

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE MUHAMMAD ZAFAR YASIN

CRIMINAL APPEAL NO.8-Q-2005

Ghulam Qadir son of Arbab Khan
Resident of Geo Colony, Quetta.

Versus

Appellant.

The State

Respondent

For the appellant

Mr.Ali Ahmad Kurd, Advocate.

For the State

Qazi Abdul Malik, Advocate

No.& date of FIR
Police Station

No.64/2003 , dt.12.7.2003,
P.S New Sariab, Quetta

Date of judgment of
Trial court

22.12.2004

Date of Institution

26.01.2005

Date of hearing

30.10.2009

Date of decision

30.10.2009

M.Z. Yusuf

JUDGMENT

MUHAMMAD ZAFAR YASIN, J. - This appeal is

directed against the judgment dated 22.12.2004 passed by learned Additional Sessions Judge-I, Quetta whereby appellant Ghulam Qadir son of Arbab Khan has been convicted under section 395 PPC and sentenced to undergo R.I for ten years with a fine of Rs.10,000/- or in default to further undergo S.I for six months. The appellant has also been extended the benefit of section 382-B Cr.P.C.

m. z. Jasin

2. Brief facts of the prosecution case as emerged from FIR No.64/2003 dated 12.7.2003 P.S. New Sariab, Quetta are that on 12.7.2003 complainant Muhammad Yousaf lodged the report with the Police Station New Sariab Quetta, stating that the complainant was permanent resident of Noshki and drives pick-up No.WAD-659 Toyota Model,1989 from Quetta to Taftan. He further alleged that last night the complainant along with his nephew Saleh Muhammad went to the house of his friend Hameedullah at Killi Mustafa Abad, Quetta, wherein outside the house of Hameedullah, he

parked the pickup and slept in its cabin along with his nephew Saleh Muhammad. He further alleged that at about 2.00 a.m (night) he woke up, five persons out of them one was armed with pistol, forcibly tied his and Saleh Muhammad hands and feet, snatched the vehicle and escaped from the spot. Hence this case. During usual investigation the accused/appellant was arrested in case FIR No.178/2003 dated 27.7.2003 registered with police station Sariab,Quetta under section 412 PPC as the alleged robbed vehicle was recovered from the house of the accused Ghulam Qadir. Hence the said accused was also challaned to face the trial in this case as well.

3. A formal charge under section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 was framed on 2.9.2003, to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution produced nine witnesses. P.W.1 Muhammad Yousaf is the complainant. He reiterated the version contained in the F.I.R. He further deposed that his watch (RADO), driving licence and Rs.20,000/- cash were also lying in pick-up. On 31.7.2003

police officials called him at police station Sariab, where he identified the accused Ghulam Qadir on suspicion. Otherwise he did not identify any accused as they had muffled faces. P.W.2 Hameedullah deposed that on 12.7.2003 his friend Yousaf came to his home at Mustafa Abad, along with Saleh Muhammad whereafter having dinner they slept in their vehicle outside the house. At about 6.15 a.m Yousaf and Babo Saleh knocked the door; he came out and had not found the pick-up. Thereafter they reported the matter at police station. P.W.3 ASI Abdul Khaliq is a witness of recovery memo of the pick up which was robbed and recovered on 27.7.2003 being parked in the house of the accused Ghulam Qadir, P.W.4 Abdul Baqi,DSP has supervised the identification parade of accused in police station Sariab,Quetta where complainant Muhammad Yousaf had identified accused/appellant Ghulam Qadir in his presence on 31.7.2003. P.W.5 Bilal Ahmed S.I who had partially investigated the case, who had produced the recovery memo as Ex.P/5-A and photo copy of Book as Mark/1-A. He also produced the copy of FIR No.178/2003 as Ex.P/5-B

