

IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate/Revisional Jurisdiction)

**MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH**

**Crl. Appeal No.29/I of 2017**

**Naeem Ahmed S/o Nazim Hussain Agani,  
By Caste Rind, R/o Village Agani Taluka, District Larkana.**

**.....Appellant**

**Versus**

**The State**

**...Respondent**

<b>Counsel for Appellant</b>	---	<b>Mr. Ghulam Murtaza Jokhio, Advocate.</b>
<b>Counsel for the State</b>	---	<b>Mr. Abdullah Rajput, Deputy Prosecutor General, Sindh.</b>
<b>Case FIR No, date &amp; Police Station</b>	---	<b>FIR No. 72/2011 dated 13.06.2011, P.S Haidri, District Larkana.</b>
<b>Date of impugned Judgment.</b>	---	<b>11.09.2012</b>
<b>Date of institution</b>	---	<b>16.11.2017.</b>
<b>Date of hearing</b>	---	<b>14.03.2019.</b>
<b>Date of decision</b>	---	<b>14.03.2019.</b>

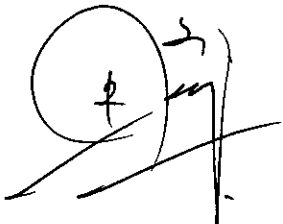
**JUDGMENT.**

**SYED MUHAMMAD FAROOQ SHAH, J.—** This is an appeal, directed by the appellant/convict Naeem Ahmed against the impugned judgment, rendered and pronounced by the learned Sessions Judge, Larkana, on 11.09.2012, in case Crime No. 72/2011, registered at P.S. Hyderi, under Section 17(3) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and section 215 PPC, whereby the appellant was convicted under section 392 PPC and sentenced to suffer three years R.I and to pay fine of Rs. 50,000/- (fifty thousand), in default thereof, to undergo S.I. for three months more. He was also convicted and sentenced to suffer 01 year R.I for an offence

punishable under Section 215 PPC. Initially, the appeal was instituted before the learned High Court of Sindh, Circuit Court, Larkana, from where it was transferred to this Court for want of jurisdiction, as the charge was framed by the trial Court under Hudood Laws. On 11.12.2017, the appeal was admitted by this Court for regular hearing.

2. Today, the appellant has shown appearance before this Court alongwith counsel. The learned counsel filed an application for condonation of absence of appellant on 11.03.2019 by showing sufficient reason and plausible cause of his absence. Learned State counsel recorded no objection. Consequently, absence of the appellant on 11.03.2019 is condoned and NBWs issued against him vide Order dated 11.03.2019 are withdrawn.

3. Facts of the prosecution case are that on 11.05.2011 the Complainant was traveling alongwith his paternal cousin PW Munawar Ali and friend PW Punhal, when at about 4.30 P.M, they reached in the common street of *Ayoob* colony, three armed persons emerged, who were identified to be the appellant Naeem, Karim Bux and Khalid, who signaled him to stop, by aiming their pistols, whereupon he stopped the motorcycle in fear and then the accused robbed his motorcycle and went away towards the main road. On the following day, the complainant alongwith his both companion approached the appellant Naeem at his village, who demanded ransom amounting to Rs.20,000/- for return of the motorcycle, which was duly paid to him. Thereafter, the appellant kept the complainant on hallow hopes, neither he returned the robbed motorcycle nor ransom



amount to the complainant, hence the complainant proceeded to the police station Hyderi and lodged FIR (Ex.6/A) on 13.06.2011.

4. Investigation was conducted by PW ASIP Zulfiqar Ali, recorded the statements of PWs Munawar and Punhal under Section 161 Cr.P.C and thereafter on 16.06.2011, he formally arrested the appellant/accused Naeem, who was already confined at Police Station, Civil Line, in Crime No. 84/2011. On completion of usual investigation, challan submitted by the concerned police before the competent Court of law was accepted.

5. Trial commenced after framing of charge. The appellant pleaded not guilty and claimed to be tried. During trial, the prosecution examined all material witnesses. In his statement, recorded under section 342 Cr.P.C, by professing his innocence, the appellant Naeem produced certified copy of judgment in another case delivered by the learned trial Court in Sessions Case No. 640/2011 (Ex.14/A), whereby he had been acquitted.

6. Heard arguments. Evidence beside other material available on record has carefully been scanned with the able assistance rendered by the learned Counsel representing both sides

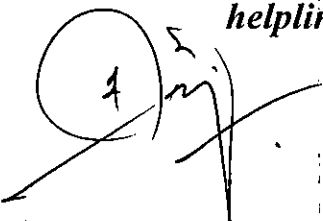
7. Learned Counsel representing the appellant submits that it is a unique concocted story of alleged crime that after the incident of alleged robbery of motorcycle, instead of lodging report of cognizable offence at the Police Station, the Complainant firstly approached to the accused/appellant Naeem at his village ie. next day of incident and had paid ransom amount of Rs. 20,000/- for

restoration of robbed motorcycle and after refusal of the appellant to return the motorcycle, the complainant approached at the Police Station and lodged FIR after 33 days of alleged incident. Learned Counsel next contended that there are sufficient contradictions and inconsistencies among the depositions of prosecution witnesses. It is argued by the learned Counsel that even a single circumstance creates a slightest doubt in a prudent mind is sufficient to extend benefit of doubt in favour of the accused as a right as held in the case of Tariq Pervaiz vs. The State (1995 SCMR 1345), Ghulam Qadir and 2 others vs. The State (2008 SCMR 1221), Muhammad Akram vs. The State (2009 SCMR 230) and Muhammad Zaman vs. The State (2014 SCMR 749).

