

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI
MR. JUSTICE GULZAR AHMED
MR. JUSTICE DOST MUHAMMAD KHAN

Criminal Appeal No.163/2013 and Criminal Appeal No.164/2013

(On appeal from the judgment dated 16.5.2013 passed by the Lahore High Court, Rawalpindi Bench Rawalpindi in Criminal Appeal No.333/2010).

1. Taimoor Khan

...Appellant
(In CrI.A.163/2013)

2. Taj Muhammad

...Appellant
(In CrI.A.164/2013)

Versus

The State and another

..Respondents in both cases

In CrI.A.No.163/2013

For the appellant:

Mr. Basharatullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Mr. Muhammad Waheed Khan, Addl. PG. Pb

In CrI.A.No.164/2013

For the appellant:

Malik Abdul Haq, ASC

For the State:

Mr. Muhammad Waheed Khan, Addl. PG. Pb

Date of hearing:

4.2.2015

JUDGMENT

Dost Muhammad Khan, J- This single judgment shall also decide Criminal Appeal No.164/2013 filed from Jail by Taj Muhammad as both are against the same judgment of Lahore High Court Rawalpindi Bench, Rawalpindi dated 16.5.2013 and because both are out come of the same crime FIR No.174 dated 17.7.2007 registered by Police Station, Hasan Abdal district Attock under Section 9(c) of Control of Narcotic Substances Act, 1997.

Arguments of the learned counsel for the appellants and learned counsel on behalf of State heard and record carefully perused.

2. On the above date, at 7.00 am truck No.P-3388/Peshawar was intercepted by Shakeel Ahmed, Inspector/SHO/I.O., Police Station, Hasan Abdal alongwith his police party. After a brief chase, the same was brought to halt. The present appellant was found on the front seat, while Taj Muhammad appellant of the connected appeal, was occupying the driver seat. On search of the body/deck of the truck, 160 bags ground poppy, each weighing 50 kilograms, total weight 8000 kilograms was recovered. Allegedly, small quantity from each bag, total weighing 500 grams was separated for examination by the Chemical Examiner for his opinion and report, while bulk of stuff was separately taken into possession. Both the appellants were arrested.

3. The Chemical Examiner report Ex-PD dated 25.7.2007 reveals as follows:-

“The sample was examined and I was led to conclude that it was poppy head. Test on back page.

The above packet contains crushed poppy heads which can be used to cause intoxication”

4. On the reverse page of the report, for his own convenience, the Chemical Examiner has put a rubber stamp and only the blanks have been filled without showing the percentage of Meconic Acid, Sulphuric Acid, Porphyroxin, Alkaloids, Morphine and Codeine. According to chemical and physiological formula, the combination of these acids and alkaloids of required percentage would constitute narcotics substance of a prohibited degree.

5. Today when the case was taken up for hearing, the learned State counsel simply relied on the definition given in Section 2, clause (t) which is reproduced below:-

“(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;”

6. He also referred to Clause (w) of Section--2 defining poppy straw which is as follows:-

“(w) “poppy straw” means all the parts, except the seeds of the opium poppy after mowing;”

7. In view of the legal controversy, we have carefully attended to this aspect of the matter and found that the report of Chemical Examiner as is common to all experts on the subject is a rough work not upto the mark. We have noticed with great concern that Chemical Examiners are taking this important task very lightly, conveniently ignoring the fact that their report alone would render the substance to be a particular narcotic substance because under the provision of Section 34 of Control of Narcotic Substances Act, 1997, the Federal Government has been authorized to set up Narcotic Testing Laboratories and such other Institutes and Narcotics Testing Research Laboratories or notify any other laboratory or institute to be a Federal Narcotics Testing Laboratory for carrying out the purpose of the Act. Under the provisions of Sub-section-2 thereof, the Provincial Governments have also been vested with the same and the similar authority.

8. With few exceptions, both the Federal and Provincial Governments have almost notified the existing Narcotics Testing Laboratories for the purpose of section 34 of the Narcotics Substance Control Act, 1997 and did not establish modern laboratories, well equipped with the modern techniques, managed and headed by the experts of required qualifications and experience, essential for

chemical analysis of narcotics. In this way, both the governments have not fulfilled their statutory obligation under the provision of section law. This kind of uncaring attitude on the part of the Executive fully exposes the degree of interest it has taken, to assist in the administration of justice on the matters relating to narcotics substance. For this very reason, the raw hands so-called experts and ill-equipped laboratories are forwarding reports to the Courts, bereft of sound reasons, the chemical and physiological formula and percentage of each alkaloid found in the substance is conspicuously omitted essential to form a fair conclusive opinion regarding its potency of causing intoxication.

