

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

Criminal Appeal No.366/2010

(Against judgment dated 18.3.2010 passed by Lahore High Court Rawalpindi Bench Rawalpindi in Crl. Appeal No.335 of 2003)

Muhammad Hanif

....Appellant

Versus

The State

... Respondent

For the Appellant

Mr. M. Shahid Kamal Khan, ASC
Mian Muhammad Zafar Iqbal, ASC

For the State

Mr. Tariq Mehmood Jehangiri,
Advocate General Islamabad
with Muhammad Hussain
Lasi, DSP/I.O.

Date of Hearing

16.10.2019.

JUDGMENT

QAZI MUHAMMAD AMIN AHMED, J.- On a tip off, a contingent of Police Station Tarnol, District Islamabad, intercepted a truck bearing Registration No.JT/7808 with a vehicle bearing No. AA/7504 being the payload; upon search of the cargo, secret cavities, concealing a huge cache of *charas*, packed in different bundles with total weight of 3 mound and 12 kilograms were detected; the stuff was secured *vide* inventory; appellant is owner of the vehicle being shifted in the truck; samples, taken from each bundle, confirmed narcotic character of the contraband. Upon indictment, the appellant claimed trial, pursuant whereunto, prosecution produced four witnesses to drive home the charge. The appellant confronted prosecution evidence with the following plea:-

"I had been serving as driver of the said Toyota Pickup. On 24.5.2002, the owner of the said Toyota vehicle, loaded it in truck No.JT/7808 and asked me to take the same to Lahore to be delivered to his brother in law; who is running an auto workshop there. As the owner wanted to sell it, after

reconstitution of the engine, which was seized, however, on my way to Lahore, the Police stopped the truck, and as already mentioned, took the same to the Police Station. I was told by the police at the Police Station that charas was recovered from the secret cavities of the Toyota Pickup. I was not at all aware of any incriminating substance, concealed anywhere in the Toyota Pickup, as alleged. The police, to whom I had disclosed all this, traced the owner and, instead of challaning him, let him off after bargaining with him, and challaned me being a poor driver. I have been made a scapegoat. The owner also did not care to pursue my case."

The learned Trial Court was not much impressed by appellant's plea and instead preferred the prosecution evidence to return a finding of guilt with ultimate penalty of death, affirmed by the High Court *vide* impugned judgment dated 8.3.2010 *vires* whereof are being assailed by leave of the Court on the grounds that samples were not taken from each piece of the contraband and thus the appellant cannot be saddled with the responsibility for the whole lot, nor being an unsuspecting employee on the payroll could be attributed conscious knowledge, blamed upon the alleged employer.

2. We have gone through the statements of the witnesses constituting an uninterrupted chain of facts ranging from seizure to forensic analysis of the contraband; the witnesses are in a comfortable unison on all the salient details regarding interception of the huge consignment as well as steps taken subsequent thereto. Since the contraband comprising various pieces, quite a few in number, was packed in different bundles, separation of samples for chemical analysis, taken from each bundle, is found by us as exercise sufficient to constitute forensic proof; argument that samples were required from each piece, packed in each bundle, is entirely beside the mark. It would be naively unrealistic to assume that random sampling left space for any doubt about the wholesome narcotic character of the contraband, too huge to be manipulated for concealment in an expensive luxury vehicle. Exoneration of driver and cleaner of the truck by the police, in retrospect, lends credence to the case set up by the prosecution, even otherwise structured upon flawless and immaculate evidence. Defence suggested to the witnesses in the box and position taken in support thereof are far less than convincing to override the overwhelming evidence, inexorably pointed upon the appellant; plea of substitution,

clamored without entering the witness box to blame the employer, having abandoned the appellant out in the cold does not hold much water as well. View concurrently taken on appellant's culpability is not open to any legitimate exception. However, quantum of sentence suggested to be exacted from the appellant by the Courts below warrants a serious reconsideration. Huge quantity of cache, notwithstanding, given toxic lethality of the contraband being on lower side coupled with the position taken by the appellant, though rejected, nonetheless, calls for exercise of caution in awarding irreversible penalty of death, therefore imprisonment for life, in circumstances, is viewed by us as a conscionable wage for the crime. Consequently, penalty of death is altered into imprisonment for life to be commuted with benefit under Section 382-B of the Code of Criminal Procedure, 1898; amount of fine and consequence of default are kept intact. Criminal Appeal is partly allowed in the above terms.

JUDGE

JUDGE

JUDGE

Islamabad, the
16th October, 2019
*Ghulam Raza/**