

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sajjad Ali Shah
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No. 83-P/2013 &
Jail Petition No.474/2017**

(Against judgment dated 30.05.2013 passed by the
Peshawar High Court, Peshawar in Criminal Appeal No.
478-P/2012 and Murder Reference No. 19-P/2012)

Izzat Ullah

(in Cr.P. No.83-P/2013)

Mst. Robina

(in J.P. No.474/2017)

...Petitioner(s)

Versus

The State

...Respondent

For the petitioner:

Mr. Altaf Samad, ASC
(in Cr. Petition No.83-P/2013)
Mrs. Farhana Naz Marwat, ASC
(in Jail Petition No.474-P/2017)

For the State:

Mr. Zahid Yousaf Qureshi,
Addl. A.G., KPK

Date of hearing:

27.09.2019.

JUDGMENT

Qazi Muhammad Amin Ahmed, J. Jail Petition No.474 of 2017 by Mst. Robina and Criminal Petition for Leave to Appeal No.83-P/2013 by her co-convict Izzat Ullah, bound by a common thread, are being decided through this single judgment; they were intercepted on 27.3.2010 at 10:00 a.m. within the precincts of Police Station Muhammad Riaz Shaheed District Kohat at a check-post while travelling in a vehicle bearing Registration No.AJD-911

Sindh. Izzat Ullah petitioner was on the wheel, Mst. Robina being next to him; on a suspect response, when questioned, the vehicle was extensively searched and the police contingent succeeded to discover a secret cavity in the fuel tank wherefrom 20 packs each with 1050 grams heroin were recovered. Soon after the arrest, Mst. Robina was produced before Mr. Tilla Muhammad, Judicial Magistrate (PW-1) who recorded her confessional statement (Ex.PW-1/2). Izzat Ullah petitioner opted to make his breast clean on the following day through statement (Ex.PW-1/5). As the investigation progressed, co-accused Majnoon son of Rustam was also taken on board for having dispatched the consignment. One Fida, an alleged privy to the transaction, is still away from the law. Upon indictment, the accused claimed trial whereupon prosecution produced as many as eight witnesses, besides the forensic report to drive home the charge; they confronted prosecution evidence with unanimous denials with a reticence as to why they were roped in the case. The learned trial Judge extended benefit of the doubt to Majnoon co-accused, however, vide judgment dated 9.10.2012 proceeded to convict Izzat Ullah and Robina Bibi under section 9(c) of the Control of Narcotic Substances Act, 1997; the former was sentenced to death while latter to imprisonment for life; their convictions were maintained by the High Court, however, death penalty awarded to Izzat Ullah was altered into imprisonment for life and it is so done on the request of his counsel on account of his being merely a carrier without deriving much benefit from the crime.

2. Validity of confessional statements as well as prosecution's failure to establish safe custody and transmission are the main planks stressed on behalf of the convicts besides non-availability of public witnesses to attest the recovery.

3. Confessional statements before Tilla Muhammad, Judicial Magistrate (PW-1), though retracted subsequently present formidable piece of evidence, inexorably pointed upon the convicts' culpability. Mst. Robina made disclosure within a small span of time soon after her arrest, during her first appearance before the Magistrate; Izzat Ullah followed the suit; both of them after having

been administered warnings and cautions, though disapprovingly on a printed format, nonetheless, made statements otherwise found by us as voluntary, natural and truthful with relevant details compatible with the salient features of the case; brief interregnum rules out hypothesis of manipulation. Other pieces of evidence have been found by us as independently sufficient to drive home the charge; forensic report confirms the lethal nature of the substance, recovered in a quantity that cannot be possibly foisted in routine; seizure of the vehicle clinches the case. Argument of safe custody does not hold much water as Abdul Faraz 28/C (PW-10) took the sample to the Forensic Science Laboratory along with *Rahdari* Ex.PW8/3 was not cross-examined despite opportunity. Forensic Report (Ex.PZ) corroborates the position taken by the said PW. Absence of public witnesses is beside the mark; public recusal is an unfortunate norm. Prosecution witnesses are in a comfortable unison; being functionaries of the Republic, they are second to none in status and their evidence can be relied upon unreservedly, if found trust worthy, as in the case in hand. Both the courts below have undertaken an exhaustive analysis of the prosecution case and concurred in their conclusions regarding petitioners' guilt and we have not been able to take a different view than concurrently taken by them. Petitions fail. Dismissed.

Judge

Judge

Judge

Islamabad
27th September, 2019
Not approved for reporting
Azmat/-