9. Opium or opium derivatives are obtained from opium poppies (*papaver somniferum*), the most popular and attractive garden plants. The opium latex inside the pod is obtained through indigenous process. Sharp cuts/incision is given puncturing the pod, the liquid/latex starts leaking out and coagulates around the pod and after many hours when it changes the colour, the dried latex is scrapped. The same is then transformed into baked or consumable opium through indigenous process of light heating.

10. The baked/dried opium contains two main groups of Alkaloids. The first group is morphine, codeine and thebaine. The other group is Isoquinolines, such as papaverine and Noscapine. The First group falls within the definition of dangerous drugs (narcotics substance) as the same significantly effects the central nerve system. If the opium is chemically processed then, synthetic morphine, heroin and codeine are procured therefrom. Amongst the first category morphine is placed in the most dangerous drug like heroin. The first category of alkaloids in opium contains 10% to 16% morphine having dangerous/harmful effects causing lungs edema, respiratory conjunction, ultimately leading to collapse of cardiac and respiratory system. Although under a proper licensing system, it is also used for medicinal purpose but the

smugglers involved in illegal business, supply the same to the drug edicts throughout the world.

11. Under the provision of section 34 (ibid) read with the relevant rules, the opinion of the notified expert alone is admissible in evidence and the person found in possession of narcotics substance is invariably punished on the opinion of the expert because the Investigating Officer, the Prosecutor or the Judges being not expert on the subject cannot give legally acceptable opinion to this effect. In this way, very heavy responsibility is placed on the qualified Chemical Examiner by the law to give well reasoned, authoritative and detailed opinion about a particular narcotics substance.

12. Keeping in view the provisions of the Act, Rules, vide SRO No.810(I)/2001 dated November 28, 2001 were published in the Gazette of Pakistan, Extraordinary Part-II for the guidance of the Chemical Examiners and about their qualification. Under rule 3 thereof, the chemical analysts shall be a person who has a degree in Pharmacy or Pharmaceutical Chemistry or Medicine from a recognized University or of any other institution recognized by the Federal Government for this purpose and has not less than three years postgraduate experience in the test and analysis of drugs. While, under rule 4 the Investigating Agency is required to send a sample in a reasonable quantity taken from each bag/slab/packet to the Testing Laboratory by insured post or through special messenger duly authorized for the purpose.

Rule 6 of the ibid Rules requires that after test or analysis, the result thereof, together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II, which shall be signed and stamped by the officer authorized and notified by the Federal Government in the Official Gazette.

13. The above legal requirements are obligatory/mandatory in nature, therefore, chemical analysis if carried/conducted in derogation of or in disregard

of the required procedure, the report of the Chemical Examiner would lose its sanctity and cannot be acted upon for the purpose of convicting a person on absurd, meager, cryptic, insufficient and inconclusive report. It is a high time for the prosecution and all the government departments dealing with this subject, to realize the sensitivity of the matter because under the provisions of S. 9(c) of the Act, 1997, the punishment for possessing, transporting or trafficking and smuggling narcotics substance is death sentence or life imprisonment with a fine of no limit. No one can be deprived of his lifelong liberty or sent to gallows unless and until the Chemical Examiner possesses the required qualification and experience, duly notified by the Federal Government and his report contains elaborate reasons giving percentage of each alkaloid contained in the narcotics substance and giving a conclusive opinion as to whether the required percentage of alkaloid is sufficient to cause intoxication and the substance so analyzed clearly falls within the definition of narcotics substance or not.

14. As earlier noted, in the present case on the second page of the report of Chemical Examiner (Ex-PD) it is mentioned that the sample was consisting of crushed poppy heads of brownish colour. The Chemical Examiner has put a rubber stamp on the same page, which is as follows:-

<p>CHEMICAL TESTS FOR OPIUM CONTENTS</p> <p>Test For Meconic Acid_____</p> <p>Test for Sulphuric Acid_____</p> <p>Test for Porphyroxin_____</p> <p>Test Alkaloids_____</p> <p>1 Morphine_____</p> <p>2 Codein_____</p>
--

The above rubber stamped chart does not convey any sense much less a meaning as to what actually the Chemical Examiner has written and conveyed to the Court or to the sender, in his report. Certainly it is a gross negligence on his part. He has violated the rules and mandatory procedure and is liable to be proceeded against under the E&D Rules to make it a lesson for the others.

