

Cr.A.No.14/Q/2014

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

Justice Mrs. Ashraf Jahan

CRIMINAL APPEAL NO.14/Q/2014

Muhammad Azeem S/o Muhammad Yousuf
By caste Parkani Appellant.

Versus

The State Respondent.

Counsel for the appellant ... Mr. Muhammad Ayub, Advocate.

For the State ... Dr. Muhammad Salah-ud-Din Mengal,
Prosecutor General Balochistan

Date of hearing 13.05.2014

Date of decision ... 13.05.2014

Date of Judgment ... 26.05.2014

JUDGMENT

ASHRAF JAHAN, J: - This Criminal Appeal is directed against the judgment dated 26.02.2014 passed by the Court of learned Sessions Judge (Adhoc), Quetta, in Hudood Case No.41 of 2012, whereby the appellant Muhammad Azeem alongwith co-accused Amanullah were convicted under Section 392/34 PPC and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.20,000/- each. In default thereof, to suffer simple imprisonment for two months more. However, the benefit of Section 382-B Cr.P.C, was extended to the appellant and the co-accused.

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2. The concise relevant facts as recorded in the FIR are, that on 16.08.2010 the complainant Bismillah lodged report at P.S. Brewery, Quetta, stating therein that he is resident of Killi Deba Quetta and by profession a businessman. On the day of occurrence *i.e.* 15.08.2010 he went to offer Isha prayers. Meanwhile, his younger brother Ali Nawaz aged about 13 years, without informing him, took away his motorcycle bearing Registration No.QAG-5226 and Chassis No.3AH4-033210K for pleasure ride. After some time he came back to the house and disclosed that while riding on the motorcycle when he reached at the corner of street, four persons were found standing there, who by appearance, were Baloch or Pathan and can be identified on seeing. Two of the above persons were armed with pistols who snatched motorcycle from him on gun point. The persons who had pistols went away on foot, while the others went on motorcycle towards Killi Sherani.

3. Police started its investigation and challaned in all seven accused on 01-09.2010, out of whom four accused were shown in custody while three were absconding. Subsequently, one absconding accused namely Amanullah was also arrested and his challan was produced on 28.09.2010.

4. On 26.10.2010 the charge was framed against accused Muhammad Azeem, Juma Khan, Daro Khan, Abdul Khaliq and Amanullah under Section 17 (3) Harrabah and 392 PPC to which they pleaded not guilty and claimed trial. On 22.12.2010, the learned trial Court, on the basis of medical board's report, declared accused Daro Khan and Abdul Khaliq as juvenile offenders and bifurcated their case for proceeding under Juvenile Justice System Ordinance, 2000.

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5. During the trial, prosecution in support of its case has examined in all seven witnesses. For the sake of appreciation, gist of their evidence is reproduced as under:

PW-1 Complainant Bismillah Khan supported the contents of F.I.R. and deposed that four persons out of whom two were armed with pistols had snatched motorcycle No.QAG-5226 from his brother Ali Nawaz aged about 13 years. He produced his written report as Ex.P/1-A.

PW-2 Ali Nawaz, eyewitness of the incident supported the contents of FIR but did not implicate the present appellant or any accused facing trial with the commission of the crime.

PW-3 Muhammad Rasheed, Inspector Police, deposed that on 17.08.2010 he was on duty at Brewery police station, when at about 9:00 P.M. accused Muhammad Azeem, in presence of DSP Sayed Zahid Hussain Shah confessed about his guilt, he produced such Fard-e-Inkshaf as Ex.P/3-A.

PW-4 ASI Amanat Khan was examined on 06.02.2013, he produced Roznamcha entry dated 15.08.2010 as Art.P/4, Fard-e-Maqboozgi/Enquiry as Ex:P/4.A, and Fard-e-Maqboozgi of Registration Book as Ex. P/4-B.

