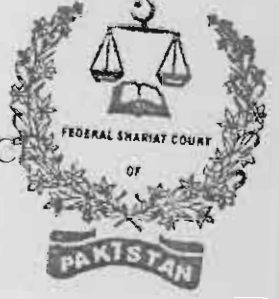


IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE HAZIQUK KHAIRI, CHIEF JUSTICE
MR. JUSTICE DR. FIDA MUHAMAMD KHAN
MR. JUSTICE SALAHUDIN MIRZA



CRIMINAL APPEAL NO. 5/P OF 2006 (Linked with)
CRIMINAL REFERENCE NO. 3/I OF 2006

Ajab Khan son of Awal Khan,
Resident of Jalalabad at present
Shahi Bala, Peshawar

--- Appellant

Versus

The State

Respondent

For the appellant

Mr. Nasrullah, Advocate

For the State

Mr. Muhamamd Sharif
Janjua, Advocate

FIR, Date and Police Station

255, 5.4.2005 P.S.
Hashtnagri

Date of the Order of
Trial Court

26.1.2006

Date of Institution

31.1.2006

Date of Hearing

28.5.2007

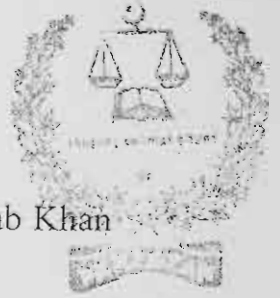
Date of Decision

7-6-2007

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Superintendent
Federal Shariat Court
Islamabad 31/3



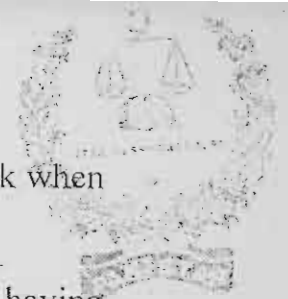
HAZIQUL KHAIRI, CHIEF JUSTICE.- Appellant Ajab Khan

has preferred this appeal against the order and judgment of Additional Sessions Judge-X, Peshawar dated 26.1.2006, whereby the appellant was convicted and sentenced under section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, (hereinafter referred to as "the said Ordinance") read with section 412 PPC to punishment with amputation of his right hand from the wrist and amputation of left foot from the ankle and further sentenced him to undergo five years' R.I. and a fine of Rs.30,000/- or in default thereof to further suffer six months' S.I.

2. Facts giving rise to the present case are that one Muhammad Islam lodged report that he belonged Toru-Mardan and had come down to Lady Reading Hospital, Peshawar, to inquire about the health of one of his relatives namely Shamshad who gave him 2000 Dollars and 6000 Saudi Riyals to convert into Pakistani rupees. He came back to Chowk Yadgar and exchanged the American Dollars and

Saudi Riyals and received a sum of Rs.3,20,240/- in exchange and put

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Federal Shariat Court




the same in a cloth bag and started for Shabistan Cinema Chowk when he reached there to board a Mazda Bus for Mardan, a person having small beard and standing in the gate of the bus, snatched away the bag from him and started running towards Sabzi Mandi. He ran after him, however, in the meantime, two constables, who were coming on a motorcycle, were informed of the occurrence, who followed the appellant, apprehended him and recovered from him the stolen money.

3. Complete challan against the appellant was put before the Court on 29.7.2005 and on 5.9.2005 charge against the appellant under section 17(3) of "the said Ordinance" read with section 412 PPC was framed to which he pleaded not guilty and claimed trial. The prosecution produced as many as five witnesses.

4. PW.1 Mian Muhammad Riaz Inspector, stated that he was posted as SHO, P.S. Hashtnagari. On 5.4.2005 when he was on mobile gusht of the area he was informed by Waheed Murad, Rider Squad-2 through wireless of the incident. He rushed to the spot i.e.

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Federal Shariat Court

Shabistan Cinema Chowk where Waheed Murad No.2 Shafqat Ullah



1856 FCs Rider Squads who had overpowered the person having

beard along with a cloth bag wherein the money was found. The same

was produced by the Rider Squads named above. Complainant,

Muhammad Islam, was present at the spot and he reported the

Murasila, Ex.PA/1. The appellant was formally arrested along with

the snatched money of Rs.3,20,240/- which he took into possession

vide recovery memo Ex.PC in presence of marginal witnesses. After

completion of investigation he submitted complete challan against the

appellant.

