

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

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PRESENT

MR. JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

JAIL CRIMINAL APPEAL NO.172/I OF 1994.

Dawa Khan son of Sahib Gul ... Appellant
resident of village Dewana
Bana, District Buner.
(now confined in Central
Jail Haripur)

Versus

The State ... Respondent

For the appellant ... Khan Mushtaq Ahmad Khan,
Advocate

For the State ... Syed Amjad Ali, Advocate

No. & date of F.I.R ... No. 352, dt. 5.10.1990,
Police Station P.S Daggar

Date of order of ... 10.7.1994.
the trial court

Date of Institution ... 27.7.1994.

Date of hearing ... 26.10.1994.
and decision

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JUDGMENT

NAZIR AHMAD BHATTI, CHIEF JUSTICE,- Mst. Makht Daroon wife

of Samandar Khan resident of Matwanai was asleep in her house alongith

her children on the night of 5.10.1990 while her husband had

gone to Kuwait to earn his livelihood. At about midnight she

was awakened by some noise. Some people with muffled faces and armed with

weapons had entered her room and asked her to keep quite.

Two accused came near her cot and the other 3/4 started search

of the house. The accused took away various clothes valued at

Rs.4000/-, a pair of golden mekhaki valued at Rs.1500/-, two ear

rings valued at Rs.3000/-, one National Colour T.V. 20" valued

at Rs.12000/-, one National Tape Recorder valued at Rs.1400/-,

one National Radio valued at Rs.600/- and cash of Rs.20000/-.

The complainant first informed her brother and then she went to Police

Station Daggar, District Swat where she recorded F.I.R No.352

at 1515 hours.

2. On 12.10.1990 appellant Dawa Khan was arrested and 4 pieces

of cloth were recovered from his possession which were duly

identified by the complainant. The appellant made a confession

on 16.10.1990 wherein he besides himself named convict Rozal,

acquitted accused Sher Umar, Momin and Amir Sultan and two other

persons for committing dacoity in the house of one Qayyum. The

complainant recorded an other statement under section 164 Cr.P.C

on 31.10.1990 wherein she charged appellant Dawa Khan by name



and six other persons for committing dacoity in her house.

3. Subsequently accused Rozal, Sher Umar, Momin and Amir Sultan were arrested while accused Amir Muhammad and Raizakay were declared absconders. The aforesaid 5 accused were sent up for trial before Sessions Judge Buner who charged them under sections 148/149 PPC and section 20 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979. All the 5 accused pleaded not guilty to the charges and claimed trial.

4. After the conclusion of the trial the learned Sessions Judge acquitted accused Sher Umar, Momin and Amir Sultan and convicted appellant Dawa Khan and Rozal under section 20 of the Hudood Ordinance read with section 395 PPC and sentenced each of them to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.7000/- each or in default to undergo simple imprisonment for one year. The learned Sessions Judge also directed that out of the fine, if recovered, a sum of Rs.13000/- shall be paid to the complainant as compensation. The conviction and sentence has been challenged by appellant Dawa Khan by the appeal in hand.

5. The facts and circumstances which came to light after the conclusion of the trial are that all the culprits had muffled their faces when they committed dacoity in the house of the complainant and not one of them was known to her, that no identification parade of appellant Dawa Khan was held although he was arrested on 12.10.1990,



that the appellant made a confession on 16.10.1990, from which he resiled afterwards, according to which he and other culprits had committed dacoity in the house of one Qayyum and not in the house of the complainant, that it was for the first time on 31.10.1990 that the complainant charged appellant Dawa Khan by name in her statement recorded under section 164 Cr.P.C when she had already seen him and heard about him, that although acquitted accused Sher Umar, Monin and Amir Sultan were also arrested but they were also not identified in any identification parade, ^{and} that the four pieces of cloth allegedly recovered from the possession of the appellant were of a general nature and could be possessed by any person and there was no evidence on the record that they actually belonged to the complainant. It is also to be noted that even if the confessional statement of appellant Dawa Khan was to be believed, still it was exculpatory because he remained outside the house and did not enter it and did not take any part in the commission of the offence of dacoity.

6. All the aforesaid circumstances would clearly show that no cogent and convincing evidence had been produced to bring home the guilt of the appellant beyond any reasonable doubt.

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For the aforesaid reasons I accept this appeal, set aside the conviction and sentence of the appellant recorded on 10.7.1994 by the learned Sessions Judge Buner. The appellant is acquitted of the offence for which he was convicted and sentenced. He shall be set at liberty forthwith if not wanted in any other case.

Fit for reporting.

CHIEF JUSTICE

Islamabad, 26.10.1994.
M.Akram/