

Cr.A.No.17/K/2016

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

JUSTICE MRS. ASHRAF JAHAN

CRIMINAL APPEAL NO.17/K/2016

Khamiso son of Pir Dino Khaskheli Appellant.

Versus

The State Respondent.

For the Appellant ... Mr. Nadir Hussain M. Abro,
Advocate

For the State ... Mr. Zahoor Shah, Assistant
Prosecutor General Sindh.

Date of the Judgment of Trial ... 30.06.2015
Court

Date of Institution ... 10.10.2016

Date of Hearing ... 07.06.2017

Date of Decision ... 07.06.2017

JUDGMENT

MRS ASHRAF JAHAN, J:- The above titled criminal appeal was disposed of vide short order dated 07.06.2017 which reads as under:

“Heard learned counsel for the appellant and the learned prosecutor General Sindh for the State. For reasons to be recorded later, Criminal Appeal No.17/K of 2016 is allowed. The Judgment dated 30.06.2015 passed by the learned 2nd Additional Sessions Judge Sanghar is set aside so also the conviction and sentence awarded to appellant Khamiso S/o

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Pir Dino Khaskheli and he is acquitted of the charges. He may be released forthwith if not required in any other custody case”.

Following are the reasons of the above order.

2. The appellant Khamiso through this Criminal Appeal has assailed the judgment dated 30.06.2015 passed by the learned 2nd Additional Sessions Judge Sanghar, whereby he was convicted and sentenced under Section 392 P.P.C. for Seven years R.I. and to pay fine of Rs.10000/-; in case of default in payment of fine to suffer S.I. for three months. He was also sentenced under Section 342 P.P.C. to suffer R.I. for one year and to pay fine of Rs.3000/-, in default thereof to suffer S.I. for one month. The Sentences awarded to him were ordered to run concurrently.

3. The facts as narrated in the F.I.R. by complainant Ali Hassan are that his uncle Moula Bux owned a Datsun vehicle bearing Registration No.BHB:1754, which was driven by him, and Nabi Bux Khaskheli was its Cleaner. On 12.05.2012 in the evening he was asked by Ustad Muhammad Bachal Malokhani to take ten cooked cauldrons for delivery in marriage ceremony at Tando Adam. At about 6.00 p.m. he took food from Otaq of Rehan Talpur and proceeded towards Tando Adam. At about 1200 hours they were on their way back in Datsun along with empty cauldrons, when at 0100 hours they reached near Suhni Dharti Bus Stop Road, suddenly four culprits armed with weapons intercepted them. They snatched keys of Datsun and robbed Cell Phones from the complainant and Cleaner. They were with open faces and two black colour motorcycles of culprits were also parked there. The culprits took them towards sugarcane crops and tied their hands and legs. One of the culprits started

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Datsun pick up while three drove away on their motorcycles and all went towards Tando Adam side. At about 0400 hours the complainant and Cleaner untied themselves and came to main road from where they took lift in a truck and reached home. They disclosed above story to their uncle Moula Bux and relative Mumtaz and kept on searching the robbers. During search they came to know that Haroon Majeedano, Lakhadino Majeedano, Ghaffar Majeedano and Khamiso Khaskheli had robbed Datsun along with other articles. They made complaint to Dadlo Majeedano and Inayat Majeedano, who ensured them to settle the issue and return robbed articles but finally on 16.08.2012 they refused to return the robbed property. Thereafter on 17.08.2012 complainant lodged the F.I.R. at P.S. Jhol, District Sanghar. Police after usual investigation submitted challan before the Court of law against accused Dadlo and Inayat while showing four accused as absconders. Subsequently accused Khamiso was arrested while the rest of the accused were declared as proclaimed offenders.

4. Charge in the present crime was framed against accused Dadlo, Inayat Ali and Khamiso on 31.12.2012 for offences punishable under Section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and Section 342 P.P.C. to which they pleaded not guilty and claimed trial.

