

LEX/BDAD/0072/1996

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**IN THE SUPREME COURT OF BANGLADESH  
(APPELLATE DIVISION)**

Criminal Appeal No. 12 of 1996 and Criminal Petition For Leave To Appeal No. 224 of 1995

**Decided On:** 04.07.1996

The State **Vs.** Miss Eliadah McCord

**And**

Miss Eliadah McCord **Vs.** The State

**Hon'ble Judges/Coram:**

*A.T.M. Afzal, C.J., Mustafa Kamal, Latifur Rahman, Mohammad Abdur Rouf and Bimalendu Bikash Roy Chowdhury, JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: B. Hossain, D.A.G, instructed by Sharifuddin Chaklader, Advocate-on-Record, For the Appellant. (In Crl. A. 12/96), Rafiqu-Ul Huq, Senior Advocate and Obaidur Rahman Mustafa, Advocate (appeared with the leave of the Court), instructed by Md. Aftab Hossain, Advocate-on-Record, For the Petitioner (in Crl. P. 224/95)*

*For Respondents/Defendant: Rafiqu-Ul Huq, Senior Advocate and Obaidur Rahman Mustafa, Advocate (appeared with the leave of the Court), instructed by Md. Aftab Hossain, Advocate-on-Record, For the Respondent. (In Crl. A. 12/96)*

**JUDGMENT**

**A.T.M. Afzal, C.J.**

**1.** Down the highway the subject of "Heroin" has suddenly become central to this appeal. From the fertile poppy fields that bloom where the borders of Thailand, Laos and Burma meet--the Golden Triangle,--and the refineries nearby flow record tides of heroin (Ref: 'Heroin Highway'--News week 29 January, 1996) feeding a global heroin epidemic. The report ends thus :

Already the multicolored petals have fallen from the poppy flowers, leaving the fat green bulbs bursting with white sap. The bumper crop looks likely to top the eastern Burma record of 2,000 metric tons, reached in each of the past 2 years. That will make this the busiest year ever on China's heroin highway.

**2.** The ultimate question for consideration in this appeal will be whether it is pure heroin or heroin which is on traffic as a narcotic will determine the measure of punishment under the Narcotic Control Act, 1990 (Act No. 20 of 1990), briefly the Act.

**3.** Accused-respondent Miss Eliadah McCord, an American girl, then in her teens at the relevant lime, came to Bangladesh on a visit on 10th February, 1992, sponsored and financed by one Walter, an American businessman of Jamaican origin living in Dallas;

and while at Dhaka in Hotel Sonargaon, being always in touch with the said Walter, she met one South African, now a Nigerian. Robert Blankson @ Tonny (co-accused) introduced by Walter over phone; and on 25 February, 1992 as she was about to leave Bangladesh in the evening by a British Airways flight, she was intercepted at the Zia International Airport by security men and found in possession of 4(four) packets of heroin weighing 3 Kg. 270 grams concealed under her wearing apparel and eventually after a trial under the aforesaid Act, convicted thereunder and sentenced to imprisonment for life on 13 July 1993. On appeal the High Court Division upon taking the view that as there was no evidence that she was carrying more than 25 grams of "actual and real heroin" she was liable to be convicted and sentenced under the lesser part of the relevant Section of the Act and further taking a compassionate view reduced the sentence to the period already undergone (on the date of the impugned judgment i.e., 9 August 1995) and directed her to be released and sent to her parents. The State is aggrieved by the impugned judgment.

**4.** This is the long and short of the case out of which this appeal by leave at the instance of the State has arisen.

**5.** The central point in granting leave was whether the High Court Division was justified in Law in taking the view that conviction and sentence would be determined by ascertainment of the quantity of "actual and real heroin and not the quantity of heroin which is seized as a narcotic. To put it technically, whether the quantity of heroin as an alkaloid having the chemical formula C<sub>21</sub> H<sub>23</sub> No<sub>5</sub> would be relevant or the quantity of heroin which is on traffic across the world and seized from any particular trafficker as narcotic would be relevant

**6.** Now we may briefly look into the facts of the case a little more closely.

Miss Eliadah McCord was put on trial with 4 others, namely, Robert Blankson @ Tonny, Goody Ochendo, Okay Godwin and Abdul Quaiyum alias Ali Khan alias Abdul in Sessions Case No. 316 of 1992 in the Second Court of the Additional Sessions Judge, Dhaka to answer a charge under Section 19(1) of the Act read with Table 1(b) thereto. The other accused were further charged under Section 25 of the said Act and the last three accused further under Section 201 of the Penal Code.