8. Conversely, learned State Counsel without controverting worthy submissions advanced by the learned Counsel for the Appellant admitted that the ownership documents of the alleged robbed motorcycle or any authority letter issued by its owner in favour of the Complainant had not been brought on record, which fact does not establish legal possession of alleged robbed motorcycle with the Complainant. However, surprisingly learned State Counsel supported the impugned judgment on the ground that the accused has failed to establish his false implication in this case.

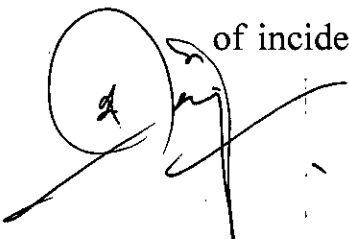
9. Ocular account of the prosecution case rest on testimony of Complainant, PWs Munawar and Punhal. The Complainant in his testimony deposed that *"It is correct that I have not informed police helpline after the incident nor had I approached the concerned*

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*police station at once. I have not visiting terms with accused Naeem. It is correct that the accused were not previously known to me. Accused Naeem was alone at the time of receiving ransom amount of Rs. 20,000/- in shape of currency notes of Rs. 1000/- After receiving ransom by the accused, I had repeatedly approached him for two times and he met me alone. I do not remember the last date and time of meeting with the accused. I had complained against the accused to his relative named Hafiz but this fact has not been disclosed by me in the FIR. I had showed the documents regarding ownership of the motorcycle to the police but have not produced the same before the Court".* The Complainant further stated in examination-in-chief that he had identified all culprits namely Naeem, Karim Bux and Khalid, who snatched his motorcycle on gun point. He had categorically stated that the appellant Naeem kept the Complainant on hallow hopes, neither he returned the robbed motorcycle nor ransom amount of Rs. 20,000/-, therefore, the complainant lodged report, as mentioned supra.

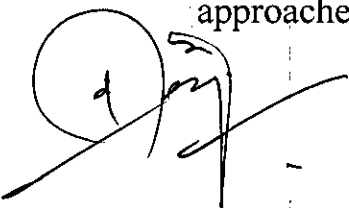
10. PW Munawar (Ex.08), who was allegedly accompanied with the Complainant at the time of commission of offence, stated in examination-in-chief that after snatching the motorcycle, all three culprits went towards 'Naudero'. Lateron, on the same day, i.e. 11.05.2011, police visited the place of Wardat at about 4:30 P.M, though the Complainant had stated that on the day of registration of FIR i.e. 13.06.2011, ie. After 33 days, the police inspected the place of incident. In cross-examination, PW Munawar clarified that police



came at the place of *Wardat* on the information given by the Complainant and later on chased the accused; further stated in cross examination that ***“It is correct that we are not on visiting terms with accused Naeem and that we did not approach the accused Naeem after ransom amount paid by the Complainant”***.

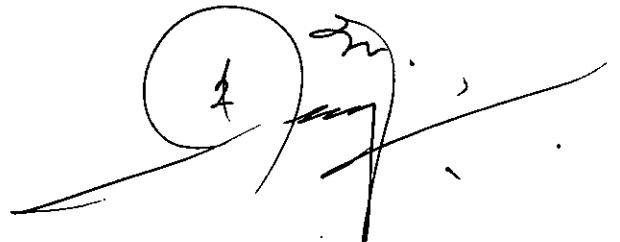
11. PW Punhal (Ex.09), another eye witness of the incident, stated almost similar facts regarding demand of ransom amount of Rs. 20,000/- by the appellant Naeem; however, in cross examination, he had stated that at the time of incident, some people were available at some distance and after the incident, the Complainant alongwith Munawar went to Police Station Hyderi and lodged *NC* report, though admittedly, no such report had been lodged by the Complainant. On the contrary, the FIR had been lodged on 13.06.2011 i.e. after 33 days of incident. In cross examination, PW Punhal had stated that ***“accused Naeem was shown to us at CIA center Larkana after a month of alleged incident”***.

12. A cursory examination of prosecution evidence reflects that in crime report (Ex.6-A), by narrating the story of occurrence, the Complainant averred that on 11.05.2011, his motorcycle, applied for registration, had been snatched on gun point by the appellant Naeem, co-accused namely Munawar Ali Kalhoro and Punhal Kori. He lodged FIR on 13.06.2011 i.e. after about 33 days of incident at P.S. Hyderi, District Larkana. By explaining delay in lodging the FIR, the Complainant stated that he alongwith both eye witnesses firstly approached to the appellant i.e. next day of incident. The appellant



demanded ransom amounting to Rs. 20,000/- for return of robbed motorcycle, which was paid to the appellant in presence of PW Punhal and Munawar. It is alleged that after receiving ransom amount, the appellant Naeem neither returned the robbed motorcycle nor ransom amount, hence the complainant approached to the police station and lodged the FIR.

13. It is unfortunate, that the trial Court did not bother to go through the relevant portions of depositions of prosecution witnesses, reproduced above, in result of which conviction had been recorded. Suffice it to say that by no stretch of imagination the appellant Naeem may be involved in this case on the basis of aforementioned evidence brought by the prosecution on record. After scanning the prosecution evidence; beside other material brought on record, I reached at the irresistible conclusion that the prosecution has failed to prove the charge against the appellant, therefore, he is entitled to the benefit of doubt as a right. Resultantly, the appellant is acquitted from the charge. The impugned judgment is set-aside. Appeal is accepted. The appellant is present on bail, his bail bond stands cancelled and surety discharged.



JUSTICE SYED MUHAMMAD FAROOQ SHAH

Karachi the  
March 14, 2019  
M.Ajmal/\*\*.