

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE SAJJAD ALI SHAH

CRIMINAL APPEAL NO. 90-L OF 2017

AND

CrI.Misc. Application No. 307-L/2018

*(On appeal from the judgment dated 24.03.2014
of the Lahore High Court, Lahore passed in
Criminal Appeal No. 2374/2010)*

Muhammad Adnan son of Khadim Hussain.

... Appellant

Versus

The State.

... Respondent

For the Appellant	:	Kh. Muhammad Saeed, ASC. Mrs. Tasnim Amin, AOR (absent).
For the State	:	Ch. Muhammad Waheed Khan, Additional Prosecutor General, Punjab.
Date of Hearing	:	13.09.2018.

J U D G M E N T

QAZI FAEZ ISA, J.

Criminal Miscellaneous Application No. 307-L/2018: Since we have proceeded to hear the main appeal, this Application seeking the suspension of sentence, has lost its relevance and is disposed of.

Criminal Appeal No. 90-L of 2017:

1. This appeal, with the leave of the Court, assails the judgment dated 24th March, 2014 of a Division Bench of the Lahore High Court, Lahore which had upheld the judgment dated 15th September, 2010 of

the Judge Juvenile Court CNSA, Sheikhpura, who had convicted the appellant Muhammad Adnan son of Khadim Hussain under section 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced him to imprisonment for life and imposed on him a fine of one million rupees and in default of payment of fine directed that he undergo a further simple imprisonment for six months.

2. The case against the appellant was that he was driving a motorcycle *rickshaw* bearing registration No. 7664/LEO ("**the vehicle**") from which a huge quantity of narcotic drugs, comprising of four *maunds*, three kilograms and two hundred grams of *charas* and one hundred and eighty grams of heroin, were recovered. The learned Trial Judge observed: (1) that the case was poorly investigated by the police, (2) that the section 173 of the Code of Criminal Procedure ("**Code**") police report / *challan* was submitted to the Court after over two years and that too only after the Court had issued specific directions in this regard after receipt of an application from the appellant through the Chairman Human Rights, (3) that the nominated co-accused/absconding accused were not proceeded against, one of whom was a police constable and (4) that the ownership of the vehicle was not inquired into. We enquired from the learned Additional Prosecutor General, Punjab ("**APG**") whether the directions of the learned Trial Judge were justified and whether the said directions had been complied with. The learned APG candidly responded that in the facts and circumstances of the case the observations and the directions of the learned Trial Judge were justified, however, he was not in a position to state whether the directions had been implemented.

3. The appellant, admittedly, was not even a teenager when the narcotic drugs were seized from the vehicle. Can a child of such tender age be the owner, or be deemed to be the owner, of the huge quantity of narcotic drugs which had been seized? Whether he could be the owner of the vehicle? Whether it could be accepted that he was driving the vehicle? Whether he had the requisite understanding to know what he was doing? None of these matters were investigated by the police. The Trial Court was a Juvenile Court in terms of section 4 of the Juvenile Justice System Ordinance, 2000 ("**the Ordinance**") and as such was required to ensure that the interest of the child whose trial it was conducting was fully protected, however, it did not formulate the aforementioned questions as "points for determination" (subsection (1) of section 367 of the Code) nor considered them. The Trial Court treated the appellant as an adult, without considering that the accused was a child of tender years, and presumed that he had full capacity and understanding. The High Court, which exercised appellate jurisdiction, perpetuated the error, and the learned Judges who heard the appeal also effectively treated the appellant as an adult offender as they too did not consider, let alone determine, the aforesaid questions which should have been amongst the *points for determination*.

4. The prosecution case against the appellant was that the police had received prior information that a huge quantity of narcotic drugs was going to be transported in the vehicle. The police had therefore posted a police picket, but despite this the co-accused slipped through. The police arrested the appellant who did not try to run away. The two witnesses in whose presence the narcotic drugs were recovered from the vehicle and who were stated to have signed the memorandum of recovery (Exhibit PA)

were Muhammad Ashraf and Shahid Ali; Muhammad Ashraf (PW-8) however denied his signature on it. The other witness Shahid Ali (PW-2) disowned any knowledge of Exhibit PA therefore he was declared hostile, and, despite his cross-examination by the prosecution, he stood firm in his denial and reiterated that the signature on Exhibit PA was not his. The prosecution did not seek to have their signatures sent for forensic determination.

5. It appears to have weighed with the learned Trial Judge that the appellant was the brother of an absconding co-accused, namely Muhammad Azam. Inspector Arshad Latif (PW-3) who had set up the picket and apprehended the appellant was the complainant of the case. He stated that the appellant was driving the vehicle but admitted when he was cross-examined that he made no attempt to determine the ownership of the vehicle nor sought its registration book nor wrote to the concerned motor registration authority to determine in whose name it was registered. He further stated in his cross-examination that the narcotics belonged to one Muhammad Riaz and admitted that, *"I have acted negligently and by this way I have also spoiled the prosecution case to this extent"* and again that, *"in this sense negligence was committed by me"*. ASI Abdul Razzaq (PW-5) stated that he was amongst the members of the police picket but he did not state that the appellant was driving the vehicle and as such undermined the reliability of the testimony of Arshad Latif (PW-3) to this effect. He admitted that the appellant was a twelve year old minor at the relevant time; that the police report / *challan* was submitted after two years; that the prosecution had spoiled the case; that the warrants of arrest of the co-accused had not been obtained; proceedings were not initiated against them pursuant to section 87 of the