**7.** At this stage Section 19 of the Act (which is in Bengali) may be quoted (English rendering) which will be ultimately necessary for a consideration of the point at issue:

"19. Penalty for breach of provision of Section 9.

(1). If any person violates any provision of Section 9 relating to the Narcotics specified in column 2 of the following table, other than sub-Section 1 and 2 of Section 9 relating to cultivation, he shall be punished with the penalty mentioned in column 3 of the Table against the said narcotics viz :

SI. No.	Name of Drugs	Penalty
1	2	3
1	Heroin, Cocaine and Coca derivatives	(a) If the quantity of narcotic does not exceed 25 grams -

		imprisonment for a term which shall not be less than 2 years and shall not exceed 10 years.  (b) If the quantity of narcotic exceeds 25 grams death sentence or imprisonment of life.
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**8.** Prosecution examined 28 witnesses in support of its case. Miss Eliadah McCord made a statement which was recorded by a Metropolitan Magistrate P.W. 24 on 29.2.1992 under Section 164 of the Code of Criminal Procedure and proved as her confession "Ext. 22" at the trial. The defense taken by Miss Eliadah McCord was that accused Robert Blankson had given her the four packets to be carried to Zurich as gifts for Walter and that she had no knowledge about the substance in the said packets. She was innocent and became a victim of circumstances.

**9.** The learned Additional Sessions Judge summed up the prosecution case and the supporting evidence and made his findings in the impugned judgment thus :

It is alleged that Eliadah McCord came to Bangladesh on 10.2.92 and went to Hotel Salon on that day but did not stay there as the place was not liked by her. Then she went to Hotel Sonargaon but she did not stay there as the charge of the Hotel was high. Then she went to Hotel Purbani and stayed there till 17.2.92. On that date she came to Hotel Sonargaon and boarded in room No. 328 wherefrom she checked out on 25.2.92 afternoon. It is in the evidence of P.W. 8 Md. Mosharraf Hossain Shishir and P.W. 10 Md. Ataharul Kabir employees of Hotel Salon that on 25.2.92 at 6.30 P.M. Robert Blankson took Eliadah McCord to Hotel Salon in room No. 2 where Blankson had been staying. There they stayed for 10 or 15 minutes and both of them went out by a scooter. It has been proved by P.W. 1 Captain (Retd.) Ekramullah, P.W. 2 Nighat Sultana, P.W. 3 A, Matin, P.W. 4 A. Rouf, P.W. 5 Bashir Ahmed, P.W. 6 Md. Shajahan, P.W. 9 Mrs. Fida Salam Allen that on 25.2.92 at 20.10 hours Eliadah McCord arrived at Zia International Airport and while she was passing through anti-hijacking check post metal detector gave a sound and she was stopped and thereafter on search of her person P.W. 2 and P.W. 9 recovered 3 kgs 270 grams heroin. These P.Ws. have also stated that Eliadah McCord was reluctant to submit to search but when P.W. 9 threatened her to offload she allowed her to be searched and 3 Kgs and 270 grams of heroin was recovered from her person hidden in her body underneath the wearing apparels. P.W. 2 Nighat Sultana stated that after recovery of 4 packets which were taped to her thighs abdomen and back, she (Eliadah McCord) admitted that it was heroin which was given by Tonny at Salon Rest House. P.W. 3 Matin corroborated the evidence of P.W. 2 that Eliadah McCord admitted that the packets contained heroin. P.W. 21 has proved that the sample of recovered seized materials relating to Cantonment P.S. Case No. 42 dated 26.2.92 was heroin. Eliadah McCord also made extra judicial confession that the packets hidden inside her wearing apparels contained heroin which was given by Tonny from Hotel Salon at Banani for carrying. Besides the direct evidence of P.W. 1, 2, 3, 4, 5 and 9 and

extra judicial confession, she also made a judicial confession (Ext. 22) which supports the prosecution case. On 7.2.93 she filed a petition retracting her confessional statement. But on 20.6.93 she filed another application seeking permission to withdraw the petition for retraction and stated that what she had confessed was voluntary and true, Ext. 22 is that confessional statement in which she stated that in the Airport the security woman searched her body and found 4 packets which were tagged to her body, two packets in two thighs, one packet in stomach and one packet to her back abdomen. They opened the packets and found powder inside the packets. Police came and tested the powder and told that it was heroin. She further stated that Walter sent her to Dhaka and scheduled to deliver the heroin to Zurich and Robert Blankson, an African who told his name as Tonny, took her to his Hotel and delivered the packets and taped them to her body and he was the supplier and directly involved in the heroin passing.

