

IN THE FEDERAL SHARIAT COURT.
(Appellate Jurisdiction)

PRESENT:

MR.JUSTICE HAZIQL KHAIRI, CHIEF JUSTICE.

CRIMINAL APPEAL NO. 10/Q of 2006

Behram son of Sikandar alias Shakoo
Jakhrani Appellant.

Versus

The State Respondent

Counsel for the Appellant ... Mr. Amanullah Kanrani,
Advocate.

Counsel for the State ... Mr. Abdul Karim Langove,
Advocate.

FIR No. date and Police Station. ... 68/2003 dated 15.06.2003
Dera Murad Jamali.

Date of Judgment of Trial Court. ... 17-04-2006

Date of Institution ... 18-05-2006

Date of hearing 14-05-2008

Date of decision:

JUDGMENT.

HAZIQUL KHAIRI, CHIEF JUSTICE. The appellant Behram is aggrieved by the impugned judgment dated 17.4.2006 passed by the Sessions Judge Sibi he was convicted under section 392 PPC and sentenced to five (5) years R.I. with fine of Rs.10,000/- and in case in default of payment thereof to further S.I. for three months. Benefits of section 382-B Cr.P.C. was extended to him.

2. Brief facts of the prosecution case as per FIR dated 15.6.2003 are that the complainant Noor Muhammad was coming on Taxi No.PL.7785 belonging to Amjad Khan Baloch between the night of 09-06-2003 and 10-06-2003 from Jafferabad to Quetta. At about 4.35 a.m. when he reached near Och Power Plant, Dera Murad Jamali, some unknown culprits snatched his vehicle and also R.4,500/- and tied his hands and took him to an unknown place and demanded from him ransom. He was kept in a Katcha room from where after spending three days, he ran away and took shelter in a mosque where a police

personnel call him and took him to police station of Dera Murad Jamali and got registered his complaint.

3. Jan Muhammad S.I. started investigation and on its completion submitted challan before the court of Sessions Judge, Dera Murad Jamali implicating thirteen persons in the crime out of whom 11 were declared absconders whereas the appellant and one Abdul Aziz were to face the trial. On 08.12.2004 charge was read over to them to which they pleaded not guilty and claimed trial.

4. PW.1. Shah Bakhsh deposed that on 9.2.2003 he alongwith Imdad Ali, Elyas, Muhammad Ibrahim SI, Shabeer Ahmed S.I. and driver Suleman was coming in a squad car D.M. Jamali to Bhag, after D.I.G. Abdul Bilal, driver Nawab Khan and driver of Squad vehicle Muhammad Suleman were martyred by unknown miscreants. On their way, they saw a yellow Taxi at a distance of one kilometer from the place of occurrence. He identified the accused persons in the moon

light and light of vehicles. In cross-examination he replied that the accused were present alongwith other four persons in the yellow Taxi.

5. PW.2 Muhammad Raheem Police Constable fully corroborated the statement of PW.1. He further stated that he identified the accused present in the court during his identification parade as well.

6. PW.3 Ellahi Baksh Police Constable a formal witness went alongwith S.H.O. to the place of occurrence where on the pointation of Noor Muhammad (not produced) S.H.O. prepared inspection memo. He identified the signature of S.H.O. He was not cross-examined by the appellant.

7. PW.4. Sana Khan DSP conducted the identification parade of accused alongwith 5/6 persons. He stated that on 22.6.2003 appellant Behram present in the court was identified by the witnesses Shah Bakhsh (PW.1) constable, Imadad Ali constable (not produced), Imdad Raheem constable (not produced) and Muhammad Elyas

(PW.7). He prepared identification parade form. He produced Ex.P/4-A, Ex.P/4-B, Ex.P/4-C and Ex.P/4-D. He identified the accused present in the court to be the same person.

8. PW.5 Nabi Bakhsh Tehsildar stated that on 5.7.2003 in courtyard of P.S.D.M. Jamli during identification parade of vehicles used in the murder of D.I.G., appellant Behram identified both the vehicles three times. He produced identification form of vehicles Ex.P/5-A and Ex-P/5-B. He identified the appellant Behram present in the court to be the same.

