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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

CRIMINAL APPEAL NO.60/K OF 1995.

1. Haider Jaffary son of Muhammad
Manzoor Jaffary r/o House No.61-Ā,
Gali No.2, Landhi No.1 Karachi and ... Appellants
2. Abdul Nasir son of Abdul Aziz,
r/o House No.1176, 33,C, Korangi
No.2, Karachi.

Versus

The State ... Respondent

For the appellants ... Syed Shamsul Qamar Warsi,
Advocate

He
For the State ... Syed Zawar Hussain Jaffari,
Asstt: A.G Sindh.

No.& date of F.I.R
Police Station ... No.223/92, dt.1.10.1992,
P.S. Landhi Karachi

Date of order of
the trial court ... 23.11.1995.

Date of Institution ... 13.12.1995.

Date of hearing
and decision ... 18.11.1996.

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Complainant

Aurangzeb was driver of taxi No. PL 1527. On 1.10.1992 at about 2030 hours three young boys engaged his taxi at Karachi Airport

for taking them to Landhi No.89. Their names subsequently

came to the knowledge of the complainant were accused Abdul

Nasir, accused Muhammad Shoalb and accused Haider Jaffary.

At about 2115 hours they reached the aforesaid destination

but the accused told the complainant to take them further away.

At about 2130 hours they reached near Octroi Check Post Lal Abad

Chashma Goth Road, where accused Haider Jaffary aimed a revolver

at the back of the complainant and asked him to stop the

vehicle and get down. The complainant offered them

money instead of the vehicle but all the accused forcibly

tried to get him out of the vehicle. The complainant raised

alarm whereupon three police officials named H.C Yousaf Ali Chandio,

F.C Munawar Khan and F.C Shah Nawaz reached the spot and apprehended

the accused. The Head Constable also searched the person of the

accused and took out pistol of 32 bore alongwith three cartridges

from accused Haider Jaffary and took all the accused to Police

Station Landhi. The complainant also made a report of the

occurrence which was recorded in F.I.R No.223/92 at 2215 hours.

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2. After investigation all the three accused were sent up for trial before VIIIITH Additional Sessions Judge (Hudood Court) Karachi East who charged them under section 17(1) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 to which they pleaded not guilty and claimed trial.

3. The State produced 5 witnesses in proof of the prosecution case. All the accused made depositions under section 342 Cr.P.C and also produced 3 defence witnesses. After the conclusion of the trial the learned Additional Sessions Judge convicted all the three accused under section 17(1) of the Hudood Ordinance and sentenced each of them to undergo rigorous imprisonment for 3 years and to suffer 10 stripes each. Convicts Haider Jaffary and Abdul Nasir had challenged their conviction and sentence by the appeal in hand.

4. I have heard learned counsel for the parties at length who also led me through the entire record of the case. The only eye witness of the occurrence is the complainant who was driver of the taxi car. Although the complainant had ~~xxx~~ corroborated the contents of the F.I.R in his deposition as P.W.1 but certain contradictions came to light in the prosecution story. According to the F.I.R the weapon of offence was revolver of 32 bore but in his evidence he deposed that it was a TT pistol. According to the F.I.R the weapon of offence was recovered by the police party there and then

at the spot but in his deposition the complainant had stated that the police mobile party arrested the accused, took them to Octroi Check Post and then to Police Station Landhi and then their search was made and the weapon was recovered. It is also to be noted that neither the weapon of offence nor taxi car were produced during the trial and it was not known as what type of weapon was allegedly used by appellant Haider Jaffary in the commission of the offence. The other alleged eye witness of the occurrence P.W.4 Muhammad Mursaleen Bhatti, who lived in a house near the place of occurrence, did not see the actual offence. He was attracted to the spot on the alarm raised by the people and then he saw the accused but he could not see whether any of them had aimed his weapon at the complainant or had tried to snatch the taxi car from him. It shall thus be seen that the complainant was the solitary witness of the occurrence but he had also made many departures from the original story. There was also no evidence available on the record to identify the weapon of offence or other case property.

5. There were also noted many important material short-comings in the examinations of the appellants under section 342 Cr.P.C. No question about the recovery of the crime weapon was asked from any of them. Even otherwise the

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recovery of this weapon had become doubtful because firstly it was not known as whether it was a revolver or TT pistol and it had also not been produced in evidence to determine as what type of weapon it was. These short-comings in the examination of the appellants under section 342 Cr.P.C had caused great prejudice to them and they had been deprived of the right to explain all the circumstances appearing against them in the evidence and had thus been deprived of a reasonable defence.

6. Moreover, since no question had been asked from the appellants about the recovery of any weapon of offence, this piece of prosecution evidence could not legally be used against them in arriving at any decision of their guilt.

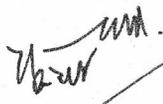
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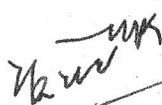
The complainant and all the three accused were still sitting in the taxi when the people and police officials arrived at the scene of occurrence, it could not be said that the culprits had committed the offence of Harabah. At the most it could be an attempt to commit the said offence if reliance could be placed on the solitary testimony of the complainant but as earlier adverted to his deposition also suffered from many contradictions and short-comings and it was not safe to rely upon his deposition. In the circumstances the defence plea that there had occurred dispute and quarrel between the complainant and the appellants with regard to the amount of fare, appeared correct.

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7. Much doubt had been created in the whole evidence of this matter and the offence could not be proved against the appellants beyond any doubt. The appeal is, therefore, accepted. The conviction and sentence of the appellants recorded on 23.11.1995 by the learned VIIIITH Additional Sessions Judge Karachi East are set aside and they are acquitted of the offence for which they were convicted and sentenced. They shall be set at liberty forthwith if not wanted in any other case.

Fit for reporting.


CHIEF JUSTICE


M. Akram/

Karachi, 18.11.1996.
M. Akram/