

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE AGHA RAFIQ AHMED KHAN, CHIEF JUSTICE
MR.JUSTICE RIZWAN ALI DODANI

CRIMINAL APPEAL NO. 03/P OF 2011

Bilal Ahmad son of Samand Khan Appellant
resident of Adeena, Tehsil and
District Swabi

Versus

1. The State
2. Abid-ur-Rehman son of Jai Pur r/o Respondent
Mohallah Dhaki Yar Hussain,
District Swabi

Counsel for the appellant ... Mr. Shakil Khan Gillani,
Advocate

Counsel for the State ... Mr. Alamgir Khan Durrani,
Deputy Advocate General

FIR No. Date and ... No.711, dated 16.07.2009,
Police Station Kalu Khan District Swabi

Date of judgment of ... 01.03.2011
trial Court

Date of Institution ... 05.04.2011
of appeal in FSC

Date of hearing ... 29.05.2013

Date of decision ... 29.05.2013

JUDGMENT

JUSTICE RIZWAN ALI DODANI, J :- This criminal appeal is directed against the judgment dated 01.03.2011 delivered by the learned Additional Sessions Judge-IV/Judge Junevile Court, Swabi, whereby the appellant was convicted and sentenced as under :-

- i. Under Section 392 PPC
Three years rigorous imprisonment with payment of Rs.2000/- as fine, or in default thereof to further undergo one month's simple imprisonment.
- ii. Under Section 394 PPC
Four years rigorous imprisonment with a fine of Rs.15,000/- or in default thereof to further undergo three months simple imprisonment, on two counts each.
- iii. Under Section 302-B, PPC
Life imprisonment and also to pay Rs.50,000/- to the legal heirs of deceased as compensation under section 544-A, Cr.P.C. or in default thereof to further undergo six months simple imprisonment.

All the above mentioned sentences awarded to the appellant were ordered to run concurrently with benefit of section 382-B, Cr.P.C. extended to the appellant.

2. Briefly stated the facts of the case are that on 16.7.2009, complainant Abid-ur-Rehman reported to the local police that he was driving a Taxi, Suzuki pickup bearing Registration No.9946/STH. He left Shewa Adda for Yar Hussain and when he reached near graveyard village Adeena he picked two unknown passengers in his vehicle and after traveling some distance one of them aimed his pistol upon him while the



other snatched Rs.945/- from him and both of them deboarded from the vehicle and tried to flee away. He made hue and cry, on which Muhammad Ali son of Muhammad Qadar, Nizar Ali son of Gul Bahadar and Farhad Ali son of Nobat Khan attracted to the place of incident. They started chasing the accused, during which the accused started firing at them, as a result of which Muhammad Ali, Nizar Ali and Farhad Ali were got hit and injured, and other co-villagers apprehended appellant/accused Bilal Ahmad son of Samand Khan while co-accused succeeded to escape. In the meantime police arrived at the scene who took custody of accused Bilal. They searched the appellant/accused, who was found in possession of one 30 bore pistol without number loaded with three live rounds. On his further search, the snatched amount of Rs.945/- was also recovered from his possession. The injured Muhammad Ali later on succumbed to his injuries in the hospital.

3. After registration of the case and completion of the investigation, challan under section 173 Cr.P.C. was submitted against the

appellant/accused for trial. The learned trial Judge formally charge sheeted

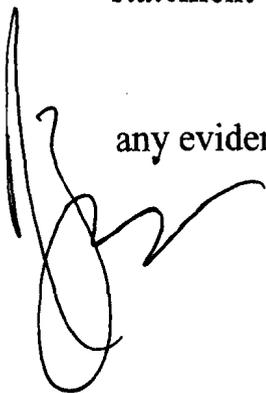


the appellant/ accused under section 17(4) read with section 17(2) of the said Ordinance, to which the appellant/accused pleaded not guilty and claimed trial.

4. During trial, the prosecution in order to prove its case examined Dr. Shad Ali (PW.1), Saddiq Akbar Khan, Inspector (PW.2), Noor Ali Khan, ASI (PW.3), Zahid Ali, ASI (PW.4), Abid-ur-Rehman (PW.5), Nizar Ali (PW.6), Farhad Ali (PW.7) Jehanzeb Khan (PW.8), Khalid Iqbal, ASI (PW.9), Hussan Badshah Khan, SI (PW.10), Naeem (PW.11), Mukhtiar Khan, SHO (PW.12), Maneer Khan ,SI (PW.13) and Jehanzeb Khan, SI as PW.14 . Thereafter, the prosecution closed its evidence.

