

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

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PRESENT

MR. JUSTICE ABDUL WAHEED SIDDIQUI

CRIMINAL APPEAL NO. 150/I OF 1996

Muhammad Amin s/o Abdullah, Appellant  
Caste Baloch, resident of  
Tasp Panjgur.

VERSUS

1. Allah Bux s/o ----- Respondents  
Haji Sabzal.
2. Muhammad Tahir s/o  
Haji Noor Bux.  
Caste Baloch, resident of  
Tasp Panjgur.
3. The State.

Counsel for the ----- Ch. Mohammad Ibrahim,  
appellant Advocate.

Counsel for the ----- Raja Abdul Ghafoor,  
State Advocate.

F.I.R. No., date & ----- Murasala No. Nil, 18-3-1996  
Police Station (before SDM, Panjgur)

Date of the order of ----- 10-06-1996  
the trial court

Date of the ----- 24-07-1996  
Institution

Date of hearing ----- 14-01-1997

Date of decision ----- 29-01-1997

*Waheed*

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Judgment

Abdul Waheed Siddiqui, J. This is a Criminal Appeal under section 24 of the Offences Against Property (Enforcement of Hudood Ordinance 1979 (Ordinance No.VI of 1979) preferred by appellant against the order of his conviction and sentence dated 10-06-1996 passed by Additional Sessions Judge, Panjgur, Baluchistan whereby he has been convicted under section 380 P.P.C and is sentenced to suffer rigorous imprisonment for seven years and fine of Rs.3000/- in default of payment he would further undergo for two months simple imprisonment. Benefit of section 382-B Cr.P.C is also given to the convict. The appeal was admitted by this Court vide order dated 2.9.1996 whereby the sentence of fine was suspended till its decision.

Waheed

2. The facts of the case in brief are that on 18-3-1996 Allah Bux (Respondent No.1) and Muhammad Tahir (Respondent No.2) filed a complaint in the Court of Sub-Divisional Magistrate, Panjgur u/a<sup>9/14</sup> of the Offences Against Property (Enforcement of Hudood) Ordinance 1979 Read with Section 457 P.P.C. The allegations were that the complainants owned and possessed three motor cycles ; one was 125 super coloured green, second was 100 coloured



red and third was also 100 but coloured green. They made all the three motor cycles stand in their haveli. 100-coloured red was locked, other two were not locked. When they came in the morning of 16-01-1996 for proceeding towards business, they found Super-125/and 100-colour <sup>green</sup> missing. (In other words the unlocked two motor cycles were missing). It was alleged further that some unknown house-breakers had stolen the motorcycles and the reason for inordinate delay of two months and two days in reporting the incident to the authorities was shown to be ignorance of procedure of reporting. It was alleged further that on their own the complainants had searched and had almost lost their hopes. Further allegations in the complaint were that some time after the incident one relative of the complainant went to the shop of Muhammad Sharif for some transaction and there then he came to know that the appellant/convict was selling a Super-125 motorcycle for Rupees six thousand. When asked about the receipt of the payment and verification by some authority of the Government the appellant became angree and refused to do so. Later on another person Akhtar Machanic informed that during Ramzan, at Sehri time, one person left a motor cycle devoid of head and cylinder before his shop. His companions informed him about that. When he came he found the appellant standing near the

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motor-cycle. He wanted to dismantle it. Since it was not the working hour, so he refused. However the appellant himself took the tool and after dismantling, he put it in a gunny bag. It was alleged further that after having received this information, the complainants contacted police station and reported in writing and although the appellant was called there, but no FIR was lodged and he was set free.

The complaint was transferred by Sub-Divisional Magistrate Panjgur to the Court of Additional Sessions Judge Panjgur for want of jurisdiction.

3. The appellant was charged u/s 9/14 Offence Against Property (Enforcement of Hudood) Ordinance 1979 by the Court of Additional Sessions Judge Panjgur for which he pleaded not guilty.

4. The prosecution examined four witnesses. The appellant gave his statement u/s 342 Cr.P.C., was also examined on oath u/s 340(2) Cr.P.C and also examined four witnesses in his defence.