m. 2-7 asw

registered with police station Sariab Quetta under section 412 PPC after recovery of Pick-up WAD-659 from the house of the accused, P.W.6 Abdul Samad deposed that at about 'fajar' time driver Muhammad Yousaf and Hameedullah came to him and narrated the incident, P.W.7 Ghulam Fareed,SI had recorded formal FIR No.64/2003, who had prepared the site plan, recovered one key through recovery 'fard'. On 28.7.2003 SHO recovered the document of pick-up No.WAD-659 and copy of FIR No.178/2003, P.W.8 Haji Murid Khan is the owner of the pick up and Muhammad Yousaf is his driver. P.W.9 Rafi Ullah Shah,SHO and I.O of this case. Thereafter the statement of the accused-appellant was recorded under section 342 Cr.P.C wherein he denied the allegations leveled against him. Neither the accused-appellant opted to make his statement on oath under section 340(2) Cr.P.C ,nor produced any witness in his defence.


5. After completion of the trial the learned trial court has convicted and sentenced the appellant as mentioned in the opening para hereof. From the impugned judgment it is evident that the accused was also tried separately

in FIR No.178/2003 Police Station Sariab , Quetta registered under section 412 PPC for recovery of same robbed pick-up. It is interesting to note that accused Ghulam Qadir has been convicted and sentenced to ten years R.I under section 412 PPC vide even dated judgment.

Hence this appeal by appellant Ghulam Qadir against his conviction and sentence recorded by the trial court under section 395 PPC in F.I.R No.64/2003, dated 12.7.2003 registered with P.S New Sariab, while *M.Z. Jasin* according to the learned counsel for the appellant, he has filed appeal in High Court of Baluchistan against the conviction and sentence of Ghulam Qadir recorded by the trial court under section 412 PPC in case FIR No.178/2003 of police station Sariab,Quetta.

6. Learned counsel for the appellant has argued that the appellant has been made victim of double jeopardy i.e the appellant has been convicted and sentenced under section 412 PPC in case FIR No.178 of 2003 registered with Police Station Sariab,Quetta on the basis that robbed pick-up has been recovered from the house of the appellant, while the appellant

has also been convicted and sentenced under section 395 PPC in case of FIR No.64/2003 registered with police station New Sariab,Quetta for snatching forcibly the same pick-up. Hence conviction is unwarranted by law. Further argued that the I.O P.W.9 Rafiullah Shah admitted that on 31.7.2003, when the alleged identification parade was conducted under the supervision of DSP P.W.4 Abdul Baqi; neither accused Ghulam Qadir was arrested in the case in hand nor the identification parade was conducted in police station New Sariab, Quetta where this case was registered. Hence the identification parade could not be used in the case in hand. Further argued that otherwise also the identification parade is fake as the complainant Muhammad Yousaf in his evidence as P.W.1 did not state that any identification parade was conducted in police station Sariab,Quetta on 31.7.2003 where he, on the asking of the police, had identified accused Ghulam Qadir. It has further been argued that otherwise also the conviction recorded under section 395 PPC is illegal because though in the FIR it was stated that accused were five in number but neither any other

Mr. Z. 

accused has been challaned nor declared as absconder while appellant alone was tried, therefore, conviction under section 395 PPC as defined under section 391 PPC is not sustainable in law, further it has been argued that the prosecution has withheld the only eye witness of the occurrence i.e. Saleh Muhammad, the nephew of the complainant, who had been present at the time of alleged occurrence of decoity. Further-more, even P.W.1 the complainant Muhammad Yousaf did not identify the accused Ghulam Qadir in police station Sariab, Quetta on 31.7.2003 but he had stated that on 31.7.2003 he was summoned by the police, and he was informed that his pick-up has been recovered. Thus on the asking of the police he had identified Ghulam Qadir as his accused under suspicion. Otherwise he was not sure whether Ghulam Qadir was the person who along with his four companions had robbed his pick-up, because all the five accused had muffled faces. The prosecution has not produced Saleh Muhammad, the eye witness in the court. Hence conviction is unwarranted by law.

M. Z. Yousaf

6. On the other hand learned counsel for the State has argued that the accused/appellant Ghulam Qadir was one of the five persons who had robbed his pick-up. The pick-up was recovered from the house of the accused Ghulam Qadir by the police of police station Sariab, Quetta on 27.7.2003. Hence his conviction and sentence under section 395 PPC in the case in hand is in accordance with law.

