

**P L D 1994 Supreme Court 858**

*Present: Wali Muhammad Khan, Pir Muharnmad Karm Shah  
and Maulana Muhammad Taqi Usmani, JJ*

RAB NAWAZ and others---Appellants

versus

THE STATE---Respondent

Criminal Appeals Nos. 30(S) to 32(S) of 1992, decided on 11th April, 1994.

(On appeal from the judgment dated 1-7-1991 of the Federal Shariat Court in Criminal Appeal No.40/I of 1991 and Criminal Revision No.3/P of .1991).

**(a) Prohibition (Enforcement of Hadd) Order (4 of 1979)---**

---Art. 3---Constitution of Pakistan (1973), Art. 203F(2B)---Leave to appeal was granted to examine the contentions that no narcotics having been found in or recovered from the car occupied by the accused Art.3 of the Prohibition .(Enforcement of Hadd) Order, 1979 was not attracted and that their appeal had been dismissed by Federal Shariat Court merely on the ground of their defence being unconvincing and also that the prosecution evidence was materially discrepant.

**(b) Prohibition (Enforcement of Hadd) Order (4 of 1979)---**

---=Art. 3---Prosecution has to. establish its case beyond any shadow of reasonable doubt and it cannot derive any benefit from the weakness of defence.--[Burden of proof].

**(c) Prohibition (Enforcement of Hadd) Order (4 of 1979)»-**

---Art. 3---Benefit of doubt---If the accused are able to convince the Court about the probability of their assertion being true and standing to reason, the benefit of doubt is to be extended to them.

Safdar Alt v. Crown PLD 1953 FC 93 and Nadeem-ul-Haq Khan v.  
The State 1985 SCMR 510 ref. -

**(d) Prohibition (Enforcement of Hadd) Order (4 of 1979)---**

---Art. 3---Appreciation of evidence---Trial Court as well as the Appellate Court had found the accused guilty mainly on the ground that they had not been able to establish the theory advanced by them in defence and did not refer to the prosecution evidence regarding their abetment of the offence--Initial burden was on the prosecution to prove its case beyond reasonable doubt and the accused were not required to establish their innocence--Defence put forth by accused was more probable than the allegation of acting as pilot made by prosecution against them and their involvement in the case was not free from doubt---Accused were acquitted in circumstances.

Safdar Ali v. Crown PLD 1953 FC 93 and Nadeem-ul-Haq Khan v. The State 1985 SCMR 510 ref.

**(e) Prohibition (Enforcement of Hadd) Order (4 of 1979)---**

---Art. 3--Criminal Procedure Code (V of 1898), S.439(3)---Appreciation of evidence---Status of accused was that of carrier---Trial Court (Magistrate 1st Class) had already exhausted its power so far as the sentence of imprisonment and fine were concerned and Federal Shairat Court had legally erred in enhancing the same---Imposition of whipping being mandatory, Federal Shariat Court was justified in awarding the same---Conviction of accused was consequently maintained, but sentence awarded to them by the Trial Court was restored with thirty stripes each imposed by Federal Shariat Court in circumstances.

Sherzada v. The State 1993 SCMR 149 ref.

K.MA. Samdani, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellants (in Criminal Appeals Nos.30(S) and 31(S) of 1992). '

Malik Rab Nawaz Noon, Advocate Supreme Court and Ch. Akhtar Alt, Advocate-on-Record for Appellants (in Criminal Appeal No.32(S) of 1992).

Anwar H. Mir, Advocate Supreme Court/Advocate-on-Record for the State (in all Appeals).

Date of hearing: 11th April, 1994.