5. I have heard the arguments of the counsel for appellant as well as State. The counsel for appellant has vehemently contended that the complaint suffers from inordinate delay for which no plausible explanation is coming forth with that

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no recovery of the stolen articles has been made; that neither ownership nor possession of the stolen articles has been proved by the complainant; that the ingredients of the theft as defined in section 378 of the Pakistan Penal Code, 1860 are not constituted; that the conviction is based wholly on the circumstantial evidence for which enough corroborating material is not available on the record; that the impugned judgment is based on conjectures and surmises; that the enmity between the complainants and the appellant is proved from the depositions on the record; and finally that it is a case not proved beyond all reasonable doubts.

The learned counsel has relied upon NLR 1996 SD 123, NLR 1996 SD 388, NLR 1986 SD 600, 1991 Pcr.L.J 1185, 1991 Pcr.L.J 1898, NLR 1996 SD 122, and NLR 1996 SD 509.

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The learned counsel for State has contended that the appellant has admitted during his statements u/s 342 Cr.P.C and deposition u/s 340(2) Cr.P.C that he had dismantled one Motor cycle for some person who had paid him Rs.200/- as labour charges and some one else had informed him that he wanted to sell his motorcycle for Rs.6000/- and this is what he had related to Sharif, machanic(PW-6). Hence his guilt is proved. When asked about the case law on the point that the statements of

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accused can be used against him and that the burden of proof can be shifted in such like cases from prosecution to the defence, he was unable to do so. On the other hand he admitted that there are infirmities in the impugned judgment and that the prosecution has not acted strictly according to the law of the land at the investigation level, but for that he tried to explain that <sup>the</sup> people and prosecution of far off locations in the country are ignorant of the provisions of law and that the prosecution can be condoned for not having followed the provisions of the Code of Criminal Procedure 1898 and the Qanoon-e- Shahadat Order, 1984. When asked by this Court to cite any law in this connection, he showed his inability.

6. In this case there is neither confession of the appellant, nor any ocular evidence is available. The evidence of prosecution wholly depends on circumstantial evidence. In the absence of direct evidence, the conviction can be upheld only when all the hypothesis of the innocence of accused are ruled out. Such a case must be free from all doubt and no other explanation should be possible except the guilt of the accused. I have gone through the entire record of this case with care.

First of all I find that the complaint moved before Sub-Divisional Magistare Panjgur on 18-3-1996 is referring to three motorcycles

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for which neither registration numbers are given nor the name of the manufacturing company is disclosed. During his examination under the provisions of section 202 Cr.P.C Allah Bux complainant No.1 is making a reference to M/c Yamaha 100 Irani, but again no Registration Number is given. He has produced a receipt Ex PW/1-A. This receipt is in Persian language and is about the sale of Motor 125 water-coloured. Neither Yamaha is mentioned in it nor the name of the vendee Allah Bux is appearing whereas Allah Bux is claiming to have purchased it from some shop-keeper of Iran. On the complaint two green-coloured motor cycles have been shown as stolen property. One is 125 Super. In the receipt Ex.PW/1-A, motor 125 is not disclosed to be green, but rather water-coloured (Rang:Aabi). Second complainant Muhammad Tahir, during examination u/s 202 read with 200 Cr.P.C is not taking the name "Yamaha" and is producing receipt of purchase of an unidentified motorcycle as Ex. PW/2-A. This Exhibit is not available in the records. Third Witness who was examined on oath before charge was framed is Akhtar mechanic. He is disclosing that a motor cycle 100 Yamaha red coloured was standing on his shop at a time when he was going for Fajr prayers during the month of Ramzan.

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But it is not the case of the complainants. They are alleging that two green coloured motorcycles were stolen.

Here Akhtar mechanic is referring to one Red coloured motorcycle which was dismantled by the accused/appellant.

This very witness has repeated the same facts in his deposition which he made after the charge was framed and the appellant had not pleaded guilty. Consequently it is not safe to identify the 100 CC green coloured motorcycle, unregistered and unnumbered, with a red coloured Yamaha of 100CC which was admittedly dismantled by the appellant. Appellant himself has admitted during his statement that he had dismantled one motor cycle for a consideration of Rs.200/- as labour charges. This statement inspires confidence and it cannot be used against him as admission of the guilt as has been done at page No.4 of the impugned Judgement.

So far as green-coloured motor cycle 125 C.C Super is concerned the receipt in persian Ex.PW/-A discloses its colour to be watery.