5. Prosecution in support of its case examined complainant Ali Hassan as Ex.11 who produced F.I.R. as Ex.11/A. PW-2 Nabi Bux as Ex.12. P.W. Moula Bux as Ex.13. At this stage an application under Section 227 Cr.P.C. was moved by DDPP for amendment in the charge which was allowed and Amended Charge was framed on 16.04.2017 wherein Section 212 P.P.C. was added. Prosecution further examined

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PW.4 Anwar Sadat as Ex.20. Investigation officer of this case Additional SHO Arbab Ali was examined as Ex.21, who produced Mushirnama in respect of documents of Datsun as Ex.21/A, Mushirnama of Sarzamin as Ex.21/B. PW-6 Mumtaz Ali was examined as Ex.22. Thereafter prosecution closed its side vide statement dated 07.04.2015 as Ex.23.

6. Statements of all three accused were recorded under Section 342 C.P.C., wherein they denied allegations leveled by the prosecution side, however, they neither examined themselves on oath nor any witness in their defence.

7. The Trial Court after completion of trial passed the judgment dated 30.06.2015 which is impugned before this Court, whereby the present appellant was convicted, while two accused Dadlo and Inayat were acquitted extending them benefit of doubt.

8. I have heard Mr. Nadir M. Abro Advocate appearing for the appellant as well as Mr. Zahoor Shah, Assistant prosecutor General Sindh, for the State. It is contended by learned counsel for the appellant that there are mere words of complainant Ali Hassan against the present appellant. Even the eyewitness PW-Nabi Bux did not identify him as culprit of this crime; most importantly there is inordinate delay in lodging of F.I.R. without any reasonable justification; there is no recovery from the present appellant. Thus the prosecution has miserably failed to prove the charge against him, therefore, the present appeal may be allowed in the interest of justice.

9. Conversely, it is argued by the learned State Counsel that though there is evidence of PW-Ali Hassan against the present appellant but at

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the same time there is no corroboratory piece of evidence against appellant to connect him with the commission of crime.

10. I have considered the arguments and have perused the record. It is apparent on the face of record that there is inordinate delay in lodging the F.I.R. in the present crime. As per prosecution itself the incident had taken place on 13.05.2012 in the early hours of the night but F.I.R. was lodged on 17.08.2012, after delay of more than three months, for which no plausible explanation is assigned except the words that complainant was searching the culprits, made complaint to Dadlo Majeedano and Inayat Majeedano, who initially promised for return of robbed vehicle but finally refused to return the same. As per prosecution story there were four culprits at the time of incident but challan was produced against six persons. No doubt that complainant in his evidence before Court has nominated present appellant with the commission of crime but the other eyewitness PW- Nabi Bux who was with the complainant at the time of incident did not identify him as accused. This piece of evidence is a major blow to the case of prosecution.

11. Further when the evidence of complainant is examined minutely, it clearly reveals that though in the F.I.R. he alleged that the culprits had also snatched two Q-Mobile Phones from the complainant party besides the Datsun and ten empty cauldrons but in his evidence before Court his statement is totally silent about snatching of mobile phones. Similarly, PW Nabi Bux also did not adduce a single word about alleged robbed mobile phones.

12. Another important aspect of the case is that there is no recovery from the appellant in this crime. Thus it is significant that there is no

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corroboratory piece of evidence in support of the words of complainant against the appellant connecting him with commission of crime.

13. It is pertinent to note that in F.I.R. the complainant reported that he approached Dadlo Majeedano and Inayat Majeedano, who assured to settle the dispute and return of vehicle but in his evidence he did not depose a single word against them and deposed that accused Lakhadino kept him on false hopes and after three months refused to return the vehicle, which compelled him to lodge the F.I.R. He attributed only appellant Khamiso for commission of offence and exonerated the rest of the accused facing trial namely Dadlo and Inayat. This self contradictory statement of complainant further creates doubts about the prosecution story.

14. in the light of above discussion it appears that prosecution has failed to discharge its burden satisfactorily and there appear major lacunas and contradictions in the evidence brought on record. It is settled law by this time that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of

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grace and concession but as a matter of right. Reliance in this regard is placed on the case of ***Tariq Pervez v. State (1995 SCMR 1345)***

14. The upshot of the above discussion is that there being no satisfactory basis for upholding the conviction and sentence of the appellant, therefore, the impugned judgment was set aside and criminal appeal was allowed by short order.

JUSTICE MRS ASHRAF JAHAN

Karachi
Dated, 09.06.2017
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Approved for reporting.

JUDGE