PW-5 PC Syed Raza has deposed that on 17.08.2010 he was on patrolling duty along with SHO and other police officials, when they reached Killi Tarkha near Haji Anwar chowk at about 5:00 P.M. they noticed three persons coming on a motorcycle. They signaled them to stop but they resisted, finally the police officials got them stopped. On inquiry, they disclosed their names as Muhammad

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Azeem, Juma Khan and Daro Khan. On personal search from accused Muhammad Azeem one 30 bore pistol was recovered along with bullets. Pistol and motorcycle were taken in custody as Ex. P/5-A, and Art. P/6 and pistol parcel as EX. P/7. He identified the appellant Muhammad Azeem, co-accused Juma Khan and Daro Khan to be the same culprits.

PW-6 ASI Mumtaz Ahmed deposed that on 21.09.2010 during investigation accused Amanullah confessed his guilt and such Fard-e-Inkshaf was produced on record as Ex.P/6-A.

The last witness examined by the prosecution is S.I. Maqbool Ahmed who investigated the present crime. He produced the FIR as Ex.P/7-A, Sketch of place of recovery as Ex.P/7-B, challan as Ex.P/7-C and subsequent challan in respect of accused Amanullah Khan as Ex.P/7-D.

6. After completion of evidence of prosecution witnesses, its side was closed. The statements of accused were recorded under Section 342 Cr.P.C. wherein they denied the allegations levelled against them and took the plea that they are innocent and falsely been implicated in the present case. However, they did not opt to record their statements on oath. At the conclusion of trial, the learned Sessions Judge (Adhoc) Quetta, vide judgment dated 26.02.2014, which is impugned before this Court, acquitted accused Juma Khan by extending benefit of doubt, whereas accused Muhammad Azeem and Amanullah were convicted and sentenced as stated earlier.

6. I have heard the learned counsel for the appellant and the learned State counsel at length and have perused the case record minutely with their assistance. It is contended by the learned counsel for the appellant

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that there are material contradictions in the evidence of prosecution witnesses, rather, it is a case of no evidence as PW-2 Ali Nawaz who is only eyewitness of this crime has not implicated the present accused with the commission of the crime. He has further contended that on same set of evidence accused Juma Khan had been acquitted. The learned Counsel pointed out that the present accused has been mainly convicted on the basis of 'Farad-e-Inkshaf' allegedly made by him before the police which has no evidentiary value in the eyes of law. Furthermore, non association of any independent witness at the time of recovery of alleged motorcycle has made the whole case of the prosecution doubtful, therefore, the appeal may be allowed and the sentence may be set aside. On the other hand it has been contended by the learned counsel for the State that robbed motorcycle has been recovered from the possession of accused along with unlicensed revolver, therefore, the trial Court has rightly convicted the appellant.

7. I have given my anxious consideration to the points raised by the learned Counsel for the parties and have minutely gone through the evidence on record. The perusal of record reveals that PW Ali Nawaz is the star witness of the prosecution as the motorcycle had been snatched from him by the armed culprits. His evidence on record transpires that he did not implicate any accused facing trial with the commission of the crime and his evidence is totally silent in this regard. Though, in FIR it has been disclosed that the accused persons can be identified upon seeing, but neither any identification parade before the Magistrate had been held in this case nor the victim (PW-2 Ali Nawaz) identified the accused present before Court to be the culprits of this crime. Therefore, in such circumstances, the prosecution story as set up, seems to be doubtful.