5. After conclusion of the trial, the appellant/accused was examined under section 342 Cr.P.C. He denied all the charges of the prosecution leveled against him in the evidence, however, he neither opted to record his statement on oath as provided under section 340 (2) Cr.P.C. nor produced

any evidence in his defence.

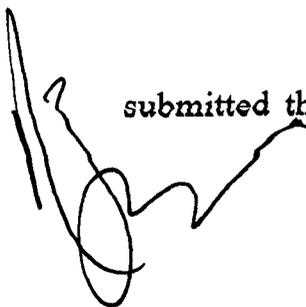


6. The learned trial Court after hearing the learned counsel for the parties and appraising the evidence on record convicted and sentence the appellant/accused as mentioned in opening para of this judgment.

7. Learned counsel for the appellant submitted that the amount allegedly snatched in the occurrence does not fall under the value of Nisab, nor the appellant did have any intention to cause death (Qatl-e-amd) of deceased Muhammad Ali, therefore, neither section 302 PPC is attracted nor even section 17 (4) of the Ordinance and at the most, according to him, appellant could be charged under section 321 PPC. He further argued that allegedly the appellant and absconding accused Nasir have fired at complainant, Muhammad Ali since deceased and injured PWs Nizar Ali and Farhad Ali, therefore, it cannot be said that who fired at whom. He lastly argued that no person from the public allegedly gathered at the spot was cited as witness.

8. Conversely Mr. Alamgir Khan Durrani, Deputy Advocate General, argued that the impugned judgment is based on well founded reasons. He

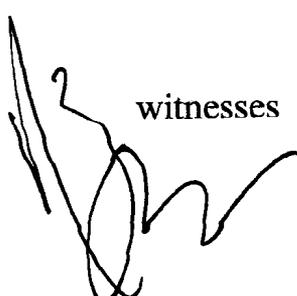
submitted that the injured PWs are eye witnesses of the occurrence who



saw accused persons running away and being apprehended one of them i.e. the appellant Bilal Ahmad who fired at all of them who were chasing them and as a result they got injured and another succumbed to injuries, as such their testimony is more than credible and reliable, besides the PWs did not have any enmity against the appellants. That both these eye witnesses remained consistent in their version and corroborated each other and the complainant at the trial and even the defence side could not shake their statements in their respective cross examinations. He further submitted that the appellant/accused got arrested red-handed by the police at the spot. He lastly submitted that the impugned judgment does not suffer from any illegality or irregularity and as such is liable to be sustained.

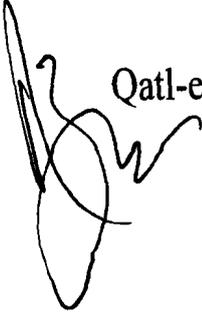
9. We have heard learned counsel for the parties, perused the evidence and scanned the impugned judgment minutely. It has come on record that the complainant who was a taxi driver, in his testimony gave the same account of fact which was given in the FIR by him, which reflects that the complainant has given the true account of facts of the crime. The other star

witnesses of the case are Nizar Ali (PW.6) and Farhad Ali (PW.7)



inasmuch as they got injured in the incident alongwith Muhammad Ali, whereas latter got seriously injured and thereafter succumbed to those injuries. The . PW.6 and PW.7 injured witnesses remained consistent in their testimonies in terms of the material particulars and corroborated the statement of the complainant Abid-ur-Rehman (PW.5), so also corroborated the statements of the police officials who reached at the scene and arrested the appellant red-handed at the spot with crime weapon and snatched amount of Rs.945/-. The empties recovered from the spot and the crime weapons have been matched vide FSL report. Therefore, in such circumstances the question of deliberation and substitution of offender does not arise. The medical report too corroborates the version of complainant and injured PWs in terms of the manner they got injured alongwith the deceased. There appears no enmity on the record between the witnesses namely Abid-ur-Rehman (PW.5), Nizar Ali (PW.6), Farhad Ali (PW.7) and the appellant/accused and even the appellant/accused in his statement under section 342 Cr.P.C. did not claim it, as such, the probability of false implication of the appellant/accused does not find any place in the case.

