

IN THE FEDERAL SHARIAT COURT.
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE HAZIQUOL KHAIRI, CHIEF JUSTICE.

CRIMINAL. APPEAL NO.116/Q OF 2000.

1. Ruhi Khan
2. Zahir Shah ----- Appellants.
Versus
The State ----- Respondent.

Counsel for the Appellants	.....	Mr. Ayaz Zahoor Advocate.
Counsel for the State	.....	Mr. Aminuddin Barzai, Additional Advocate General, Balochistan.
FIR No. date and police Station.	.....	182/1999, dated 21.07.1999. P.S. City Quetta..
Date of Judgment of Trial Court.	.....	24.7.2000
Date of Institution	.....	25.09.2000
Date of hearing	.....	23.11.2006
Date of decision:	.....	12.01.2007

JUDGEMENT

HAZIQUL KHAIRI, CHIEF JUSTICE:- This appeal under section 24 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the said Ordinance") is directed against the judgement dated 24.7.2000, passed by the learned Additional Sessions Judge-I, Quetta whereby appellants Ruhi Khan and Zahir Shah have been convicted under section 389, PPC and sentenced to undergo five years R.I. each and fine of Rs.30,000/- each or in default of payment of fine to further undergo imprisonment for six months each.

2. Facts as briefly stated in the impugned judgement are that on 21.7.1999, a complaint was lodged by one Muhammad Anwar, a Taxi Driver, with City Police Station, Quetta incorporated in FIR No.182/99 under section 389/34, PPC read with section 17/20 of "the said Ordinance" on the allegation that on the said date while he was driving van and reached near Ali Bahi Road, one woman signalled him to stop and asked him to drop her at Civil Hospital. While he allowed her to sit in the vehicle, two other persons also entered into the vehicle stating that they are police officials and since he was taking a prostitute he was directed to come with them to the Police Station. Thereafter the said two persons passed by different Police Stations in his taxi but did not report. Ultimately when they reached near Sariat Road, they asked him to stop the vehicle and demanded fifty thousand rupees from him. The deal

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was settled at rupees fifty thousand. After that they snatched the key of his vehicle and told him to bring money. The complainant proceeded to bring money. On the way he met S.I. Amanullah who was patrolling. He narrated the incident to him and took him to the place where vehicle was parked and found appellant No.1 Ruhi Khan standing there. He was arrested. Afterwards appellant No.2 Zahir Shah was also arrested and both were challaned.

3. On 20.4.2000, charge under section 389/34, PPC was framed to which the appellants did not plead guilty and claimed trial.

4. The prosecution examined P.W.1 Muhammad Anwar, the complainant, PW.2 Amanullah, S.I. and P.W.3 Nehmtullah, S.I. the Investigating Officer. On completion of prosecution evidence, appellants were examined under section 342, Cr.P.C. wherein they denied the prosecution case. They also got recorded their statements on oath as envisaged under section 340 (2) Cr.P.C. and alleged that a false case has been made up against them by Amanullah, S.I. due to enmity with them. In defence the appellants produced DWs. Muhammad Afzal and Dr. Shabbir Magsi.

5. The deposition of PW.1 Muhammad Anwar was more or less the same as in FIR except that he came to know of the names of the appellants at the Police Station. PW.2 Amanullah, S.I. corroborated the statement of PW.1 and Nahmatullah. PW.3 stated that he was posted at Thana City on 21.7.1999 when Amanullah, S.I. brought

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Ruhi Khan to the Thana and he arrested him. Along with him came also Suzuki van with registration number, which were taken into possession by him. On 2.8.1999 appellant Zahir Shah filed certificate of Bail before arrest at the Thana.

6. Both the appellants examined themselves under section 340 (2) Cr.P.C. According to them the prosecution with ulterior motives concealed the fact that as per police constables they had been working under PW.2 Amanullah, S.I. Whereas appellant Ruhi Khan was working with him at Cantonment Police Station, appellant Zahir Shah was working under him at Sariab Police Station. According to appellant Ruhi Khan PW.2 used to ask him to do his personal work. One day he asked him to get shoes of PW.2 polished at Chiltan Market to which he refused resulting into quarrel with him. On 21.7.1999 while he was off from his duty and sitting at Faran Hotel he was summoned by S.H.O. of the Police Station where he was locked up and after two days he was beaten up by PW.2 and his tooth was broken. On 31.7.1999 he got bail where after he went to Civil Hospital and got certificate of injuries from a doctor. He also made an application to S.H.O. against PW.2 Amanullah, S.I. Appellant Zahir Shah also deposed that Amanullah S.I. used to ask him to do illegal things, which he refused resulting into exchange of abusive language between them.

7. From the perusal of record and after hearing learned counsel for the parties it appears that the learned trial Judge closed his eyes

to ocular as well as documentary evidence adduced by the appellants. He also failed to take into consideration surrounding circumstances as well as the relationship PW.2 Amanullah had with the appellants. The entire episode on the face of it appears to be flimsy and made up. The evidence produced by the prosecution is devoid of credibility. The alleged prostitute was not produced nor any independent witness was examined by the prosecution. According to PW.1 he came to know of the names of the accused persons at the police station. There are a number of loopholes, contradictions and inconsistencies in the prosecution case, which call for the acquittal of the appellants.

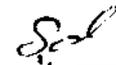
8. Accordingly, the appeal is accepted with direction to jail authorities to release the appellants forthwith if not required in any other criminal case.

Karachi
January , 2007



JUSTICE HAZIQUL KHAIRI
Chief Justice.

Approved for reporting.



JUSTICE HAZIQUL KHAIRI
Chief Justice.