

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE ABDUL WAHEED SIDDIQUI

Jail Criminal Appeal No.127/Q of 1998.

Maia Khan s/o Kafo, Caste Achakzai, r/o killi Machan, Pishin, Balochistan	.....	Appellant
	Versus	
The State	.....	Respondent
Counsel for the appellant	.....	Miss.Aisha Tasneem Khan, Advocate
Counsel for the State	.....	Qari Abdul Rashid, Advocate
FIR No. Date and Police Station	.....	80/98 dated 17-7-1998 P.S Kuchlak
Date of judgment of trial Court	.....	18-9-1998
Date of Institution	.....	8-10-1998
Date of hearing	.....	1-2-1999
Date of decision	.....	1-2-1999

JUDGMENT:

ABDUL WAHEED SIDDIQUI, J:- Appellant has assailed a judgment delivered by ^{the Court of} Additional Sessions Judge-I, Quetta on 18-9-1998 whereby he has been convicted under Article 4 of the Prohibition (Enforcement of Hadd) Order 1979, hereafter to be referred to as the said Order, and is sentenced to R.I for 3 years and also to pay a fine of Rs:10,000/-. In default of payment he has to further undergo S.I for five months. Benefit of Section 382-B Cr.P.C. is also extended.

2. Story of prosecution, in brief, is that on 17-7-98 at about 4/20 P.M complainant Ghulam Mustafa Gaman (PW-2), SHO, P.S Kuchlak, District Quetta, was on patrol duty accompanied by other personnel of police. When they reached near Killi Domran, they found the appellant in suspicious condition having alighted from a bus coming from Chaman. He was proceeding towards gardens that he was caught hold. From his personal search, three pieces of opium covered with plastic were recovered from his waste-coat which were found sewed inside the said waste-coat. It was weighed and found to be four KGs. Recovered narcotic and waste-coat were taken into possession through memo of recovery Ex.P/3-A and were sealed into parcel. A murasila Ex.P/2-A was sent to the

police station Kuchlak where an FIR was registered. The

investigation was entrusted to Hameedullah (PW-4), SIP.

During investigation this I.O went on leave and then another

I.O, Asim Shafi (PW-3) S.I — completed the investigation.

Appellant was challaned and charged under Article 3 of the

said Order, to which he did not plead guilty.

3. To prove its case prosecution examined 4 witnesses.

Syed Abdul Jabbar (PW-1), Chemical Expert, Crimes Branch,

FSL Quetta proved Ex.P/1-A which is his report of chemical

analysis of the parcel containing 4 KGs which proved to be

Raw opium. He has deposed that the parcels were received by

the laboratory on 28-7-1998. Ghulam Mustafa (PW-2), complain-

ant, has proved the contents of his murasila Ex.P/2-A. He

has also proved FIR Ex.P/2-B and challan Ex.P/2-C. Asim Shafi

(PW-3), ASI has proved his being one of the members of the

raiding party and has corroborated the complainant (PW-2).

He has proved his investigations since 21-8-1998 as the

first I.O had gone on leave. Hameedullah (PW-4) has proved

that he was working as SI at P.S Kuchlak on 17-7-1998. He

was entrusted with investigation and took necessary steps

in this regard. Then he went on leave and handed over the

file to S.H.O.

In his statement under section 342 Cr.P.C, appellant has

denied all the specific questions. To question No.9, he has

replied as under:

”میں بے گناہ ہوں۔ میں نے کوئی جسم نہ دیا ہے۔ اور نہ ہی مجھے کوئی
افیون ہرا دیا ہوگی۔ 110 کے اصل کوٹھڑا اور مجھے ہرا دیا گیا ہے۔
میں ملوث کیا۔“

4. I have heard the counsel for appellant and State.

The counsel for appellant has mainly relied on the following contentions:

1. Advanced age of the appellant
2. Violation of mandates of ^{section} 103 Cr.P.C

The first contention is based on the following admission of

Ghulam Mustafa (PW-2):

”یہ سب سے کم ماہر کا عمر 3/4 سال ہے“

The learned counsel's contention that at this advanced age, carriage of 4 KGs of weight is not possible is patently erroneous and is rejected accordingly.

The second contention is also misconcieved in view of the principles enunciated by the apex Court and cited as, inter alia, 1994 SCMR 1543, 1995 SCMR 1793.

5. The counsel for State has contended that the prosecution has been able to prove the guilt of accused beyond reasonable doubts. However he has conceded that the advanced age of the appellant is creating mitigating circumstances. In view of this position, the impugned judgment

and conviction is upheld. However the sentence is reduced from R.I of 3 years to R.I of 2 years and fine is also reduced from Rs:10,000/- to Rs:2000/-. In case of default in payment of this fine, appellant has to undergo further S.I for one month. Benefit of Section 382-B Cr.P.C shall remain intact. With these modifications appeal is dismissed.

(Abdul Waheed Siddiqui)
Judge

Fit for Reporting
- Judge

Islamabad, the
1st February, 1999
Zain