

IN THE FEDERAL SHARIAT COURT
(Appellate / Revisional Jurisdiction)

PRESENT:

MR. JUSTICE SYED AFZAL HAIDER

Criminal Appeal No.304/L of 2005

Sajjad Hussain son of Allah Ditta, Caste Bhatti,
resident of Kotli Matham Karampur, Tehsil Mailsi,
District Vehari.

.....Appellant

VERSUS

The State.

.....Respondent

Criminal Appeal No.305/L of 2005

Muhammad Ilyas son of Bashir Ahmad, Caste Bhatti,
resident of Chak No.53/WB, District Vehari.

.....Appellant

VERSUS

The State.

.....Respondent

Counsel for the Appellants

--- Sh. Khizar Hayat, Advocate.

Counsel for the State

--- Qazi Zafar Iqbal,
Additional Prosecutor General.

F.I.R. No. Date &
Police Station

--- 10/97, 15.01.1997
Danewal, District Vehari.

Date of Judgment of trial Court

--- 27.09.2002

Date of institution

--- 19.10.2005

Date of hearing

--- 18.03.2009

Date of decision

--- 18.03.2009

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JUDGMENT

JUSTICE SYED AFZAL HAIDER, J; This judgment will dispose of two connected criminal appeals i) Cr. Appeal No.304/L/2005 filed by Sajjad Hussain, and ii) Cr. Appeal No.305/L/2005 filed by Muhammad Ilyas, directed against the common judgment dated 27.09.2002 passed by the learned Additional Sessions Judge, Vehari, whereby both the appellants have been convicted and sentenced as under:-

| | |
|--|--|
| Under section 324 of the Pakistan Penal Code | 10 years rigorous imprisonment each. |
| Under section 337-D of the Pakistan Penal Code | 10 years rigorous imprisonment each with Ursh of 1/3 rd of Diyat for the financial year 1996-97 each. |
| Under section 397 of the Pakistan Penal Code | 7 years rigorous imprisonment each. |

All the sentences were ordered to run concurrently with benefit of section 382-B of the Code of Criminal Procedure.

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2. Brief facts of the case are that complainant Abdul Basit PW.8 got registered the crime report i.e. FIR No.10/97 dated 15.01.1997 at Police Station Danewal District Vehari alleging therein that in the evening of 15.01.1997 at about 7.00 p.m. he was returning to his home on motorcycle bearing No.VRE/25 Honda 125/CC from Sharqi Colony, Vehari after seeing Mian Muhammad Sleem, Advocate. When he was passing through his plot at G-Block, two unknown young accused persons, whose descriptions have been given in the FIR, stopped him on pistol point and tried to snatch motorcycle. On his resistance they made fires with their respective pistols which hit him on his left arm and abdomen. On his alarm, Mian Muhammad Saleem, Advocate and Ch. Bashir Ahmed reached at the spot. On seeing them the accused fled away but could not succeed in taking away the motorcycle.

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3. Investigation ensued as a consequence of registration of the crime report. During investigation the complainant made supplementary statement and nominated five accused persons instead of two accused as nominated in the FIR. The accused were arrested and their identification parade was conducted. The police recovered pistol from Khalid Javed. After investigation the SHO submitted report under Section 173 of the Code of Criminal Procedure before the Court on 10.09.1997 required the accused to face trial.

4. The learned trial Court framed charge against five accused persons under Section 17(2) of the Offence against Property (Enforcement of Hudood) Ordinance, 1979 and under Section 324 of the Pakistan Penal Code. The accused did not plead guilty and claimed trial.

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5. The prosecution produced eleven witnesses in support of its case. The gist of prosecution evidence is as under:-

i) PW-1 Munir Ahmad deposed about the confession of the fathers of accused persons regarding the offence committed by the accused persons with his son Abdul Basit complainant.

ii) PW-2 Doctor Abdul Sattar deposed that "on 15.01.1997 I was working as Medical Superintendent DHQ Hospital, Vehari with the additional duty of Radiologist. Abdul Basit son of Munir Ahmed, caste Arain, resident of Club Road, Vehari was referred to me by C.M.O. vide LMC No.54/97. On X-Ray plain abdomen, a radio opaque foreign body suspected of a bullet was seen. No bony lesion was seen, in pelvic skiagram. X-Ray upper arm, no bony lesion was seen. Ex-PA is my original report, which is in my hand

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and signed by me. Ex.PA/1, PA/2, PA/3, Ex.PA/4 and PA/5

are the X-Ray films of the examinee.”

iii) PW.3 Doctor Muhammad Akram Tariq had medically

examined Abdul Basit complainant and observed the

following injuries:-

“1. An oval shaped wound 1.5 cm x 1 cm going deep (depth not probed), with inverted margins on left side of front of lower abdomen, 18 cm below and lateral to umbilicus. Blackening and tattooing was present. Corresponding hole in Qameez and Jercy was present. It was wound of entry.

