

**IN THE FEDERAL SHARIAT COURT**

(Appellate Jurisdiction)

**PRESENT**

**MR. JUSTICE SALAHUDDIN MIRZA**

**CRIMINAL APPEAL NO.41/Q OF 2002**

Zafar Iqbal son of Muhammad Khan,  
Caste Khilji, Resident of Jail Road,  
Quetta.

Appellant

.....

Versus

The State

.....

Respondent

Counsel for the appellants

...

Mr. Adnan Ejaz,  
Advocate

Counsel for the State

...

Mrs. Noor Jehan Kahur  
Advocate

No. and Date of FIR and  
Police Station

...

No.79/01 dated 24.5.2001  
P.S. Civil Line,  
District Quetta

Date of decision of the  
trial Court

...

08.05.2002

Dates of Institution

...

08.05.2002

Date of hearing

...

09-10-2008

Date of decision

...

21-11-2008

**JUDGMENT**

**SALAHUDDIN MIRZA, J:-** Appellant Zafar Iqbal, a police constable, has come in appeal against the judgement dated 8.5.2002 passed by learned Additional Sessions Judge-III, Quetta, Mr. Rashid Mahmood, in Case No.14/2001 in which he has convicted him under section 387 PPC and sentenced him to five years' rigorous imprisonment with fine of Rs. 10,000/- or to SI for two years in default of its payment.

2. The prosecution case as per FIR No. 79/01 of Police Station Civil Lines, Quetta, recorded on 24.5.01 at 9.05 in the morning is that on that date complainant Ejaz Ali Awan went out from his house on his new and unregistered motorcycle alongwith his 5-year old daughter at 8.45 in the morning and when he reached Habib Nala near Railway bridge he saw two persons sitting on the bridge who came in front of the motorcycle as a result of which he had to stop the motorcycle

whereupon they demanded from him to hand over the motorcycle to them but he resisted whereupon one of them, who was of short stature, fired at him with a pistol but missed and, in the meantime, the other person tried to take away the motorcycle upon which the complainant caught hold of him and at this the short-statured man tried to fire at him again but the pistol did not fire and he snatched the pistol from him and then he grappled with them but one of them managed to free himself and tried to run away on his motorcycle and at this stage the other person also managed to free himself and ran after the motorcycle whereupon the complainant tried to fire at them with the snatched-pistol but the pistol did not work and the complainant then ran after them but the motorcycle slipped on the bajri lying on the road whereupon they abandoned the motorcycle and disappeared in the lanes of Mohalla Faqirabad. Before the complainant could go to the police station and report

the incident a police party which was patrolling in the area reached the spot to which the complainant narrated the incident and said that he could identify the culprits if he saw them again.

The police recorded the statement of the complainant and took into possession the pistol which was snatched by the complainant from the culprits and also the motorcycle which was the subject-matter of the attempted robbery. The report of the complainant was later incorporated in the FIR which was recorded under section 22 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. During the course of the scuffle with the culprits the complainant had received some injuries and he was immediately sent to the hospital for medico-legal examination.

3. Appellant Zafar Iqbal was arrested on 30.5.2001 and on the completion of investigation was sent up for trial before learned Additional Sessions Judge-III, Quetta, who on

07.07.2001 charged him under section 22 of the Offences Against Property (Enforcement of Hudood) Ordinance,1979.

The prosecution examined the following witnesses in support of

its case:

- PW-1 Ejaz Ali, divisional accountant, WAPDA, is the complainant who reiterated what he had stated in the FIR
- PW-2 City Magistrate Hamid Al Kareem. He had conducted the identification parade in which the complainant had identified appellant Zafar Iqbal.
- PW3 Constable Liaqat Ali. He was a member of the police patrolling party which was in the vicinity of the place of occurrence and which reached the place of incident on hearing the commotion. He heard from the complainant the details of the incident. He is one of the marginal witnesses of the memo **Ex. P/3-A** in respect of the securing of the pistol from the complainant and of memo **Ex. P/3-B** in respect of the securing of the motorcycle in question.
- PW-4 Dr. Baqar Shah of Casualty Department, Civil Hospital, Quetta. He had medico-legally examined Complainant Ejaj Ali shortly after the incident on 24.5.01 and issued Medico-legal Certificate **Ex.P/4-A**. He found the

following injuries on the person of the complainant.

1. Bruise 2 x 1 cm on the right knee joint.
2. Lacerated wound on the lower palan.
3. Bruise 1 cm x 1 cm in the left little finger of hand.

PW-5 SI Behram Khan. He is the investigating officer. He visited the place of occurrence and prepared sketch **Ex. P/5/A** and the memos of securing of pistol and motorcycle earlier produced as Ex. P/3-A and Ex. P/3-B, got the appellant identified under the supervision of the city magistrate on 30.5.01, got the complainant medico-legally examined by the medical officer. He found that the appellant was also involved in Crime numbers 308. 310 and 311 as well. He also stated that the identification parade of the appellant/accused was conducted six days after the occurrence, that is, on 30.5.01 when he was arrested. He also conceded a suggestion that appellant was a former police constable.

4. In his 342 Cr.P.C. statement appellant pleaded his innocence and claimed that he had been implicated in this case at the instance of SI Ghani but did not indicate the reason why SI Ghani did so. He further stated that he was a police

constable but was absent from his duty and that his house was raided on 24.5.2001 and the same day he had surrendered to the police. He also stated that complainant was his neighbour and he had no quarrel with him. He, however, did not examine himself under section 340(2) Cr. P.C nor gave any evidence in his defence.

5. Learned Counsel of the appellant and learned State counsel have been heard and the record has been perused with their help.

