

IN THE FEDERAL SHARIAT COURT.
(Appellate Jurisdiction)

PRESENT:

MR.JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE.
MR. JUSTICE DR. FIDA MUHAMMAD KHAN

CRIMINAL. APPEAL NO.26/Q OF 2005.

Muhammad Raheem alias Abdul Raheem
son of Sawad Khan Katoher ----- Appellant.

Versus

The State Respondent.

CRIMINAL. REVISION NO.06/Q OF 2005.

Dayam Khan son of
Haji Sher Dil Nichari ----- Appellant.

Versus

Muhammad Raheem alias
Abdul Raheem son of
Sawad Khan Katoher Respondent.

Counsel for the Mr.Adnan Ejaz, Advocate.
Appellant

Counsel for the Mr.Muhammad Shuiab
State Abbasi, Advocate.

FIR No. date and 100/2002, dated 24.11.2002,
Police Station. P.S. Saddar, Dera Murad
Jamali.

Date of Judgment of 14.04.2005
Trial Court.

Date of Institution 14.05.2005

Date of hearing 01.12.2006

Date of decision: 01.12.2006

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JUDGMENT.

HAZIQUL KHAIRI, CHIEF JUSTICE:- In this appeal under section 24 Offences Against Property (Enforcement of Hudood) Ordinance, 1979 the appellant Muhammad Raheem has impugned the judgement dated 14.4.2005 passed by Additional Sessions Judge Naseerabad at Dera Murad Jamali, Quetta where the appellant has been convicted under Section 20 Offence Against Property (Enforcement of Hudood) Ordinance, 1997 read with Section 391/395 to suffer R.I. for four years and fine of Rs.500/- or in default thereof to further S.I. for two months.

2. Briefly stated, the complainant, Daim Khan son of Haji Sher Dil Nichari lodged an FIR No.100/2002 on 24.11.2002 at the then Levies Thana Dera Murad Jamali that he owned a red coloured Messy Ferguson Tractor Model 2000 registration No.SAE.8496 run by his driver, Yar Muhammad son of Lal Bakhsh Nichari. A night before, the driver along with his companion Jaffer Khan Nichari took the Tractor of the complainant from Goth Sher Dil Nichari to the Dera. On their way back at about 10:30 p.m. seven unknown persons beat up his driver and snatched the Tractor from him at the distance of one kilometre from the Goth Sher Dil Nichari. Four of the accused tied up the driver and his companion Jaffar Khan. The following morning at about 4.00 a.m. the four accused made good their escape from the spot.

3. After the registration of the FIR the investigation team arrested the accused Ramzan son of Muhammad, Allah Dina son of Abdul Nabi and Khair Muhammad son of Sawad Khan on 28.11.2002 on the basis of foot tracks and challaned them on 21.12.2002. The predecessor of the learned trial Court convicted them vide judgement dated 19.8.2004. However, on 4.01.2005, the complainant submitted an application along with the duly attested affidavits of the ocular witnesses Yar Muhammad and Jaffar Khan nominating the appellant Muhammad Raheem alias Abdul Raheem, Qalandar Bakhsh and Baboo (Both absconding) as well in connection with the commission of Harabah which took place on the night of 24.11.2002. The appellant Muhammad Raheem alias Abdul Raheem was arrested and challaned. A formal charge of Harabah was framed and read over to him on 24.2.2005 to which the appellant pleaded not guilty and his statement under Section 342, Cr.P.C. was also recorded and he claimed trial.

4. The PW-1, Daim Khan the complainant reiterated the contents of the FIR stating that his driver Yar Muhammad informed him at his house that seven accused persons snatched the Tractor from him and his companion Jaffar at night at the distance of two kilometers from the Goth while they were on their way back to the Goth from the Gobat of the shali crop. Three of the accused were stated to watch them with their hands and feet tied up with ropes and then at dawn they went away. He further deposed that his driver had identified the

appellant at the time of Harrabah whose name was known afterwards on account of which he gave a second application to the SHO on 04.01.2005. He admitted the defence suggestion that the formal identification parade of the appellant Muhammad Raheem alias Abdul Raheem was not conducted.