2. An oval shaped wound 1.2 cm x 1 cm with inverted margins on front of left arm, 4 cm above left elbow joint. Blackening and tattooing was

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present. Corresponding hole was present in Qameez and Jarcy. It was wound of entry.

3. An oval shaped lacerated wound 1.5 cm x 1.2 cm with everted margins on inner side of left arm, 5 cm above elbow joint. No blackening and tattooing was present. It was wound of exit to injury No.2. All the injuries were kept under observation and were caused by fire arm.

The probation duration of injuries were fresh.”

- iv) PW.4 Muhammad Shafique deposed about the confession made by the fathers of the accused persons before the complainant and his father Munir Ahmad. The witness further stated that all the five accused confessed before him that they injured Abdul Basit and snatched motorcycle.

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- v) PW.5 Muhammad Afzal Constable deposed that on 16.01.1997 he went to the site of occurrence of the instant case where the complainant's father Munir Ahmad presented Honda Motorcycle No.VRE/25 to the I.O. which was taken into possession through memo Ex.PH signed by the witness and Shakoor constable.
- vi) PW.6 Amanullah Khan, City Magistrate Bahawalpur deposed that on 30.08.1997 had conducted the identification parade at New Central Jail, Multan in respect of Sajjad Hussain accused who was identified by Abdul Basit complainant.
- vii) PW.7 Muhammad Amir Bakhsh, City Magistrate, Vehari deposed that on 26.05.1997 he conducted identification parade at Judicial Lock-up Vehari in respect of Khalid Javed, Muhammad Ilyas, Muhammad

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Irshad and Sajid Islam accused. The witness further stated that Basit PW identified three of the four accused namely Khalid Javed, Muhammad Ilyas and Sajid Islam but could not identify Irshad accused.

viii) PW.8 Abdul Basit complainant reiterated the same story as mentioned in the crime report. He also deposed about the confession made by the fathers of the accused persons regarding the occurrence committed by the accused. He also deposed about identification of accused persons by him.

ix) PW.9 Riaz Ahmad SI deposed that on 29.06.1997 the investigation of the case was entrusted to him. After efforts he arrested accused Sajjad and obtained judicial remand for conducting identification parade but before

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identification parade he was transferred from Police Station Danewal.

- x) PW.10 Javaid Ashraf SI deposed that on 15.01.1997 he received an information that an injured was brought to the DHQ, Hospital, Vehari upon which he reached the hospital and after obtaining permission from the doctor he recorded the statement of Abdul Basit injured and sent the same through Abdul Shakoor Constable to Police Station for registration of the case. He inspected the place of occurrence, prepared site plan, collected blood stained earth and recorded the statement of the PWs under Section 161 of the Code of Criminal Procedure. He took into possession a magazine P-63 containing nine live cartridges P-64/1-9 through recovery Memo Ex.PN. He took into possession

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motorcycle P-62 through recovery memo Ex.PH and handed over the case property to the Moharrir of the Police Station. On 07.02.1997 the I.O. recorded the supplementary statement of the complainant.

- xi) PW.11 Rab Nawaz Inspector deposed that on 27.02.1997 he started investigation of this case. On 07.03.1997 he recorded the additional statement of the complainant and statements of two PWs under Section 161 of the Code of Criminal Procedure. He arrested accused Khalid Javed, Muhammad Ilyas, Muhammad Irshad and Sajid Islam on 14.04.1997. He took into possession through recovery memo Ex.PD 30-bore pistol P-1, alive bullets P-2 to 60 and bag P-61 and prepared the recovery site plan Ex.PD/1. On

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15.04.1997 he sent the accused persons in judicial lock
up for identification parade.

6. The prosecution closed its case on 12.07.2002,
whereafter the statements of accused were recorded under Section
342 of the Code of Criminal Procedure. Sajjad Hussain appellant
stated as under:-

“The PWs are related interse and they are inimical to
me. ----- I was not named in the FIR. I was later on
arrested on the evidence which is inadmissible in its
nature. No identification parade was held in accordance
with law. I was arrested and was exposed to the
complainant before identification parade, hence was
made escape and independent witness Mian
Muhammad Salim Adv. Alongwith one other
independent witness were given up to suppress the
truth. I have been falsely implicated.”