6. The prosecution case mainly rests on the evidence of the complainant and the Investigating Officer SI Behram Khan. The defence does not allege any enmity with them. In fact, the appellant himself states in his 342 Cr.P.C. statement that he has no quarrel with complainant Ejaz Ali. There is therefore no reason why the complainant would falsely implicate him. If he wanted to falsely implicate him he would have as well named

him in the FIR but he did not. The identification parade was held the very day the appellant was arrested. The evidence of City Magistrate PW-2 Hamid Al Kareem shows that all requirements for holding the identification parade were fulfilled before it was held, that is, ten dummies of equal size and age were mixed up with the appellant and complainant Ejaz Ali identified the appellant as the robber who had threatened him with pistol and had tried to rob him of his motorcycle and the identification was done thrice and each time the appellant/accused was made to stand at different serial number and each time the complainant had correctly identified the appellant. The memo of holding of identification parade is **Ex. P/1-B** which the magistrate produced in evidence. He issued certificate **Ex. P/2-A** on the conclusion of the identification parade. Nothing has come in the cross examination of the

complainant, investigating officer or the city magistrate which could discredit their testimony.

7. On the basis of recovery of pistol which the complainant had produced to the police at the time of lodging of the FIR in which he had stated that he had snatched it from one of the culprits, a case under section 13-E Arms Ordinance was registered against the appellant and he was convicted in it but honourable Baluchistan High Court had acquitted him vide judgement dated 3.9.2002 and learned counsel of the appellant placed on record copy of this judgement during the course of hearing and also copies of the two witnesses which the appellant had examined in his defence in that case. In my view copy of judgement in 13-E case and the deposition of defence witnesses in that case have no bearing on this appeal which must be decided on the basis of the evidence recorded in this case. It may however be mentioned that Zafar Iqbal was

acquitted in that case mainly on the ground that neither Ejaz Ali complainant nor the magistrate who had conducted the identification parade had been examined in the court and honourable Baluchistan High Court severely censured the district attorney who had conducted that case and observed that due to his negligence maximum undue benefit appeared to have been extended in favour of the accused and recommended appropriate disciplinary action against him (as well as against the official witnesses for their dereliction of duty) but in the present case both these witnesses have been examined.

8. Learned counsel of the appellant raised the following objections during the course of hearing:

1. There is delay in the lodging of the FIR.
2. No private musheer was associated with the process of securing of motorcycle and pistol.
3. Motorcycle and pistol were not produced in the court.

4. Complainant did not say that he could identify the accused.

9. As for the delay in the lodging of the FIR, the record shows that the police station was ½ kilometer away from the place of occurrence and a police gasht party had reached the place of occurrence within minutes of the occurrence which occurred at 0845 hours of 24.5.01 and the FIR was recorded the same day at 0905 hours, that is, within 20 minutes of the occurrence. I do not understand how according to learned counsel of the appellant there is delay in the recording of the FIR. As for the **second objection**, the police witnesses are as good a witness as any private witness. Besides, in the present case there was no occasion for the association of private witnesses. There is also no force in the **third** contention of learned counsel of the appellant that the motorcycle was not produced in the Court. No such question was put to the investigating officer who was the right person to whom such

question should have been put. Such question was put to constable Liaqat Ali (PW-3) to which he had replied in the negative which means that the motorcycle was not produced on 22.11.2001 when Liaqat Ali was examined but it does not mean that the motorcycle was not produced on other dates of hearing. Besides, as learned trial judge has observed, the motorcycle was given on superdari to the complainant who had not produced it in Court (on 22.11.2001) and action was being taken against him in this regard. As for pistol, there is no basis to say that it was not produced as no such question was put to any witness; even otherwise, the pistol was produced in the 13-E case of which it was case property. In this regard learned counsel had relied on 1994 Cr .L.J 1874 (Munawwar Begum Vs State), 1989 Cr.L.J 1738 (Ghuam Shabbir Vs State) and PLD 1987 FSC 43 (Liaqat Bahadur Vs State). The facts of these judgements are quite different and do not apply to the facts of

this case. In those cases the case property was not produced at all which is not the case here. Besides, in the above noted first case, the accused was not even asked whether he wanted to examine himself on oath under section 340(2) Cr.P.C. and the recovery witnesses had not supported the prosecution case and therefore the accused was given benefit of doubt. The second case is of shop lifting and the third case is about theft in an arms shop. In the present case the motorcycle was released to the owner on superdari who thereafter did not produce it and action was taken by the Court against the superdar/complainant whose bond was attached. However, the failure of the superdar would not adversely affect the prosecution case. The **last contention** of learned counsel of the appellant was that the complainant had not stated either in the FIR or in his deposition that he could identify the accused. This is factually incorrect. Both in the Fard-e-bayaan Ex. **P/1-A**

and in the FIR he has stated that he could identify the accused if he saw them again.

10. I am satisfied that there is no possibility of false involvement of the appellant. The complainant says he did not previously know the appellant and the latter says that they were known to each other but there was no quarrel or bad relations between them. There was scuffle between the culprits and the appellant, which is established by the medical evidence, and thus the complainant had ample time to see and observe the appellant and the other culprit who is absconding and the identification parade was held within a week of the occurrence and on the very day he was arrested and thus it appeals to reason that the complainant identified the appellant in the identification parade. The evidence of the city magistrate leaves no doubt about the authenticity of the identification parade. The appellant is a policeman who at his own admission was

absconding from his duty and it appears that he had changed his profession from law enforcer to law breaker. Under the circumstances I find no merit in the appeal. The impugned judgement is therefore upheld and the appeal is dismissed. The appellant is on bail. His bail bonds are cancelled and he shall be taken into custody to serve out the remaining sentence.

**JUSTICE SALAHUDDIN MIRZA**

Announced at Islamabad  
On 21-11-08.  
Abdul Majeed/