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IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RIZWAN ALI DODANI
MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD

CRIMINAL APPEAL NO.64/Q/2003

Saifullah Khan, Sepoy No.8835203, Appellant
D.S.G Station Sui, Tehsil Sui,
District Dera Bugti.

Versus

1. Muhammad Hanif, Respondents
son of Ellahi Bakhsh,
2. Dr. Muhammad Azeem
son of Ellahi Bakhsh,
3. Muhammad Shakeel,
son of Wazir Muhammad,
4. Muhammad Wakeel
son of Wazir Muhammad,
5. Peer Muhammad,
son of Chaghardi,
6. Abdul Baqi,
son of Pir Muhammad

All by caste Marhate Bugti, residents of Bogra Colony Sui,
District Dera Bugti.

7. The State.

Counsel for the appellant : M/s Muhammad Bilal and Babar
Bilal, Advocates

Counsel for the respondents: Mr. M. Amin K. Jan,
Advocate

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Counsel for the State : Mr. Muhammad Sharif Janjua,
Advocate on behalf of Prosecutor
General Balochistan for State.

FIR No, and date : 40/2000, dated 29.12.2000,
P.S. Sui,
District, Dera Bugti.

Date of impugned
Judgment of Trial
Court : 07.08.2003

Date of Institution of
appeal in FSC : 06.10.2003

Date of hearing : 12.10.2012

Date of Judgment : 12.10.2012

JUDGMENT

Muhammad Jehangir Arshad, Judge. This appeal

filed by Saifullah Khan son of Khan Muhammad is directed against the judgment dated 07.08.2003 handed down by the learned Additional Sessions Judge-I, Sibi Division, Sibi, by which the learned trial Court acquitted respondents Muhammad Hanif son of Ellahi Bakhsh, Dr. Muhammad Azeem son of Ellahi Bakhsh, Muhammad Shakeel son of Wazir Muhammad, Muhammad Wakeel son of Wazir Muhammad, Peer Muhammad son of Chaghardi and Abdul Baqi son of Peer Muhammad, in case FIR No.40/2000, dated 29.12.2000 P.S. Sui, District Dera Bugti from the charge under section 17 (3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with sections 427/353/186/147/149 PPC.

2. Brief facts of the case are that complainant/Saifullah Khan got registered FIR No.40/2000 (Ex.P/1-A) at Police Station, Sui, District Dera Bugti on 29.12.2000 wherein he stated that he

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was performing his duty at gate No.5 of sui-field, when one person namely Muhammad Hanif came in a vehicle, who was stop ped and asked by him for identification pass, upon this said Muhammad Hanif became displeased and he went back. After a while he came back and about 50/60 people gathered at the gate, Hanif threw the gate pass and asked him to check it. The complainant further alleged that Hanif started abusing him and in the meanwhile Dr. Muhammad Azeem also came inside and caught him by neck and gave a slap and tried to snatch official rifle. It was further alleged that 50/60 people came inside and started beating him and torn off his uniform and Dr. Azeem snatched his rifle. On hearing hue and cry Sepoy Ghulam Rasool, Samiullah and Dilshad reached there and tried to retrieve back the rifle but the assailants also beaten them, however, Sepoy Ghulam Rasool succeeded in getting back the rifle and Dr. Azeem and Hanif fled away alongwith magazine and 15 rounds.



3. The case was duly investigated; the respondents were arrested and statements of the PWs were recorded under section 161 Cr.P.C. After completion of investigation, challan was submitted in the trial Court against the accused/respondents, under Section 173 of the Code of Criminal Procedure.

4. The learned trial Court on receipt of challan framed the following charge against all the accused on 22.05.2001:-

"I Muhammad Abdullah Khan, Sessions Judge, Sibi Division, Sibi hereby charge you:-

- 1. Muhammad Hanif and,***
 - 2. Dr. Azeem sons of Haji Ellahi Bakhsh.***
 - 3. Muhammad Wakeel***
 - 4. Muhammad Shakeel son of Wazir Muhammad.***
 - 5. Peer Muhammad son of Chaghardi.***
 - 6. Abdul Baqi son of Peer Muhammad***
- All by caste Marhata Bugti.***

As follows:-

"This is alleged that on 29th December, 2000 at 04.00 p.m. at gate No.5 Sui Field all of you in furtherance of common intention forcibly snatched the official rifle from Saifullah Guard Incharge/Serjoy of II D.S.G Battalion who was on official duty and also abused, assaulted him and

tore off his official uniform, you have thus committed offence punishable under section 17 (3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with sections 427/353/186/147/149 PPC within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the said charge”.

The accused did not plead guilty and claimed trial.

5. The prosecution in order to prove its case produced 06 witnesses at the trial. The prosecution also produced the following documents, besides other connected documents:-

- (i). Application for registration of case Ex.P/1-A.
- (ii) Recovery Memo (One telephone and wires set and one Khaki shirt) Ex.P/3-A.
- (iii) Site Plan Ex.P/6-B.
- (iv) Site of occurrence/site plan Ex.P/6-C.

As the oral evidence of the PWs has already been noted

in detail by the learned trial Court in the impugned judgment,

therefore, the same need not be reproduced in this judgment, in order to avoid repetition and wastage of time. However, the same would be examined, discussed and evaluated in the subsequent paras where need be.

6. The learned trial Court after close of the prosecution evidence recorded statements of respondents Muhammad Hanif, Dr. Muhammad Azeem, Muhammad Shakeel, Muhammad Wakeel, Peer Muhammad and Abdul Baqi under Section 342 of the Code of Criminal Procedure who denied the prosecution case and pleaded as innocent.