The direct evidence of P.Ws. and confessional statement of Eliadah McCord taken together proved that Walter sent Eliadah McCord to Bangladesh for carrying heroin and Robert Blankson took her from Hotel Sonargaon to Hotel Salon in room No. 2 and delivered the four packets of heroin, taped them to her private parts and while she was passing anti-hijacking check point she was stopped and on search 3 Kgs 270 grams heroin was recovered. It is well-proved that accused Eliadah McCord was carrying, transporting 3 kgs heroin hidden inside her wearing apparels. She has committed offence under Section 9(1) of the Narcotics Control Act, 1990 punishable under clause 1(b) of Section 19(1) of the said Act."

**10.** Accordingly Miss Eliadah McCord and Robert Blankson @ Tonny were found guilty under the said Section and sentenced to imprisonment for life. The other three accused were, however, acquitted of the charges for reasons which are not relevant for the present purpose.

**11.** Miss Eliadah McCord preferred an appeal before the High Court Division, Criminal Appeal No. 1664 of 1993, against the aforesaid Order of conviction and sentence passed on her on 13.7.93. While the appeal was pending for hearing a news item was published in the 'Daily Sangram' on 18.7.1995 under the caption "how is Eliadah inside the Jail?" and upon perusing the said news item a Division Bench of the High Court Division issued a suo motu Rule on the same day in the nature of habeas corpus upon the Government and other officials. The Rule gave rise to Criminal Miscellaneous Case No. 2085 of 1995. In obedience to a direction from the said Division Bench Miss Eliadah McCord was brought before the Court and the learned Judges recorded her statement on 2.8.1995.

**12.** The Misc. case and the appeal being in respect of the same person they were taken up together for hearing by the Division Bench. In discharging the suo motu Rule as being infructuous, the Division Bench observed that the suo motu Rule was issued as it had appeared from the news item that when the offence was committed on 25.2.92 Miss Eliadah McCord was below the age of 16 years and that the Children Act, 1974 might have been applicable to her case for trial. But when she was brought before the Court and made a statement on 2.8.1995 she herself stated that her date of birth was 27.3.1993 and as such her age was above 16 years on the date of occurrence and that she could not be treated as a child for application of the Children Act.

**13.** In considering the appeal it was observed that the learned Advocate for Miss

Eliadah McCord frankly submitted that it was difficult for him to challenge the fact of recovery of 4 packets containing objectionable goods from her person as alleged by the prosecution. The argument in support of the appeal was threefold--(1) that there having been discrepancy in the quantity of white powder (5 grams) sent for chemical examination by the Investigating Officer and the quantity (6.5 grams) as actually received and examined by the Chemical Examiner P.W. 21, there was grave doubt as to the alleged white powder seized from Miss Eliadah McCord being heroin; (2) that the prosecution has not been able to prove that the alleged heroin (if at all) was more than 25 grams as would attract table 1(b) under Section 19 of the Act and (3) that Miss Eliadah McCord on the facts proved might be held to be an abettor only and not the main offender.

**14.** The High Court Division, first of all, found that Miss Eliadah McCord was only an abettor.

**15.** As to the first point the High Court Division merely observed that there was substance in the contention but did not proceed further. It took up for consideration the second point which became the main matter in the judgment i.e., whether the prosecution could prove that the 4 packets contained more than 25 grams of heroin as would attract 1(b) of the table to Section 19. Upon making reference to the evidence of the chemical examiner P.W. 21, it was found that percentage of heroin in the white powder measuring 6.5 grams sent to him for chemical examination could not be ascertained. The learned Advocate for the respondent submitted that since there was no evidence to show that heroin above 25 grams was found in the 4 packets of white powder, the sentence of imprisonment for life passed upon the respondent under 1(b) was not sustainable in Law. It was submitted on behalf of the State that the whole quantity of white powder 3 kg 27 grams which was seized from the respondent was heroin.