Muhammad Ilyas appellant also made the same statement
under Section 342 of the Code of Criminal Procedure.

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7. The learned trial Court after recording evidence of the prosecution and assessing the arguments made by the parties convicted and sentenced Sajjad Hussain and Muhammad Ilyas appellant as noted above whereas the remaining three accused were acquitted by extending them benefit of doubt.

8. I have gone through the file and also perused the evidence placed on record including the statements of appellants. I have also scanned the relevant portions of the impugned judgment. The learned Counsel for the appellants at the outset states that Sajjad Hussain appellant has already undergone 9 years and 17 days of sentence against the three concurrent sentences, the longest being ten years and appellant Muhammad Ilyas has undergone 5 years and 5 days of imprisonment as against the three concurrent punishments, the longest being ten years rigorous imprisonment before they were granted bail by the Federal Shariat Court on 18.09.2006. The

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learned Counsel proceeded to submit that under the peculiar circumstances of this case and a considerable period having been spent by the appellants in jail, it is a fit case for acquittal for the following reasons:-

- (i) that the appellants were not named in the FIR;
- (ii) that the charge of Harrabah was not proved;
- (iii) that there was no loss of the property;
- (iv) that the identification parade was doubtful;
- (v) that no pistol was recovered from the accused; and
- (vi) lastly that the appellants are young people and there is no previous history of their criminal activities.

9. The learned Counsel for the State however contends that the allegation in the FIR was certainly about unknown persons who were later on identified. He also submitted that the incident

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took place at night and the medical evidence shows that two different weapons were used which caused injuries to the victim.

10. I feel that in the absence of the recovery of the crime weapons it will not be safe to connect the appellants with the wounds caused by fire-arm particularly when injury No.2 could have caused injury No.1 also. The learned trial Court in Para 19 of the impugned judgment held that the recovery of a pistol and 59 live cartridges and a magazine from accused Khalid Javed on 14.04.1997 was violative of Section 103 of the Code of Criminal Procedure and it could not be used against all the accused persons. The learned trial Court also found that the recovery did not connect the accused with the offence as neither any empty was recovered from the place of occurrence nor the pistol was sent to Forensic Science Laboratory or any other expert for matching report. The learned trial Court also found that there were serious discrepancies in the statements of

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PW.1 and PW.2. The learned Court also found that the extra judicial confession made by the father(s) of the accused and by Khalid Javed accused did not inspire confidence and further that the identification parade could not be conducted after a considerable period after arrest of the appellants. The learned trial Court also found that the complainant could not identify Sajid Islam and Khalid Javed at the time of occurrence although their shops are situated in the same street where the occurrence took place.

11. I also find that the learned trial Court however did not believe the recovery of pistol from appellant Khalid Javed. The learned trial Court also found that Muhammad Ilyas was identified during the first identification parade conducted on 26.05.1997 and Sajjad Hussain appellant was identified in the second identification parade held on 30.08.1997 while the occurrence took place on 15.01.1997.

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12. It is worth appreciating that Abdul Basit PW.8 in his cross-examination had admitted that "the shop of Khalid Javed accused falls at a distance of 100-150 yards from my aforesaid plot on the same land." Supplementary statement of the complainant was recorded on 07.03.1997 in which he did not provide the name of any accused. Even the particulars of the three accused were not narrated. However, the witness stated that though he did not know the names of the accused but he knew their fathers. It was after three months that the complainant was informed by the police that the accused have been apprehended. The witness also admitted in his cross-examination that it was correct that he did not state the source of light, in which he identified the accused during the occurrence and he had not noticed any mark of identification of any of the accused.

13. Keeping in view the principles of safe administration of justice it will not be possible for me to maintain the conviction and

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sentence of the appellants recorded by the learned trial Court in the impugned judgment dated 27.09.2002 delivered in Hudood Case No.165/HC of 1997 and Hudood Trial No.03 of 1998. For reasons recorded above, reasonable benefit of doubt has crept in and the benefit is being given to the appellants. As a result thereof, both the Criminal Appeals i.e. Criminal Appeal No.304/L/2005 and Criminal Appeal No.305/L/2005 are accepted. The appellants are present on bail, they are free to move about and their sureties are released of their obligations.

S. Haider

Justice Syed Afzal Haider

Dated Lahore the
18th March, 2009
Imran/*

Fit for reporting.

S. Haider

Justice Syed Afzal Haider