5. PW.2 Yar Muhammad is the driver of the Tractor and one of the two ocular witnesses of the Harrabah that took place on the night of 24.11.2002. He deposed that on 24.11.2002, at about 10:00 p.m, he and Jaffar Khan were on their way back to Goth Sher Dil Nichari on board the Tractor No.SAE.8496. After the Gabat of the shali crop seven masked accused stopped them at a distance of about two kilometers from the Goth. On his refusal to hand over the keys of the Tractor, the accused beat him up and snatched the Tractor. Three of the accused drove away the Tractor while four of them kept watching him and his companion Jaffar Khan after tying them up and make good their escape in the morning. He and Jaffar Khan untied their hands and feet and informed the Tractor owner of the incident at his house at Goth Sher Dil who lodged the FIR. He further deposed that he identified four of them including appellant Muhammad Ramzan, Allah Dina and Khan Muhammad (convicted) and Muhammad Raheem alias Abdul Raheem on account of their getting unmasked during the course of scuffle between him and them at the time of the incident. The appellant and his co-accused were ready to hand over the Tractor during the course of settlement outside the court but they

went back on their word afterwards. Like PW.1, the PW.2 also admitted the defence suggestion that the formal identification parade was not conducted.

6. The PW.3. Jaffar Khan in his deposition stated that he was with the driver Yar Muhammad on the night of 24.11.2002 when seven accused snatched the Tractor at a distance of about two kilometers from the Goth. He fully supported the deposition of PW.1 & 2.

7. The PW.4 Nabi Bakhsh son of Rasool Bakhsh, is the then Tehsildar, Dera Murad Jamali stated that he lodged the FIR on 24.11.2002 at 7:00 in the morning. He followed the tracks during the course of initial investigation which led towards the houses of the accused Muhammad Ramzan Buledi and Abdul Raheem Katoher. Appellant Abdul Raheem was absconding at the beginning but he was arrested afterwards.

8. The PW.5 Muhammad Younis the Investigating Officer deposed that on 04.01.2005 after about 3 years the complainant Daim Khan and the PW.3 Yar Muhammad and Jaffar Khan together approached the Police Station and the complainant gave an application to the SHO along with their affidavits praying for the arrest of the appellant, Baboo, Qalandar Bakhsh and Sikandar Khan in connection with the commission of the crime. The task of investigating the case was assigned to him who arrested the appellant

Muhammad Raheem. He admitted the suggestion made by defence that a formal identification parade was not conducted. The question of his and his three co-accused becoming unmasked was also turned down by him. According to him he was been falsely charged of Harrabah so that he may be deprived of the position of a teacher he was holding at the Education Department.

9. The appellant in his examination under Section 342, Cr.P.C. has stated that the prosecution had falsely charged him of harrabah so that he may be deprived of the position of a teacher he was holding in the Education department. It is true that the allegation could not be substantiated by him by documentary or ocular evidence. In cases of Harrabah hardly enmity is involved. However, the prosecution has to establish its case beyond doubt, otherwise the benefit would go to the accused person. Learned trial court rightly held that the complainant party does not know the accused (appellant) not to speak of having any dispute with him motivating him to falsely implicate the appellant. But that by itself is not enough to convict an accused. The case against him has to be positively established to justify his conviction.

10. Even though the evidence of PW.1, 2 & 3 is corroborative, it contains number of loop holes on the face of it and creates serious doubts to their credibility. According to them, the Vardat had taken place at night at about 10:30 p.m. All the seven accused persons, including the appellant, were masked and armed. They stopped the

Tractor on the point of gun and snatched away its key and four of them took away the Tractor. What is not believable is, firstly; how PW.1 & PW.2 could have scuffled with seven armed persons. Secondly, how these two unarmed persons could have overpowered seven armed dacoits so as to render them unmasked, while receiving no injuries at all. Thirdly, at night time in a rural area, how could they see so clearly and for so long so as to recognise the appellant after about two years of Vardat. Lastly it is also an admitted position that there was no identification parade of the appellant.

11. These are the reasons for allowing Criminal Appeal No.26/Q/2005 and setting aside the impugned judgement vide our short order dated 01.12.2006 in which direction was given to the concerned Jail authorities to release the appellant Muhammad Raheem forthwith unless he is required in some other criminal case.

12. For the above reasons also the Criminal Revision No.6/Q/2005 filed by Dayam Khan complainant for enhancement of sentence of Muhammad Raheem was dismissed vide our short order dated 01.12.2006.


(DR. FIDA MUHAMMAD KHAN)
Judge


(JUSTICE HAZIQUL KHAIRI)
Chief Justice.

Approved for reporting.

Islamabad: 1-12-2006


(JUSTICE HAZIQUL KHAIRI)
Chief Justice.