**16.** In the trial Court it was argued by the State that Law does not make any distinction between pure and impure heroin as it was a drug in any case. The trial Court accepted the submission that if any substance is mixed with heroin and used as drug the whole thing should be treated as heroin. The learned Judges of the High Court Division found the said finding to be absurd and preposterous and against the Law itself. The learned Judges held that if one gram of heroin is mixed with 999 grams of white powder then the entire 1000 grams of white powder cannot be treated as heroin under the Law. Then they referred to two judgments passed by the High Court Division in two death reference cases where the view was taken that unless and until actual percentage of heroin is found out by chemical examination and unless there is clear evidence that the actual heroin is above 25 grams a sentence as under 1(b) of the table cannot be awarded. Finally, it was held that the quantity of actual and real heroin shall have to be ascertained very correctly, accurately and meticulously because a slight variation or mistake in measuring may call for a death penalty for an accused. Since in the present case the prosecution failed to prove the quantity of actual and real heroin, the benefit of doubt should go to the accused, the Court observed. The learned Judges, however, held that the respondent could not be exonerated altogether as it had been proved that there was element of heroin mixed with the powder which she was found carrying. She was, therefore, liable under clause 1(a) of the table. Considering the circumstances of the case and particularly the statement of the accused recorded by itself, the High Court Division passed the impugned judgment and Order as already noticed above.

**17.** The respondent also filed a petition for leave to appeal, No. 224 of 1995, from the impugned judgment which was, however, barred by 110 days. An application was there

praying for condonation of the said delay, Mr. Rafique-ul Huq who appeared for the respondent in the Government appeal advanced some argument in support of the respondent's petition for leave to appeal. He argued that upon the finding made by the High Court Division itself that the white powder which was examined by the chemical examiner was a doubtful stuff, the respondent should not have been convicted at all and further that heroin having not been mentioned specifically as a narcotic in the first schedule of the Act, there was lacuna in the Law and as such the respondent ought not to have been convicted in any case.

**18.** Mr. Rafiq-ul Huq, however, had to leave in the midst of the hearing of the matter for his personal difficulty and he left it to his learned Junior Mr. Obaidur Rahman Mostafa, who appeared in the High Court Division for the respondent, for making further submission.

**19.** After we have heard the Government appeal in full including the reply from the respondent, Mr. Obaidur Rahman Mostafa clearly submitted that he would not press the leave petition filed by the respondent. It is therefore, not necessary for us to consider the submission made by Mr. Rafique-ul Huq which even otherwise appeared to us to be clearly untenable on merit.

**20.** The main point for consideration is, as already noticed, whether the High Court Division was right in holding that ascertainment of actual and real heroin of more than 25 grams would be necessary for recording conviction under 1(b) of the Table.

**21.** It is not disputed that 4 polythene packets containing 3 kg 270 grams white powder were found with an seized from the respondent as alleged by the prosecution. Out of the said quantity 6.5 grams were sent to the chemical examiner P.W. 21 for examination. A doubt was sought to be created with regard to the substance sent to the chemical examiner for examination by saying that 5 grams were sent by the Investigating Officer for examination but the chemical examiner said that he found 6.5 grams in the polythene bag which was sent to him under a sealed cover. We find nothing in the evidence of the I.O. P.W. 28 that he had sent actually 5 grains. He only said that he had sent seized heroin for chemical examination and got the report of the expert. There is no reason to entertain any doubt about the authenticity of the stuff sent for chemical examination which was found by the chemical examiner in a properly sealed cover.

**22.** The chemical examiner opined that there was heroin found in the white powder. In cross-examination he admitted that he did not work out the percentage of heroin in the white powder. He stated that the procedure adopted for finding out percentage has not been started in our country and that two equipments are needed for finding out percentage. The High Court Division relying upon only this evidence of the chemical examiner observed that prosecution is required to prove the quantity of actual and real heroin for the purpose of conviction under 1(b) of the Table.

**23.** It may be briefly observed that in the First Schedule of the Act heroin has not been specifically mentioned which by definition of 'narcotic' (2(th)) ought to have been there. But that does not make heroin no less a narcotic under the Act because in the First Schedule, among other, 'opium derivatives' have been mentioned and by way of illustration, Morphine, Codeline, Thebaine, Noscapaine, Narcotine and Papavarine etc. have been specifically named. It is not disputed that heroin is also a derivative of Opium whose chemical name is diacetylmorphine. In the Dangerous Drugs Act, 1930 which has been repealed by the present Act, it was provided in Section 2(f) "opium

derivative" means

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(iv) diacetylmorphine, that is, the alkaloid, also know as diamorphine or heroin, having the chemical formula C<sub>21</sub> H<sub>23</sub> No<sub>5</sub>, and its salts.

