged him under Articles 3 and 4 of the Prohibition Order to which the appellant pleaded not guilty and claimed trial. Two witnesses were examined by the State in proof of the prosecution case while the appellant made a deposition under section 342 Cr.P.C. but he neither produced any defence nor made any deposition on oath.

4. P.W.1 Sadardin Pechuho corroborated the contents of the F.I.R. He further stated that he had himself carried out search of person of the appellant

-4-

and had recovered a polythene bag containing heroin from the right side pocket of his shirt. He further stated that he had himself prepared the parcel of the recovered heroin and had also made recovery memo which was attested by P.W.2 Muhammad Ibrahim. The latter corroborated the testimony of P.W.1 and deposed that the recovery of heroin powder from the appellant was made by the complainant in his presence and parcel of the recovery was made on the spot and he attested the recovery memo as a marginal witness. In rebuttal there is only the solitary statement of the appellant without oath wherein he denied the recovery of any heroin from his possession and stated that the complainant had demanded an amount of Rs.5,000/- from him as bribe and on his refusal he falsely implicated him in the case.

5. The recovery of heroin powder weighing 30 grams from the possession of the appellant was proved and there was no rebuttal of this fact. The only contention of the learned counsel for the appellant

-5-

was that the recovery had been made on 23.1.1993 but the sample was received in the Office of the Chemical Examiner on 16.2.1993 but there is no explanation on the record as why this delay had ~~xxx~~ occurred and the matter had become doubtful. I have very anxiously considered this aspect of the matter. No doubt the report of the Chemical Examiner shows that the sample was received in his office on 16.2.1993 and no explanation has been brought on the record as where it was delayed as the accompanying letter was dated 24.1.1993 and it was sent by the hand of Swar Shafi Muhammad. The learned counsel for the State had contended that the sample was sealed in a parcel at the spot on the day of occurrence and it was sent to the Office of the Chemical Examiner on the next day with an accompanying letter which was dated 24.1.1993 and when it was received in the Office of the Chemical Examiner it contained the same seals intact with signatures of two mashirs and the I.O. He was of

-6-

the opinion that all that showed that although the sample was received in the Office of the Chemical Examiner with a delay of about 3 weeks yet it had not been tampered with because signatures of the attesting witnesses were found intact as also the seal of the I.O. In this view of the matter the contention of the learned counsel for the appellant does not make any headway.

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6. It was again contended by the learned counsel for the appellant that the police officials of the same Police Station had been made witnesses of recovery which had made the recovery doubtful. I do not subscribe to this idea as police or excise and taxation officials can be competent witnesses of recovery of any narcotic from the personal possession of any accused. There is no merit in this appeal which is dismissed.

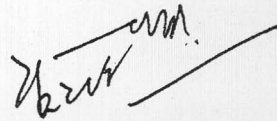
7. The learned Additional Sessions Judge had not allowed benefit of section 382-B Cr.P.C. to the appellant but in view of the recovery of small quantity of narcotic

the appellant was justified to claim the said benefit.

He shall therefore, be entitled to the benefit of

section 382-B Cr.P.C.

FIT FOR REPORTING.



CHIEF JUSTICE

Announced in open court on
27.12.1994 at Karachi.

Bashir/*