7. Heard. Record perused.

M. Z. Jassu

8. It is well established law that no one can be punished twice for the same offence. Under Article 13 of the Constitution of Islamic Republic of Pakistan, 1973, there is protection against double punishment which reads as under:

“No person shall be prosecuted or punished for the same offence more than once”

If the appellant was member of five persons who had robbed pick-up then he could be tried and convicted under section 395 PPC and otherwise if only the robbed vehicle has been recovered from his house, in that case he was rightly convicted and sentenced under section 412 PPC in case FIR

No.178/2003 registered with police station Sariab Quetta. The last para of the impugned judgment shows that apart from the fact that appellant has been convicted and sentenced under section 395 PPC in the FIR No.64/2003 dated 12.7.2003 regarding commission of robbery whereby the pick-up of the complainant was robbed; the accused/appellant Ghulam Qadir has also been convicted and sentenced by the same court vide even dated judgment under section 412 PPC in case FIR No.178/2003 registered with police station Sariab Quetta, on the charge that robbed pick-up was recovered from the house of Ghulam Qadir. Thus the principle of double jeopardy is fully attracted in the case in hand, while it has not been taken note of by the learned trial court while passing conviction of sentence in both the F.I.Rs on the same day.

Mu. Z. Yousaf

9. However as regard the conviction and sentence of the appellant recorded under section 395 PPC in the case in hand, the complainant Muhammad Yousaf while appearing as P.W.1 did not say that any identification parade had taken place on 31.7.2003 wherein he had picked

up the accused out of dummies in three times as alleged by the P.W.4 Abdul Baqi DSP. Further-more, it has been admitted by P.W.9 Rafiullah Shah I.O that on 31.7.2003, when identification parade had taken place, neither accused Ghulam Qadir was under arrest in case in hand i.e FIR No.64/2003 with police station New Sariab Quetta nor even identification parade had taken place in his police station i.e New Sariab Quetta. Thus the alleged identification parade held on 31.7.2003 cannot be read as piece of evidence in the case in hand. Further-more while appearing as P.W.1 Muhammad Yousaf, has not identified Ghulam Qadir as one of his accused who had robbed the Pick-up but on the asking of the police that vehicle has been recovered from the house of Ghulam Qadir, therefore, on the basis of doubt he identified Ghulam Qadir. Otherwise he could not identify any of the five robbers because they had muffled faces. It is also important to note that the prosecution has withheld the best available evidence i.e the evidence of Saleh Muhammad the nephew of the complainant Muhammad Yousaf, who was present at the time of alleged

Muhammad Yousaf

robbery who could independently identify the accused and corroborate the prosecution version in the case in hand. Despite recovery of Pick-up the robbed property, it has not been taken into custody by police of police station New Sariab Quetta as case property in this case and produced in the court as robbed property to corroborate the prosecution case. It is well established law that if there is any doubt in the prosecution case the benefit of doubt is to go to the accused.

10. In view of what has been discussed above, the prosecution has failed to prove charge under section 395 PPC against the accused, therefore, the conviction and sentence of the appellant Ghulam Qadir recorded by the learned trial court vide judgment dated 22.12.2004 under section 395 PPC in case FIR No.64/2003 with police station New Sariab Quetta registered under section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 are set aside and he is acquitted of the charge. The appellant Ghulam Qadir is present on bail. His bail bonds stand discharged.

M. Z. Jassani

11. Needless to add that the conviction and sentence of the accused Ghulam Qadir recorded in case FIR No.178/2003 registered with police station Sariab, Quetta under section 412 PPC, by a separate judgment of the trial court dated 22.12.2004 would be independently decided by the court of appeal as convict Ghulam Qadir has challenged the said judgment, before High Court of Baluchistan.

These are the reasons for acquittal.

m.z. yasw

JUSTICE MUHAMMAD ZAFAR YASIN

Quetta, 31.10.2009
M.Akram/

Fit for reporting.

m.z. yasw
JUDGE