We have not been able to lay our hands on classified drug literature but some publications that we have seen show that pure diacetylmorphine is rarely used as a narcotic drug and it is always mixed with cutting agents and the entire thing goes round as heroin.

**24.** In the Drug Enforcement (Journal), published by Drug Enforcement Administration, U.S. Department of Justice, under the heading, 'Semi-Synthetic Narcotics', it is found:

The following narcotics are among the more significant synthetic substances that have been derived by modification of the chemicals contained in opium.

Heroin

First synthesized from morphine in 1874, heroin was not extensively used in medicine until the beginning of this century, the Bayer Company in Germany first started commercial production of the new pain remedy in 1898. While it received widespread acceptance. The medical profession for years remained unaware of its potential for addition. The first comprehensive control of heroin in the United States was established with the Harrison Narcotic Act of 1914. Pure heroin is a white powder with a bitter taste. Illicit heroin may vary in color from while to dark brown because of impurities left from the manufacturing process or the presence of additives such as food coloring, cocoa, or brown sugar. Pure heroin is rarely sold on the street. A "bag"--slang for a single dosage unit of heroin--may weigh about 100 mg, usually containing less than 5 percent heroin. To increase the bulk of the material sold to the addict, diluents are mixed with the heroin in ratios ranging from 9 to 1 to as much as 99 to 1, Sugars, starch, powdered milk, and quinine are among the diluents used.

In a leaflet, "what you should know about: OPIATES", it is said under the heading, which Opiates are abused?; among other, is Heroin - diluted or 'Cut' with other substances such as sugar or quinine.

**25.** In Bengali book named, "Heroin--another lethal weapon" by Abu Taleb, it is found that in world market usual heroin is found mainly in the form of powder and known various pseudonym (U.S. - white death colt-45, T.N.T., Seven up, poison; U.K; Smack, Horse Dust, Mexican Brown, China white; India - Brown Sugar; Bangladesh Heroin, etc. The heroin which is very pure and well refined is comparatively white in color. The usual heroin which is available in the market is a mixture of pure heroin with various additives on cutting agents.

**26.** The Act has mentioned heroin as a kind of narcotic, a substance which is sold as such in the market a substance which is in traffic as such around the world. Law in every country is very severe as to dealing with narcotic drugs because of its disastrous potential on social, national and international life of mankind. We are therefore inclined

to the view that if a substance which is commercially accepted as heroin is proved to contain what is chemically called 'diacetylmorphine' the whole substance is to-be treated as heroin for the purpose of the Act. The Law intends to punish the dealer of the narcotic irrespective of whether it is in the purest form or not.

**27.** In the instant case, when it has been proved that the seized packets contained heroin then whole of the contents must be treated as heroin for punishment. It is not necessary for the prosecution to prove the "actual and real heroin content" for the purpose of a conviction under 1(b) of the table. The view taken by the High Court Division seems to ignore the entire perspective of the Act and gives the impression that the purpose of the Law is only to punish the preparation, carrying and dealing etc. of 'laboratory heroin' and not the stuff which was being clandestinely carried by the respondent taking great personal risk under a remote control system managed by the captains of the crime sitting across the seas. Therefore, the view taken by the High Court Division cannot be approved.

**28.** The High Court Division was only being technical and failed to notice that the respondent herself had admitted after being compelled to a body-search and recovery of the four packets that the substance was heroin. P.W. 1 Captain (Retd.) Ekramullah stated in his evidence that the four polythene packets Contained-powder like substance and when asked the respondent informed that it was heroin. Of course, in cross-examination he said that she did not say in his presence that there was heroin in the packets. But a number of other witnesses present at the scene supported the statement of P.W. 1, P.W. 2 Nighat Sultana, security supervisor at the airport who first searched the person of the respondent stated that she ultimately gave up the packets and said that it was heroin and she was sorry P.W. 3 Abdul Matin, security operator at the airport also stated that the respondent admitted that the packets contained heroin, P.W. 6 Md. Shahjahan, security worker of the Civil Aviation corroborated that the respondent stated that there was heroin in the packets which were given by Tonny for carrying. In her alleged confession, however, she stated that when she was asked about the contents of the packets, she stated that she did not know and then Police came and upon testing they said it was heroin. The fact remains that what she was carrying surreptitiously weighed 3 kg 27 grams and the whole of it was narcotic. Nobody would contend that the real heroin in the powder only was narcotic and not the whole staff. If it were so, then these was no point in carrying the whole of it which involved greater risk than carrying only pure heroin which would have been small in quantity and the risk of carrying would have been much less. The only inescapable conclusion is that the whole of it was heroin and the carrier must be made liable for the whole staff and, in our opinion, that is what the Law is.