About this motor cycle Muhammad Sharif, while being examined under section 202 read with 200 Cr.P.C, disclosed that it was the event of last Ramzan that the appellant was working in his garrage and he wanted to sale a Super motor cycle



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for Rs.6000/- The same witnesses during deposition has said that this event was that <sup>of</sup> five or six days before the last Ramzan. This contradiction is enough to discard his evidence. In this situation the evidence which is not direct, is not free from doubt. On holding this view I am fortified by the rulings of the full-bench of this Court cited as NLR 1996 SD 388 and also ruling appearing as NLR 1986 SD 600, NLR 1996 SD 123.

So far <sup>as</sup> point of animus between the complainant and accused/appellant is concerned, although denied by the prosecution, yet it is evident from a reply of Muhammad Tahir (PW-8) during cross. He deposes " It is correct that since the time of your brother Muhammad Alam's marriage, there are no terms of mutual family gatherings! Now the parties are admittedly close relatives, and admittedly the apple of discord commenced from the relationship of a family in which appellant's brother Muhammad Alam married. DW-1 who is father of the appellant has further clarified the existing animus during his examination-in-chief. He says " Complainants Tahir and Allah Bux are my relatives. It is an event of about three years ago that I had agreed to arrange the marriage of my son Muhammad Alam with the daughter of Haji Karim Bux. On this Imam Bux and Sumaiya

*Ahmed*

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came to my house early in the morning and they are khala zads of the complainants. They brought me out of my home and Imam Bux said that I shall kill your son Muhammad Alam and Sumaiya said that whatever you have given to Karim Bux, you take it back and I shall give equivalent to Karim Bux. You finish the expected betrothel of your son with the daughter of Karim Bux. Then I gave an application before SDM Panjgur against 10/12 persons for keeping peace ,and then the SDM took the surety for keeping peace from both the parties!"

Other DWs have stated on oath that such an enmity is simmering between the parties. The on going simmering enmity is further proved by Exhibits DW/A and Exh: DW/B which are FIRs of offences of varying degrees u/ss 337/A,147,148, 149,336/34 lodged by the parties and/or their close relatives against each other. All these FIRs are of 1994. It simply means that the parties have been involving each other after the origins of enmity from the point of differences regarding the betrothel of the brother of appellant with the daughter of Karim Bux. Now it is a common knowledge that in a social frame-work which is based upon tribal values, the marriage with particular ladies are given highest importance and family honours are felt at stake.

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There is also an inordinate delay in reporting for which no plausible explanation is coming forward. The incident is that of 16-1-1996. Two months and two days afterwards a direct complaint has been filed for which delay the only explanation is that complainants were unaware about the procedure. This explanation is falsified by the record itself. According to the deposition of DW-1 about 2 years prior to this incident proceedings for peace-keeping were taken up by the SDM Panjgur and parties were bound down to give sureties. This has not been denied by the complainants as no such question was posed during the cross. On the contrary, another question regarding reconciliation by M.P.A Kachkol Ali has been asked which is nothing but an implied admission of such proceedings before SDM Panjgur. Again Exhibits DW/A and DW/B, i.e. two FIRs of 1994 and lodged against each other falsify the stand of ignorance of procedure. Complainant Allah Bux has admitted during cross upon him that he has lived in Maskat for 20 years. Both the complainants have admitted that they had purchased the motorcycles from Iran and in this context a receipt of purchase in Persian language has been exhibited as PW/1-A. All these admissions prove that the complainants are travellers of wide-ranging distances and of countries other than Pakistan.

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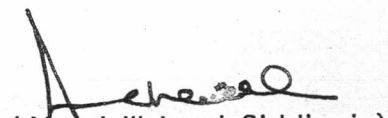
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The contention of ignorance of the procedure as to how to report an offence is repelled on this account. Under such circumstances, the explanation regarding delay of two months and two days is not plausible and it fires back upon the complainant party and creates strong doubts regarding long deliberations before reporting to the authorities concerned.

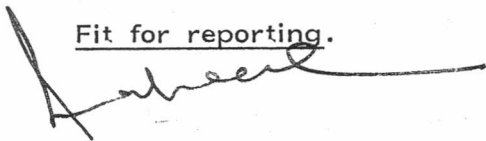
For the reasons noted above , the conviction and sentence dated 10-6-1996 passed by the Additional Sessions judge, Panjgur against the appellant is set aside and he is acquitted of the charge. He may be released and set at liberty if not wanted in any other case.

  
(Abdul Waheed Siddiqui)  
Judge.

Announced on 29th January, 1997, in open Court.

  
(Abdul Waheed Siddiqui )  
Judge

Fit for reporting.



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