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8. In the present case, mainly, the prosecution has relied upon Farad-e-Inkshaf of accused Muhammad Azeem, which was recorded before the police. If the accused had volunteered to give his confessional statement then why he was not produced before the Magistrate. No explanation in this regard has come on record. Therefore, I am of the view that this Farad-e-Inkashaf before the police officials has no evidentiary value and cannot be used as evidence against the accused. Further, the accused during the statement recorded under section 342 Cr.P.C. has disowned such statement and categorically denied in reply to question No.3 put to him regarding recording of extra judicial confession before police. The perusal of record further reveals that it has come in evidence that complainant in his FIR disclosed the motorcycle No.QAG 5226 and produced its Registration Book but surprisingly no such Registration Book or any document of the robbed motorcycle is available on the record. As per evidence of PW-4 ASI Amanat Ali it seems that he had produced Registration Book of the robbed motorcycle during his examination-in-chief as Ex.P/4-B i.e. 'Fard-e-Maqboozgi of Registration Book', but no Registration Book or its copy is available on record. It is the case of the prosecution that the number of motorcycle was QAG-5226 but as per cross-examination of PW-4 ASI Amanat Ali it appears that he admitted that the Registration Book produced in Court was bearing No.MA-9874. However, he had voluntarily said that earlier number was QAG-5226. It has also come on record that the above Registration Book in the column of owner bears the name as Mujahid Hussain S/o Muhammad Nawaz and nowhere the name of the complainant Bismillah Khan was appearing. In view of above position it appears that the prosecution has failed to produce on record the Registration Book in respect of motorcycle

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QAG-5226 and such failure is another lacuna in the case of prosecution which cannot be ignored in the circumstances of the present case.

9. It is the prosecution case that the accused were arrested at about 5:00 P.M. at Killi Tarkha near Haji Anwar Chowk on 17.08.2010. PW-5 PC Syed Raza in his cross-examination has admitted that this place was a busy area and the private persons were available but police party did not call any person to witness the recovery of robbed motorcycle and the 30 bore pistol. Non-association of private persons from the locality is another dent in the case of the prosecution.

10. In the light of discussion made above, I am of the view that the prosecution has failed to prove the charge against the present appellant, therefore, the appellant is entitled to the benefit of doubt which is accordingly extended to him. The conviction and sentence of the appellant is thus set aside and he is acquitted of the charge.

11. During the hearing of this appeal, it has been noticed that on same set of evidence the learned trial Court has acquitted one accused Juma Khan and convicted two accused, the present appellant and other accused Amanullah, who has not filed any appeal to challenge this judgment. As discussed earlier, the victim has not implicated any accused facing trial with the commission of crime and there is no iota of evidence available against accused Amanullah except his "Fard-e-Inkshaf" before the police, which has no legal value and he had also categorically disowned, during his statement under section 342 Cr.PC. in reply to question 3. In such situation, the canon of justice demands that like the present appellant he may also be extended the benefit of this judgment.


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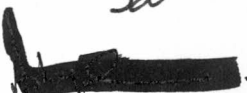
12. It is well settled law that the benefit granted to one accused/appellant is also to be extended to other non-appealing accused, as well. This view is supported from following judgments:

1. Muhabbat Ali and another Vs. The State (1985 SCMR 662)
2. Muhammad Imran Vs. The State (2006 P.Cr.L.J 954)
3. Muhammad Ayub Vs. The State (2002 SD 80)
4. Mukhtar Ahmad Vs. The State (NLR 1991 SD 691)
5. Bijoy Singh & Anr Vs. State of Bihar (2002 (4) Supreme 362)
6. Pawan Kumar Vs. State of Haryana (2003 (5) Supreme 196)
7. Chellappan Mohandas and others Vs. State of Kerala (AIR 1995 Supreme Court 90)
8. Akbar Hussain and another Vs. The State (1997P.Cr.L.J 543)
9. Muhammad Aslam and 5 others Vs. The State (1972 SCMR 194)
10. Talib Hussain and another Vs. The State (PLD 1958 W.P Karachi 383).

13. In view of above discussion and relying upon the case law, accused Amanullah (who has not filed any appeal) is also extended the benefit of present judgment. Consequently, for the same reasons he is also acquitted and directed to be released from jail, if not required in any custody case. His conviction shall be deemed to have been set aside.

A copy of this judgment be sent to the Superintendent, District Jail, Mach, for information and compliance.

14. Foregoing are the reasons for the short order dated 13.05.2014.



 26.5.2014.
JUSTICE ASHRAF JAHAN

Islamabad
26.05.2014
 Imran/*

Approved for reporting 

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