**29.** In view of the discussion above, it must be held that there was no scope for altering the conviction from one under clause 1(b) to clause 1(a) of the Table and consequently there could not be any question of reduction of sentence on compassionate ground as was done by the High Court Division. We must at this stage observe that the High Court Division in any case was wrong in relying upon a statement of the respondent recorded in connection with the Misc. case while considering the sentence to be passed upon her under clause 1(a) inasmuch as that statement was no part of the record of the appeal and thus irrelevant as far as the appeal was concerned. The learned Advocate for the State argued that the High Court Division was largely influenced by its suo motu Rule which had to be discharged and in the hearing of the appeal analogously, the legal considerations suffered because the High Court Division perhaps felt pity and thought that it had to do something for the respondent somehow. The submission cannot be ignored because it has been noticed that, among other, the

statement of the respondent recorded by it evoking pity was made the foundation of reducing the sentence to the period undergone. Even if the Court wants to grant any relief it must be based on legal materials and not on anything that comes in the way.

**30.** Before parting with this case, we would like to observe that as far as the sentence is concerned, the hands of the Court are tied because under clause 1(b) of the table to Section 19(1) of the Act there cannot be a lesser sentence than imprisonment for life (as awarded by the trial Court). The offence of drug-trafficking is beyond doubt a serious and grave offence and on conviction an offender must be visited with legal and adequate punishment. Even so, there may be a case where a young man or woman on the threshold of life, otherwise innocent, being temporarily in straitened circumstances, lured with the promise of a free foreign trip by a nice-looking drug merchant and smelling adventure in an impoverished Asian country like Bangladesh, may find himself or herself involved unwittingly in a racket leading to a long prison sentence in an unfamiliar country. We cannot say for sure that Miss Eliadah McCord was not one of them. In her statement recorded, by a Magistrate under Section 164 of the Code of Criminal Procedure she has given out vividly the circumstances how she had got into the matter. She was a student in San Jacinto College in the fall of September, 1991 and because of some problem with her family, she chose to leave her study and started modeling in Houston. She was living alone with a friend in an apartment. After two months of modeling she decided to go back to College and earn money in regular night job. She went to friends to see if they could help her to meet the college expenses. She approached one American businessman at one of her shows whose name is Walter, a Jamaican, living in Dallas and doing business in Houston. He agreed to bear her educational expenses on her return from Bangladesh where she was required to go (not clear) and he provided her with ticket from Houston London-Dhaka and back via Zurich.

**31.** Then began a long story of this case which has already been noticed. She said that she was compelled to carry the heroin by Robert Blankson alias Tonny and it was meant for Walter. Pleading innocence and good faith, she expressed her desire to go back to her country through American Embassy. During her examination in the trial Court she said that she had never been involved in any criminal activity in her life. "I have no experience of life. I have fallen into a trap been made a victim of circumstances. I wish to go home to my parents" - she said. In the High Court Division she pleaded for mercy of the Court.

**32.** As already observed the hands of the Court are tied as far as the sentence is concerned. If the Law permitted, we would have considered the question of reducing the sentence of the respondent in view of her young age, the plea she was making from the beginning and on humanitarian ground. The respondent may approach the Government or the President, if so advised, for any relief that she may choose to pray. The power of remitting, commuting, suspending the sentence is there both with the Government and the President (vide Chapter XXIX of the Cr. P.C.; Article 49 of the Constitution).

**33.** The Government may have many other considerations for showing clemency which are not available to the Court. The statement of Miss McCord recorded by the High Court Division can very well be considered by the Government for the purpose. The said statement, inter alia, reads:

At the relevant time I did not know any Law regarding intoxicating matter in Bangladesh and as such I did not know about the consequence of carrying of such goods according to relevant Law of

Bangladesh. Mr. Tony in fact misled me in carrying of the goods as stated above. I had no previous experience in such situation and so I could not understand any need to question the contents of the packets. I am, for the thing which happened, sorry and repentant and I am full of remorse for such happening and I am throwing myself to the mercy of the Court and giving assurance that I would never repeat such action in future in my life.

Sorry, the Court cannot help per.

**34.** In the result, the appeal is allowed. The impugned judgment and Order of the High Court Division are set aside and those of the trial Court restored. Criminal Petition No. 224 of 1995 is dismissed as not pressed.

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