9. PW-6 Hidayatullah, ASI, deposed that complainant Noor Muhammad Pathan in the presence of DSP Sona Khan identified the Yellow Taxi No.7785 which was recovered in case F.I.R. No.66/03 for offence under section 302/324/353 P.P.C. He produced memo of identification Ex.P/6-A and identified his signature as well as signature of DSP on the same. He further stated that complainant Noor Muhammad Pathan also identified the pickup No.2776 which

was used in case F.I.R. No.66/03 for offence 302 P.P.C. He further stated that I.O./S.I. Police Jan Muhammad had taken into possession the vehicle through recovery memo Ex-P/6-B. He identified his signature as well as signature of Muhammad Khan constable. He also produced recovery memo in the murder case. He identified the accused present in the court to be the same persons.

10. PW.7 Muhammad Elyas Police Constable deposed that in his presence identification parade was conducted by DSP Sona Khan. He produced identification form Ex.P/4-A. He identified his signature on the same. He identified the accused Behram present in the court to be the same person.

11. PW.8 Makhi Khan Police Constable is the witness of recovery of two vehicles. He deposed that on 10.6.2003 he alongwith S.H.O. went to the place of occurrence from where they took the prints of tyre of vehicle and found two vehicles near single road which they taken into possession.

12. PW.9 Jan Muhammad is I.O. of the case. After lodging F.I.R. Ex-P/9-A he started investigation, visited the place of occurrence, prepared inspection memo Ex.P/3-A, map of occurrence Ex-P/9-B, prepared incomplete challan Ex-P/9-C, received F.S.L. report Ex-P/9-D and prepared challan Ex-P/9-E. He identified the accused present in the court to be the same persons.

13. CW.1, Muhammad Yousif, ASI, deposed that he had warrant of arrest in respect of 18 co-accused of appellant but they could not be served and their whereabouts were not known. According to CW.2 Haji Muhammad, Inspector, the complainant Noor Muhammad had left for Afghanistan and could not be served.

14. The accused in his examination under section 342 of the Cr.P.C. denied the allegations and took the plea of false implication.

15. In the light of what is stated above what brings into fore is the fact that the prosecution had failed to produce the star witness namely Noor Muhammad, the complainant who is the eyewitness. In

FIR the complainant had stated that on 15.6.2003 on his way from Jafferabad to Quetta his vehicle No.PL.7785 was snatched away by some persons. In ordinary sense, the expression 'some persons' is taken as 'few persons' whereas there were as many as 13 accused persons out of whom eleven were declared absconder. No one was named nor their description given in F.I.R. The owner of the car Amjad Khan Baloch was not produced. Neither Imdad Ali, Elyas, Muhammad Ibrahim, Shabeer Ahmed S.I. who had accompanied PW.1 Shah Bakhsh were produced. There is unexplained contradiction in the deposition of PW.1 that in the moonlight and light of vehicles he saw the accused (thirteen in number) whereas according to the complainant the occurrence took place on 9/10th June at 4.35 a.m. which is early in the morning during summer. It may also be pointed out that although there were so many police officials in a police van who saw the accused running out of the taxi, they made no attempt to catch hold of them (PW.2 says the taxi was 60/70 steps away from them). The statement of witnesses under section 161

Cr.P.C. was recorded on 24.6.2003 after a delay of 9 days for which there is no explanation whatsoever. The fallacy of the identification parade becomes evident in the deposition of PW.7 who stated that there were 10 or 12 persons in identification parade whereas as per PW.8 Sona Khan DSP there were 5/6 persons. PW.7 had also admitted that SHO and DSP were present at the time of identification parade. There is nothing in his statement as to where he saw the appellant first to link him with the crime and how he could identify the appellant unless he had seen the appellant earlier. There was no recovery from the appellant. Taxi was not produced.

16. The cumulative effect of the foregoing is that the prosecution has failed to establish its case. Hence the impugned judgment dated 17.4.2006 of the learned Sessions Judge Sibi is set aside with directions to jail authorities to release the appellant forthwith unless he is required in some other case. However if the

appellant is on bail his bail bond shall stand cancelled and the surety shall be discharged.

[Signature]
15/7/08
Justice Haziqul Khairi
Chief Justice.

Announced on 15/7/08

at Kandi
Daud/**

Applicant in requesting
[Signature]
15/7/08