5. PW.2 is complainant Muhammad Islam reiterated exactly what

he had stated in FIR. The report was read over to him and he signed

the same. The I.O. prepared the site plans, Ex.PB, at his instance in

presence of the FC riders. He charged the appellant for the

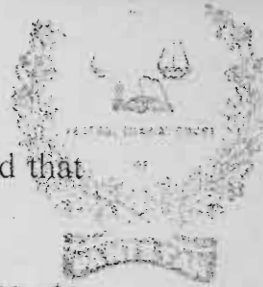
commission of offence.

6. PW.3 Bacha Khan ASHO, who stated that on receipt of

Murasila he incorporated its contents in shape of FIR, Ex.PA, which is

in his hand writing and correctly bears his signature.

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7. PW.4 is the statement of Waheed Murad No.2 who stated that he produced the snatched amount to the SHO amounting to Rs.3.20,240/- and gave particulars of its denomination. PW.5 Anwar Gul Inspector stated that during the days of occurrence he was posted as SHO, P.S., Hashtnagri. After registration of the case he rushed to the spot where he prepared the site plan, Ex.PB, at the instance of complainant in presence of Waheed Murad and Shafqat Ullah FCs (Rider Squad) and similarly, prepared the site plan, Ex.PB/1 of that spot where he was overpowered and recovery was effected from his possession. He recorded the statements of appellant as well as PWs. under section 161 Cr.P.C.

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8. On 15.11.2005 prosecution closed its evidence. Statements of appellant was recorded on 24.11.2005 under section 342 Cr.P.C. and he was given opportunity to produce any defence or be examined on oath but neither he wished to be examined on oath nor wanted to produce evidence in defence. However, it was stated by him that he was involved in the false and fabricated case because he had refused to meet the demand of police for money.

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Sub-Inspector
Police Station
Hashtnagri

9. After going through the depositions of PWs. and record of the case the learned trial Court observed:-

“The best evidence can be procured when it is taken at the earliest possible opportunity and in the instant case the witnesses have been examined not far later in order to create dent in veracity of their testimony.”

10. On the basis of prosecution evidence there is no iota of doubt that the appellant was not involved in the crime. It is a case where there is nothing on record which would favour the appellant in any manner although we find lengthy cross-examination of prosecution witnesses. The appellant was caught red handed and the said huge amount of Rs.3,20,240/- was recovered from him. No evidence has been adduced by the appellant in defence for his plea for demand of money by police or his false implication.


11. While we agree with learned trial Court as to the conviction and sentence of the appellant under section 412 PPC we do not find any justification of his conviction and sentence under section 17 of “the said Ordinance” as the same is devoid of the fulfillment of

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Federal Shariat Court
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requirement of "Tazkiyah-al-Shahood" as contemplated under section 7(b) thereof.

12. Resultantly, the impugned judgment dated 26.1.2006 to convict and sentence the appellant under section 17(3) of "the said Ordinance" is set aside but the conviction and sentence of the appellant under section 412 PPC are upheld whereby he has to undergo five years' R.I. and fine of Rs.30,000/- and in default thereof to further suffer six months S.I.

13. Criminal Reference No.3/I of 2006 is replied in negative.



JUSTICE HAZIQUL KHAIRI
Chief Justice

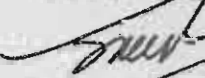

JUSTICE DR. FIDA MUHAMMAD KHAN


JUSTICE SALAHUDDIN MIRZA

Announced at Islamabad
the 7th day of June 2007.
Bashir/*

- 1) Name of the applicant..... 113/2007-R
- 2) Name of the respondent..... the application
- 3) Name of the applicant with whom the application was filed..... 31-3-2007
- 4) Name of the applicant..... the application
- 5) Date of receipt of copying charges.....
- 6) Number of pages copies..... 7
- 7) Copying charges..... Rs. 141/-
- 8) Court fee affixed on the application..... 40/-
- 9) Name of copyist..... Ali Saad Khan
- 10) Date of completion of copy..... 31-3-2007
- 11) Date of delivery of copy..... 31-3-2007

Approved my Signature

7/6/07

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