15. During the course of hearing, we were also confronted with the correct and true definition of narcotics substance/drug, particularly, opium and its alkaloids and that what percentage of the same on consumption would cause intoxication to bring it within the definition of narcotics substance. This issue was also the subject of discussion and debate before the Lahore High Court in the case of Khalil-ur- Rehman v. The State (PLD 2005 Lhr. "F.B" 440).

16. After combined study of the various provisions of the definition clauses i.e. sections 2 and 3 of the Act, one is left to the guesswork due to incomplete and absurd definition of 'opium' given in clause (t) of section 2 of the Act. The same is reproduced below:-

- (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 include any preparation containing not more than 0.2 per cent of morphine."*

Similarly, under clause (w) *"poppy straw"* means all the parts, except the seeds of the opium poppy after mowing, while under clause (x) *"poppy straw concentrate"* means the material obtained after the poppy straw has been subjected to a process for the concentration of its alkaloids. In the judgment (ibid) the Lahore High Court has noted down the defects, flaws and omissions in the definition clauses however after holding such view, no directions were issued to the Legislature/Government to make good the deficiency in the relevant provisions of law.

17. Now it is deemed imperative to draw a fair inference from the definition clauses of section 2 of the Act and if it is not so possible then to recommend and advise the remedial measures.

18. The definition of the '**poppy straw**' although does not expressly mention the latex in liquid or dried form but the deducible inference would be that it speaks about the entire plant including the poppy pods containing latex/milky liquid, from which opium is obtained because the intended exclusion therefrom is the seeds inside the pod. Thus, fair conclusion would be that it does not speak with clarity about the opium as well, which is part of the poppy straw. The next question thus, arises is that, primarily it is the percentage of particular alkaloids in a particular substance, which would render the substance a narcotics substance because the universal conventions too lay emphasis to that effect. However, the vagueness and absurdity in the relevant definition clauses leave behind much for debate and discussion. There is no cavil to the proposition that once it is described that the latex/liquid inside the pod of poppy plant, obtained through the above indigenous procedure, is the principal narcotics substance, the most precious one for those who indulge in illegal business of opium then empty capsules/pods, out of which the seeds and remnants/micro particulars are removed/scrapped, still would have intoxicating effect, is definitely a matter of high presumption and drawing conclusion in that way would be highly unsafe unless research based opinion, both of international and national level is incorporated in the true and correct definition of poppy straw, clearly drawing a distinction between pure opium, pods and straws including the latex of the poppy plants to categorize which one is potential narcotics substance and others of minimum degree not causing intoxication like pure opium as presently, the definition of poppy straw u/s 2(t) is misleading being vague and absurd.

19. This clarification in the definition clause is required to be made because not only the sentence u/s 9(c) of the Act is death or life imprisonment if

the quantity is of the nature mentioned therein but also for the reasons that this grave menace of drug trafficking is increasing day by day because of the poppy cultivation at massive level in the neighbouring country, so that the serious mischief posing threat to human life and dignity is suppressed in an effective manner. The Government and the Legislature may take guidance from the international conventions beside the research oriented opinions of the experts on the subject while making amendments in, addition or omitting something from the definition clauses so that the meaning of opium with regard to poppy straw is clearly provided and present confusion in the definition clauses is adequately removed/done away. Therefore, we direct the Government to make an early effort for doing the needful as discussed above.

Similarly, the learned Attorney General for Pakistan and the Secretary Narcotics Division are required to issue clear directions to all the Laboratories, headed by the Chemical Examiners requiring them to comply with the above guidelines contained in the rules mentioned above, otherwise such cryptic, absurd, meager and inconclusive report would be of no benefit to the prosecution in future. The required qualification and experience of each expert shall also be checked and properly verified without any undue delay.

20. Now looking at the facts of the present case, we have found on record an application of the accused submitted to the trial Court with a request to send a reasonable quantity of the preserved sample for re-examination through any other Laboratory however, at a subsequent stage, the defence did not press the application rather abandoned this plea and it was dismissed by the trial Court through a short order. This conduct of the accused/defence raises a strong presumption against them as they were apprehending another result adverse to them, otherwise there was no impediment in their way to have taken the matter to a logical conclusion getting clearance from the charge.

21. Accordingly, we do not find legal merits in both the appeals, which are dismissed.

Judge

Judge

Judge

Islamabad, the
4th February, 2015
Sarfraz /-

‘Approved for reporting’