Code to have them declared as proclaimed offenders and to have their properties attached under section 88 of the Code. The third witness on whose testimony the learned Trial Judge relied in convicting the appellant was Muhammad Ashraf (PW-8) who is stated to have signed the recovery memorandum (which has been discussed in the foregoing paragraph). Muhammad Arshad (PW-8) admitted that he was not from the locality where the vehicle was stopped, and when he was questioned to explain his presence there, stated he had visited Shahid Ali (PW-2) at his home, but when questioned further stated that he would not be able to take a person, if so appointed by the Court, to Shahid Ali's house. He was also unable to answer the question, "*whether Shahid Ali was along with him at the time of recovery*". In reply to a specific question this witness disclosed that two criminal cases were registered against him, which raised the possibility that the police may have persuaded him to testify. It was on the testimony of these three unreliable prosecution witnesses of doubtful integrity that the prosecution case against the appellant rested. It also appears that the policemen were shielding the co-accused whilst arresting and prosecuting a young boy merely because he was the brother of Muhammad Azam a co-accused. The statement of Inspector Arshad Latif (PW-3) alleging that the appellant was driving the vehicle was not supported by ASI Abdul Razzak (PW-5). The fact that at the relevant time the appellant was not even a teenager further detracted from his assertion that the appellant was driving the vehicle. A boy of such tender age could also not be assumed to be the owner of the narcotic drugs or of the vehicle in which they were being transported.

6. We, therefore, without any hesitation can state that the prosecution had completely failed to establish its case against the

appellant, let alone having established it beyond reasonable doubt. Through a short order passed on 13th September, 2018 this appeal was allowed and the conviction and sentence passed by the Trial Court and maintained by the High Court were set aside and it was directed that the appellant be released forthwith, if not required to be detained in any other case, and these are the detailed reasons for doing so.

7. We, however, are not setting aside the observations made by the learned Trial Judge and the directions issued by him on pages 9 and 10 of his judgment dated 15th September, 2010 and direct the Inspector General of Police, Punjab, the Deputy Inspector General of Police, Sheikhpura Range and District Police Officer, Sheikhpura to abide thereby and to immediately implement them, if they have not done so already.

8. It saddens us to note that because of an inept investigation a child remained incarcerated for over eleven years and attained majority in jail. In this case the police appeared to be more interested in protecting the real perpetrators of the crime. The Trial Court needlessly indulged the prosecution, which took over two years to submit the police report / *challan*, and it took three years to conclude the trial. The Trial Court also overlooked section 10 (7) of the Ordinance which stipulates that if the trial is not concluded within a year the accused "*shall be released on bail*" and all the more so when the appellant was not responsible for the delay. The High Court, which was the Appellate Court, then took another four years to decide the appeal of the appellant. In the present case an appeal to this Court did not lie as of right therefore a petition for leave to appeal was filed in the year 2014 and leave to appeal was granted in

terms of Article 185 (3) of the Constitution by this Court in the year 2017, and the appeal has been decided on the first day of its listing.

9. The Juvenile Justice System Ordinance, 2000 does not specifically stipulate the period within which trials should be concluded nor the period within which appeals should be decided, however the stated purpose of the Ordinance is to "*provide for protection of children*" (the title and the preamble of the Ordinance). The delay in the conclusion of a juvenile's trial before a juvenile court is also a ground for his release on bail as provided in section 10 (7) of the Ordinance. Therefore, considering the provisions of the Ordinance and being mindful that the Constitution envisages "*the protection of women and children*" (clause (3) of Article 25) it would be appropriate to direct that trial of juveniles be concluded by juvenile courts without delay and appeals against conviction be prioritized and expeditiously decided. Therefore, the Hon'ble Chief Justices of the provinces and of the Islamabad High Court through their respective Registrars should be pleased to issue necessary directions to prioritize the hearing of appeals filed by juvenile convicts and in this regard may be further pleased to direct that appeals by juvenile convicts are so highlighted on the file covers of the appeals. Requisite instructions by the Hon'ble Chief Justices, through their respective Registrars, should also be issued to the juvenile courts within their respective territorial jurisdictions to ensure the expeditious conclusion of trials. The juvenile courts should be further directed not to entertain routine requests for adjournments and if the case is to be adjourned it must only be in exceptional circumstances. The Office of this Court is directed to communicate this paragraph (nine) of the Judgment to the Registrars of all the High Courts, the Prosecutor Generals of the provinces and of the

Islamabad Capital Territory and to the Attorney General for Pakistan.
The Office of this Court is directed to insert the word "Juvenile" on the cover of the files of all criminal petitions and appeals filed by juvenile convicts and to prioritize their fixation in Court.

JUDGE

JUDGE

JUDGE

Bench-III
Islamabad:
15.09.2018

Approved for Reporting
(M. Tauseef)