

IN THE FEDERAL SHARIAT COURT  
(Appellate Jurisdiction)

PRESENT

Mr. Salahuddin Ahmed.	Chairman
Mr. Justice Agha Ali Hyder.	Member
Mr. Justice Aftab Hussain.	Member
Mr. Justice Zakauallah Lodi.	Member
Mr. Justice Karimullah Durrani	Member

CRIMINAL APPEAL NO.K-13 OF 1980.

Latif & Ghulamullah ....	Appellants
Versus	
The State .....	Respondent
For the Appellants ....	Mr. Mohammad Hayat Junejo Advocate.
For the respondent ....	Mr. Abdus Sattar Sheikh Addl: A.G. Sind.
Date of hearing.	<u>21-12-1980</u>

This appeal is against an order of the learned Sessions Judge, Dadu, convicting the two appellants under Section 9 of the Offence against property (Enforcement of Hadood) Ordinance VI of 1980 and sentencing each one of them to amputation of the right hand from the joint of the wrist.

The complainant Ran Nawaz resided in a Katcha Kotha alongwith PW Nazar Mohammad and his brother Lal Khan. Adjacent to it there is a landhi in which his bullock was tethered at night. The entire house was surrounded by a compound wall of thorny bushes with an entrance which had been locked at night.

It appears that at mid night between the 10th and 11th of February, 1980, the complainant woke up from sleep on hearing noise created by the bullock. PW Nazar Mohammad and Lal Khan also woke up on hearing the cries of the complainant. In the light of his torch the complainant saw his bullock missing from the place where the bullock had been tethered. He observed that the entrance of his house was open. Outside the house he saw two persons carrying his bullock which was subsequently

identified to be the stolen bullock. PW Nazar Mohammad too saw them with the bullock in the light of his torch. The three persons chased the two persons since identified to be the two appellants and with the help of PW Ghulam Qadir and some other neighbours who had arrived at the scene of occurrence caught hold of the two appellants with the bullock. The appellants were taken to the otak of the complainant and Ghulam Mohammad and were kept them under surveillance. In the morning the complainant went to Police Out Post Butra at a distance of 2½ miles from the place of occurrence and lodged an FIR. It was recorded at 9.00 a.m. on 11th February, 1980. The Head Constable of Police then came to the place of occurrence alongwith the complainant and arrested the two appellants and gave over the bullock to the ~~complainant under~~ ~~superdginama~~.

The defence was one of denial. It was claimed that the appellants had been falsely implicated in the occurrence due to enmity and that the appellants had been arrested from their village. All the presecution witnesses to whom these suggestions had been given denied them. The two defence witnesses, one of them is brother of the appellants, examined on behalf of the appellants contradicted each other and the learned Sessions Judge did not find their evidence acceptable.

Mr. Hayat Junejo, learned advocate for the appellants has contended that the defence's case has been made out by the statements of the appellants supported by the two defence witnesses. He has also contended that none of the witnesses saw the appellants entering the 'Hirz'.

The complainant's case has been fully supported by PWs Nazar Mohammad and Ghulam Qadir. They corroborated

one another. Both of them are natural witnesses and they have been mentioned in the FIR. Although these witnesses appear to be related to the complainant there is no enmity between them and the appellants. The recovery of the torches from the complainant and PW Nazar Mohammad lent support to the evidence that they had seen in the light of torches the appellants carrying away the complainant's bullock. None of the PWs said that any of the appellants had any weapon, and this showed that the witnesses told the truth and did not exaggerate things. PW4 proved the arrest of the appellants and the seizure of the two torch lights and the bullock. The Investigating Officer, PW5 proved the arrest of the two appellants at the otak of Ghulam Mohammad. He proved the mashirnama of the wardat, and saw the door of the house broken. He also proved the seizure of the bullock and the two torch lights. The seized articles and the bullock were duly identified in the Court. He denied the suggestion that the appellants were arrested elsewhere. No reason has been suggested as to why this witness should not be believed.

It appears that the learned Sessions Judge went to the place of occurrence and held an inquiry in the nature of Tazkiya-al-Shahood and satisfied himself about the character and credibility of the eye witnesses.

"We entirely agree with the appraisal of evidence made by the learned Sessions Judge. On a careful examination of the evidence, however, we find that none of the witnesses has seen anyone of the appellants actually entering the 'Hirz'. In other words none of the appellants has been seen inside the place where the bullock was tethered. Section 8 of the said Ordinance is clear on this point and it is as follows:-

"Commission of theft liable to hadd by more than one person. Where theft liable to 'hadd' is committed

by more than one person and the aggregate value of the stolen property is such that, if the property is divided equally amongst such of them as have entered the 'Hirz' each one of them gets a share which amounts to, or exceeds the 'nisab' the 'hadd' shall be imposed on all of them who have entered the 'Hirz', whether or not each one of them has moved the stolen property or any part thereof".

The evidence has disclosed that PWs, Rab Nawaz, Nazar Mohammad and Ghulam Qadir all saw the two appellants with the bullock outside the house and the landhi where the bullock had been tethered at night. In the absence, therefore, of any proof that any one of the appellant actually entered the 'Hirz' it is not possible to sustain the conviction and the sentence of the appellants under Section 9 of the Ordinance.

The evidence, however, proves beyond any reasonable doubt that the appellants have committed theft of complainant's bullock, and is thus guilty of theft liable to Tazir under Section 14 of the Offence against property (Enforcement of Hadood) Ordinance, 1979.

It may also be mentioned that the value of the bullock has been stated to be Rs 4,000.00 (Rupees four thousand) and it has gone un-challenged. The learned Sessions Judge, however, failed to consider the value with reference to the 'nisab' as defined under Section 6 of the Ordinance which has fixed the nisab to be four decimal four five seven (4.457) grams of gold. Under Section 8 of the Ordinance, the Court should have directed its attention to the 'nisab' and come to a finding on the question of nisab with reference to each individual appellant.

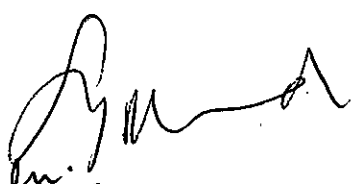
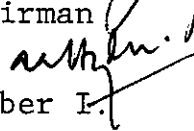
The incidence of cattle lifting is very large in villages and it should be put down with a strong hand. In view of the facts and circumstances mentioned above we set aside the conviction and sentence of each of the appellants under Section 9 of the Ordinance. Instead we




convict each one of them under Section 14 of the Ordinance read with Section 380 of the Pakistan Penal Code and sentence them to suffer rigorous imprisonment for 7 years each.

The appeal is accordingly disposed of.

The attention of the learned Sessions Judge is drawn to Section 24(2) of Offence against property (Enforcement of Haddood) Ordinance No. VI of 1979. He should follow the procedure prescribed in Section 374 of the Code of Criminal Procedure and shall submit the proceedings to the Federal Shariat Court for confirmation of the sentence. This should be done whether the convict files appeal or not.

Chairman   
Member I. 

Member II. 

Member III. 

Member IV. 

18/4/81