So, ocular testimony is found natural, reliable, satisfactory and confidence inspiring. Statement of complainant was supported by two injured witnesses leaves no room to doubt on prosecution story and nexus of offender with the crime he has been charged with. As far the arguments of learned counsel for the appellant that the alleged offence could not said to be Qatl-e-amd under section 300 PPC, as, according to him, the appellant while firing did not have intention to cause death of deceased Muhammad Ali and at the most it is an offence under section 321 PPC, (Qatl-bis-Sabab). This argument has no legal force to sustain inasmuch as in the instant case the appellant/accused made effective firing with fire arm at persons chasing them as a result three were got injured grievously one of whom died in the hospital later on, such an act was without any reasonable doubt reflects their clear intention to cause death or bodily injury of persons in order to stop them from apprehending or chasing the accused persons. As such, the case in hand completely comes under the purview of

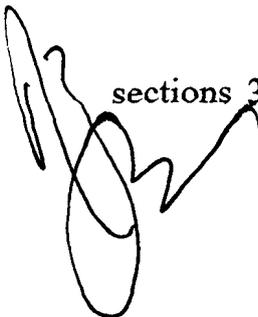
 Qatl-e-amd and not in Qatl-bis-Sabab and, therefore the conviction and

sentence under section 302-B PPC was rightly inflicted by the trial Court upon the appellant/convict.

10. It has come in evidence inconsistently that the accused Bilal has fired gun shots, as such, question of joint firing and that who fired at whom as argued by counsel for appellant does not arise as it made abundantly clear by the PWs. Even otherwise in commission of offence of robbery every member shares vicarious liability for each and every act done during the offence.

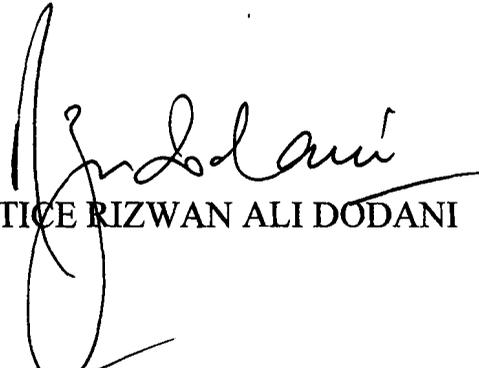
11. In view of what has been discussed, we are of the opinion that there is sufficient credible evidence on record which reasonably connect the appellant with the crime under section 302-B, 392 and 394 PPC beyond any doubt, therefore, the impugned judgment does not warrant any interference of this Appellate Court. Consequently, the Criminal Appeal No.3/P of 2011 is dismissed and the impugned judgment dated 1.3.2011 delivered by the learned Additional Sessions Judge-IV/Judge Juvenile Court, Swabi is upheld, the conviction and sentences awarded under

sections 302-B, 392 and 394 PPC are maintained. The benefit of section

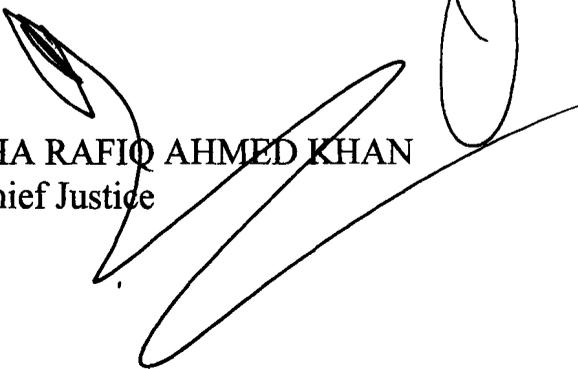


382-B Cr.P.C. and the direction for the sentences of imprisonments to run concurrently as extended by the trial Court are also maintained.

12. These are the reasons for our short order of even date.



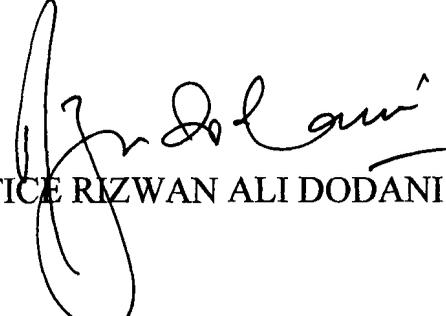
JUSTICE RIZWAN ALI DODANI



JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice

Peshawar the
29th May, 2013
Abdul Majeed/*

Approved for reporting.



JUSTICE RIZWAN ALI DODANI