

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 657 OF 2016

(On appeal against judgment dated 29.09.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 1628/2009)

Zulfiqar @ Zulfa

... Petitioner

VERSUS

The State

... Respondents

For the Petitioner: Nemo

For the State: Ch. Muhammad Sarwar Sidhu, Addl. P.G.

Date of Hearing: 16.12.2020

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- The

petitioner was proceeded against in terms of the case registered vide FIR No. 1372/2007 dated 20.10.2007 under Section 9 (c) of the Control of Narcotic Substances Act, 1997, at Police Station Saddar, Faisalabad. The learned Trial Court vide its judgment dated 28.08.2009 convicted the petitioner under Section 9 (c) of the CNSA, 1997, and sentenced him to imprisonment for life. He was also directed to pay fine of Rs.30,000/- or in default thereof to further suffer one year & four months SI. Benefit of Section 382-B Cr.P.C. was also extended to him. The learned High Court vide impugned judgment maintained the conviction and sentence recorded by the learned Trial Court.

2. Briefly stated the facts of the matter are that on a spy information, raid was conducted on the house of the petitioner and

he was apprehended with a sack full of *bhukki/poast*. On search, it was found that there was 15 kilogram of *bhukki/poast* in the bag. Out of the 15 kilogram, 500 grams was separated for chemical analysis. The report of the Chemical Examiner came positive. The prosecution produced six witnesses in support of its case. In his statement recorded under Section 342 Cr.P.C., the petitioner denied the allegations leveled against him and pleaded that he is falsely involved in this case.

3. None was present on behalf of the petitioner in this case. However, in the interest of justice, instead of adjourning the case, we have decided to proceed with the case and decide it on merits.

4. Learned Additional Prosecutor General has *inter alia* contended that the petitioner was caught red handed with a huge quantity of narcotics; that the Police had no enmity with the petitioner to falsely implicate him in the present case and that the prosecution case has been fully proved beyond any reasonable doubt. He lastly contended that the petitioner deserves no leniency by this Court.

5. We have heard learned Law Officer and have perused the case record.

6. The petitioner was caught red handed by the Police while he was holding a sack, which contained 15 kilograms of *bhukki/poast*. To bring home the guilt of the petitioner, the prosecution produced six witnesses, out of which Ghazanfar Ali, constable (PW-4) and Khawaja Imran Manan, ASC (PW-6) were important. Both these PWs were cross-examined by the defence counsel at length but they remained consistent on all material

particulars of the case. We have noted that FIR was registered in the year 2007 whereas the evidence was recorded in the year 2009, therefore, the possibility of minor discrepancies in the statements of PWs is natural. This Court in a number of cases has held that police officials are also competent witnesses and their testimony cannot be discarded merely for the reasons that they are employees of police force. This Court in Salah-ud-Din Vs. State (2010 SCMR 1962) has held that *"reluctance of general public to become witness in such like cases has become judicially recognized fact and there was no way out to consider statement of official witness, as no legal bar or restriction had been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remained un-shattered during cross-examination."* The occurrence took place on 20.10.2007 whereas the sample was sent to Chemical Examiner on 02.11.2007 and according to the report of the Chemical Examiner the sample contained 'poast'. Keeping in view the above position, it can safely be said that there is sufficient evidence available to connect the petitioner with the commission of crime. However, so far as quantum of punishment is concerned, we note that this is a case of lesser punishment and for this we will examine as to what actually is the 'poast'/opium. In Section 2(t) of the Control of Narcotics Substances Act, 1997, 'opium' has been defined as under:-

"(t)"opium" means:-

- (i) poppy straw, that is to say, all parts of the poppy plant (papaver somniferum or any other species of Papaver) after mowing, other than the seeds,*
- (ii) the spontaneously coagulated juice of capsules of poppy which has not been submitted to any manipulations other*

than those necessary for packing and transport; and

- (iii) *any mixture, with or without natural materials, of any of the above forms of opium, but does not includes any preparation containing not more than 0.2 per cent of morphine;"*

7. As per definition clause of CNSA, after mowing, all parts of the poppy plant except seeds are considered to be poppy straw. However, this Court in the case reported as Taimoor Khan Vs. State (2016 SCMR 621) while referring to earlier judgment of this Court reported at Muhammad Imran v. The State (2011 SCMR 1954) has held that it is only the basket, sack or pouch (also known as 'Doda') excluding the seeds, which contains narcotic substance and that all poppy straw may not necessarily be 'poast'/doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds. It would be advantageous to reproduce the relevant portion of the said judgment, which reads as under:-

"What exactly is that which is called 'Poast'?"

It has been agreed before us by the learned counsel for all the parties and it is also borne out from the authoritative works referred to above that in the local parlance Poast is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant. This natural pouch or bulb made of the skin of the plant is meant by the nature to hold and protect the seeds of the plant contained therein. In some parts of this country this natural pouch of the poppy plant is also known as Doda. The Control of Narcotic Substances Act, 1997 calls this part of a poppy plant as 'capsule' of poppy and this finds a specific mention in section 2(t) (ii) of the said Act. The authoritative works mentioned above as well as the learned counsel for all the parties before us are also in agreement that if an unripe capsule of a poppy plant is given an incision then a fluid oozes out of the same containing meconic acid and a number of alkaloids including narcotine and morphine which fluid thickens within a short time and becomes brown in colour and such substance is pure opium. It is also

agreed at all hands that even ripe and dry capsules of poppy contain morphine and other alkaloids, i.e. opium, although less in quantity, which can be used for sedative and narcotic action. Most of the authoritative works produced by the learned counsel for the parties also confirm that alkaloids can be extracted even from a mature and dry plant of poppy or poppy straw whether it is in its natural shape or is in a crushed form. However, the seeds contained in a capsule of a poppy are free from morphine. After its mowing every part of a poppy plant, including its capsule/Poast/Doda but excluding the seeds, is generally called poppy straw and, thus, every Post/Doda is a part of a poppy straw but all poppy straw may not necessarily be Poast/Doda because poppy straw can be any other part of the mowed poppy plant as well, excluding the seeds. (Underlined to lay emphasis)

8. From the above, it is clear that 'Poast' is the name given to that part of a poppy plant which has the shape of a basket, sack or pouch and it contains the seeds of such plant. In some parts of this country this natural pouch of the poppy plant is also known as Doda. This led us to the question as to what actually was recovered from the petitioner. Was it only the *doda/basket/pouch* or it was the whole plant with stems and flowers? But unfortunately, there is nothing in evidence regarding this aspect of the matter. In common parlance, it has been seen that oftenly stems and leaves of the poppy plants are used as animal food. The plant can reach the height of about 1-5 meters (3-16 feet). Poppy straw is derived from the plant *Papaver somniferum*, which has been cultivated in many countries of Europe and Asia for centuries. This has medicinal impact as well, which is largely used as a tonic for wellness of nervous system. The purpose of its cultivation was actually the production of poppy seeds. The latter is used as a food stuff and as a raw material for manufacturing poppy-seed oil, which is used for making various varnishes, paints and soaps etc. We, therefore, find it a mitigating circumstance. The

petitioner is behind the bars for the last more than 13 years and his remaining sentence is less than two years.

8. For what has been discussed above, we while maintaining the conviction of the petitioner, reduce the sentence of imprisonment for life awarded to him into what he has already undergone. The petitioner shall be released from jail forthwith, unless detained in any other case. This jail petition is accordingly converted into appeal and partly allowed.

JUDGE

JUDGE

JUDGE

Islamabad, the
16th of December, 2020
Approved For Reporting
Khurram