

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate Jurisdiction)

Present.

MR. JUSTICE SARDAR MUHAMMAD RAZA, CHIEF JUSTICE
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE RIAZ AHMAD KHAN

CRIMINAL APPEAL NO.103/I of 2010.

Mst. Shamim Akhtar widow of Late
Abdul Samad Khan, resident of
Zafar Abad Colony, D.I.Khan Appellant.

Versus

1. Saifur Rehman alias Saifa son of
Ellahi Bakhsh, R/o Bagera,
Tehsil Kulachi, District D.I.Khan.
2. Elahi Bakhsh alias Illa son of
Muhammad Bakhsh resident
Of Kurai, Tehsil & Distt; D.I.Khan.
3. The State Respondents.

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Counsel for the .... Nemo.  
Appellant. ....

Counsel for .... Nemo.  
Respondents ....

Counsel for the .... Nemo.  
State. ....

Case FIR No. date .... FIR # 37 dated 22.02.1999,  
& Police Station. .... P.S Saddar D.I.Khan.

Date of judgment .... 08.08.2005.  
of trial Court.

Date of receipt of .... 29.11.2010

Date of hearing .... 10.10.2014.

Date of decision. .... 10.10.2014.

 10/10/14

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JUDGMENT

SARDAR MUHAMMAD RAZA, C.J. — Mst. Shamim Akhtar has filed this appeal against the acquittal of accused/respondents Saifur Rehman alias Saifa and Ellahi Bakhsh alias Illa, who, vide judgment dated 8.8.2005 of the learned Additional Sessions Judge-V, Dera Ismail Khan, were acquitted of the charge under section 302/324/34 PPC holding that the charge of Haraabah under section 17 (4) of Ordinance VI of 1979 was not proved.

2. The Hon'ble Division Bench of Peshawar High Court Circuit Bench Dera Ismail Khan had earlier transferred the appeal to this Court with the observation that the accused/respondents having been charged for the offence of Haraabah under section 17 (4) of Ordinance VI of 1979, the appellate jurisdiction stood vested in Federal Shariat Court.

3. FIR No.37 dated 22.2.1999 of Police Station Saddar Dera Ismail Khan reveals that Fazlur Rehman complainant alongwith Abdul Samad Khan the deceased and another Bagga Khan, while riding one motor bike were going to the house of Bagga Khan in village Lakhra from the tube well of Allah Nawaz Khan Sadozai in Kot Batta. It was 9.15 p.m. that they reached Lakhra bridge of Pahar Pur Canal when suddenly three persons duly armed, one of them having klashnikov, appeared on the scene. The complainant stopped the motor bike. All the three alighted therefrom when the assailants opened fire at them with the intention to kill. Abdul Samad Khan got injured and succumbed to his injuries while on his way to the hospital; where the complainant lodged report before the police.


4. Not a single word is uttered by the complainant either in the FIR or in the statements etc that the assailants had come for the purpose of taking away the property of the party aggressed. There is no allegation that the assailants even showed a slight inclination of demanding either money or the motor bike of the complainant party. When such element is missing altogether, the accused could not be charged under section 17 (4) of Ordinance VI of 1979. The element of Haraabah as defined by

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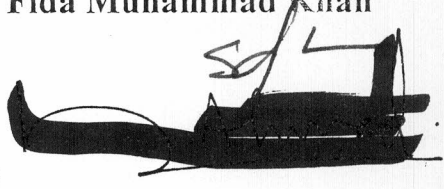
section 15 of the Ordinance is completely missing. By no stretch of reasoning, the accused could ever be challaned or charged for the offence of Haraabah with murder. It is a plain offence of murder, as per charge, where the assailants had waylaid the victims and had killed one of them without the intention to rob or extort anything whatsoever.

5. Any Court, while exercising or assuming the jurisdiction of an appellate Court, has absolute authority to appreciate by judicial application of mind as to whether the trial court has charged the accused rightly or wrongly. We therefore, hold that this being a simple case of murder and attempted murder, the act of charging the accused under section 17 (4) of Ordinance VI of 1979 was void and illegal. We are therefore, of the view that the Hon'ble Peshawar High Court Circuit Bench Dera Ismail Khan had every jurisdiction to hear the case in appeal and that this Court, in view of law and facts, lacks jurisdiction.

The record of appeal in original sent by the High Court may be transmitted back to the Hon'ble Court for decision at its own end. The parties are directed to appear there against the notices issued by the court itself.


Mr. Justice
Sardar Muhammad Raza,
Chief Justice.


Mr. Justice
Allama Dr. Fida Muhammad Khan


Mr. Justice
Riaz Ahmad Khan

Announced.
at
Islamabad
10th October 2014
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Approved for reporting. 