7. After hearing both the parties the learned trial Court acquitted the respondents namely Muhammad Hanif, Dr. Muhammad Azeem, Muhammad Shakeel, Muhammad Wakeel, Peer Muhammad and Abdul Baqi from the charge under section 17 (3) of the Offences Against Property (Enforcement of Hudood) Ordinance,



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1979 read with sections 427/353/186/147/149 PPC. Hence this appeal.

8. It would not be out of place to mention here that originally this appeal was filed against six persons arrayed as respondents 1 to 6. However, vide order dated 07.10.2004 this Court opted to issue notice to respondents 1-2 namely Muhammad Hanif and Dr. Muhammad Azeem only. Since, remaining respondents 3 to 6 were never summoned, therefore, this appeal to their extent shall be considered as dismissed in limine.

9. Mr. Muhammad Bilal, learned Counsel for appellant Saifullah Khan argued that though the appellant has not been able to produce the proof of allegation against respondents covered by section 17 (3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and as well as sections 147 and 149 PPC, yet he has fully established the offences against respondents 1-2 falling under sections 427/353/186 PPC, therefore, to this extent the



judgment of the learned trial Court was erroneous and liable to be reversed. Learned counsel further argued that the appellant at the relevant time was performing his official duty in connection with defence establishment viz guard duty at Sui Field and the interference by both the respondents not only by snatching rifle but also damaging government property i.e. telephone etc. and further slapping the appellant would definitely amount to commission of offences covered by sections 147/353/186 PPC. Learned counsel, therefore, contended that to this extent the acquittal of respondents was not warranted and the judgment of the learned trial Court was liable to be reversed.

10. On the other hand, Mr. M. Amin K. Jan learned counsel for respondents argued that as the appellant miserably failed to prove the allegation against the respondents, therefore, the learned trial Court rightly acquitted the respondents of the said charges. Learned counsel further argued that as it was a case of two versions



per law one adopted by the appellant had to be accepted. Learned counsel further argued that as the prosecution failed to produce any evidence against the respondents through independent witness and further no one on behalf of the Sui Gas Management came forwarded to support the allegation of complainant/appellant, therefore, the learned counsel for the appellant was not right in arguing that the respondents were guilty of causing interference in the performance of official duty of the appellant and damaging the government property specially when neither the said property was produced in evidence at the time of recording of evidence before the learned trial Court nor there was any evidence on the record to prove that the respondents caused damages to the government property. Finally, learned counsel for the respondents by placing reliance on **2010 SCMR P.222** and **2009 SCMR P.946** argued that since the appellant have failed to show that the judgment of



the learned trial Court acquitting the respondents was wrong, or not reasonable, therefore, this appeal is not maintainable.

11. Learned counsel for the State namely Mr. Muhammad Sharif Janjua, Advocate though half-heartedly supported the arguments of the learned counsel for the appellant yet simultaneously conceded that in view of the law declared by the Apex Court regarding judgment of acquittal this Court should not interfere with the judgment of the learned trial Court.

12. Arguments considered. Record perused.

13. Before further proceedings, we would like to reproduce the criteria laid down by the Apex Court in the above noted judgment and several other judgments regarding jurisdiction of appellate Court for interference with judgment of acquittal. The law declared by the Apex Court on the above noted question is;

"important test is that the finding sought to be interfered



with should be found wholly artificial, shocking and ridiculous after scrutiny".

14. In the light of the above noted criteria, we have scrutinized the evidence produced by the prosecution and have also examined the above noted contention of the learned counsel for the parties.

15. The appellant/complainant appeared as PW.1 and in support of his evidence he produced two witnesses namely PW.2 Dilshad Ahmed and PW.4 Samiullah. The evidence of PW.1 complainant is not corroborated by the evidence of PW.2 Dilshad Ahmed and PW.4 Samiullah. According to the complainant PW.1 he was abused and also given slapped by both the respondents/accused, but PW.2 and PW.4 have not specified the names of respondents but they had stated that mob of 30/40 people attacked the appellant and the accused after damaging telephone set ran away from the scene, we further observe that the



prosecution evidence is not only contradictory but do not inspire confidence and the learned trial Court after proper appreciation of evidence rightly gave the benefit of doubt to the private respondents, even the damaged telephone set etc. and rifle allegedly snatched by the accused/respondents was neither produced in the Court at the time of recording of evidence as a case property nor marked as "Exhibit" in order to attract the provision of section 427 PPC. We also find that the evidence produced by the prosecution is not sufficient for holding the respondents guilty of causing interference in the performance of official duty by the appellant. The fact that after appeal against six persons the appellant remained content when this Court issued notices to the private respondents 1 and 2 only vide order dated 07.10.2004 also shows malafide on his part. Even no one appeared on behalf of the Sui Gas Department to support the prosecution version which was very material evidence. Despite repeatedly asked learned counsel



for the appellant failed to point out that the judgment of the learned trial Court impugned in this appeal was either wrong, artificial, shocking or ridiculous or suffered from mis-reading or non-reading of evidence within the parameters of law declared by the Apex Court in the above noted judgments.

16. We, therefore, feel that the learned trial Court while passing the impugned judgment neither committed any illegality, infirmity nor mis-reading or non-reading of evidence warranting interference in the impugned judgment of acquittal. Hence, this appeal has no force and the same is dismissed.



JUSTICE MUHAMMAD JEHANGIR ARSHAD



JUSTICE RIZWAN ALI DODANI

*Announced at Islamabad
on 12.10.2012
Hummayun/-*

Approved for reporting.


JUSTICE MUHAMMAD JEHANGIR ARSHAD