IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.222/I OF 2005 (Linked with)

1. Riaz son of Said Rehman, resident of Rash Kai, Mardan/Nowshera 2. Muhammad Tufail alias Malang alias Jabbar son of Khan Zada, resident of Manga	---	Appellants
	Versus	
The State	---	Respondent

JAIL CRIMINAL APPEAL NO.223/I OF 2005

Muhammad Tufail son of Shafi Ullah, resident of Batakar, Swabi	---	Appellant
	Versus	
The State	---	Respondent
Counsel for the appellants	---	Mrs. Tahira Khan Goraya, Advocate
Counsel for the State	---	Mr.Muhammad Sharif Janjua, Advocate
FIR No. date and Police station	---	02, 16.1.2003 P.S Thana, District Malakand
Date of the Order of Trial Court	---	18.7.2005
Date of Institution	---	4.8.2005 and 8.8.2005 respectively
Date of Hearing	---	15.11.2005
Date of Decision	--	15.11.2005

JUDGMENT:

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This judgment will dispose of two connected appeals i.e. jail criminal appeal No.222/I of 2005 filed by appellants Riaz son of Said Rehman and Tufail alias Malanga alias Jabbar son of Khanzada and jail criminal appeal No.223/I of 2005 filed by appellant Muhammad Tufail son of Shafi Ullah as both arise out of the same judgment dated 18.7.2005 passed by the learned Sessions Judge/Zilla Qazi, Malakand at Batkhella whereby the afore-named appellants were convicted under section 392 PPC read with section 20 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the Ordinance") and sentenced to undergo R.I. for 10 years each alongwith a fine of Rs.50,000/- each or in default thereof to further undergo R.I. for 2 years each. It was further ordered that the appellants shall also pay an amount of Rs.one lac each to the victim as compensation under section 544-A Cr.P.C. and in case of failure they

shall further suffer S.I. for six months each. Benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Facts of the case, in brief, are that on 16.1.2003 report was lodged by one Taj-ud-Din with Levies Post/Thana District Malakand wherein it was alleged that the complainant used to ply a white colour motorcar 1990 model, owned by one Alamzeb, as taxi. On 15.1.2003, at about 1830 hours, the vehicle was hired by four young persons, for village Thana and a fare of Rs.500/- was settled. No sooner, they reached Jangi Bye-Pass the afore-mentioned persons overpowered the complainant, de-boarded him from the car, tied him with a tree and drove the vehicle in question away, besides snatching a sum of Rs.1,300/- from the complainant. After their departure, the complainant untied himself and reached the Police Station for the purpose of lodging the report. On the stated allegation a formal FIR bearing No.2, dated 16.1.2003 under section 17(3) of "the Ordinance" was registered at the said Police Station and investigation was carried out in pursuance thereof. On the completion of the investigation, the

accused persons were challaned to the Court for trial whereas co-accused persons, namely, Naik Muhammad and Siraj-ud-Din were proceeded against under section 512 Cr.P.C.

3. Charge was accordingly framed against the accused persons under sections 17(3) of "the Ordinance" and 412 PPC, to which they pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to prove the charge and substantiate the allegations leveled against the accused persons produced seven witnesses, in all. PW.1 Umar Mehmood, Moharrir is marginal witness of the recovery memo Exh.PW.1/1 whereby a sheet i.e. Article 4 produced by the complainant was taken into possession by the police. He is also a marginal witness of the recovery memo Exh. PW.1/2 vide which registration book of the stolen car produced by the complainant was taken into possession by the police. PW.2 Siraj Khan was entrusted with the warrants of arrest issued against accused Siraj-ul-Islam and Naik Muhammad. PW.3 Khurshid Iqbal Khattak, Senior Civil Judge/Illaqa Qazi, Batkhela had, on 22.2.2003,

supervised test identification parade of the accused persons, namely Riaz, Tufail alias Malang alias Jabbar and Muhammad Tufail son of Shafi Ullah. He produced memo thereof as Exh. PW.3/1. PW.4 Isa Khan, DFC had carried out proceedings under section 87 Cr.P.C. against the absconding accused persons, namely, Naik Muhammad and Siraj-ud-Din. PW.5 Mokarrum Khan, Naib Tehsildar is IO of the case. PW.6 Jehangir Khan, Civil Judge/Judicial Magistrate had recorded confessional statements of the appellants. He produced the same in Court as Exhs.PW.6/2, PW.6/5 and PW.6/8. PW.7 Taj-ud-Din alias Khashake is the complainant. He, at the trial, reiterated the version contained in the FIR. After close of the prosecution evidence, the accused persons were examined under section 342 Cr.P.C. In their above statements the appellants denied the charge and pleaded innocence. They, however, failed to produce any evidence in their defence or to appear themselves as their own witnesses in terms of section 340(2) Cr.P.C.

5. After hearing arguments of the learned counsel for the parties, the learned trial Judge convicted the appellants and sentenced them to the punishments as mentioned in the opening para hereof.

6. Since on appeal to this Court it was found that section 20 of "the Ordinance" under which the appellants were convicted by the trial Court was merely an enabling section and therefore, the appellants could not have been convicted there-under hence, the case with consent of the parties, was remanded to the trial Court vide judgment dated 30th March, 2005, in criminal appeal No. 59/P of 2004 and jail criminal appeal No.335/I of 2004, for re-writing of the judgment. On remand, the learned trial Judge, again convicted the appellants and sentenced them to the punishments as mentioned in the opening para hereof.

7. I have heard Mrs. Tahira Khan Goraya, Advocate, learned counsel for the appellants, Mr. Muhammad Sharif Janjua, Advocate, learned counsel for the State and have also perused the record of the case with their assistance. It has been contended by the learned

counsel for the appellants that solitary statement of the complainant was not sufficient to bring home charge against the appellants. It is further her grievance that since the instant was not a case of robbery but was of extortion therefore, the sentences inflicted on the appellants being harsh do not commensurate with gravity of the offence .

8. Mr. Muhammad Sharif Janjua, Advocate, learned counsel for the State, on the other hand, while controverting the contentions raised by the learned counsel for the appellants has stated that since the appellants had confessed their guilt through their confessional statements and they were also correctly identified at the test identification parade as well as in Court by the complainant therefore, their guilt having been fully brought home at the trial, the impugned judgment was unexceptionable. He has added that since force was applied in snatching the vehicle from the complainant therefore, instant was a case of robbery and was not of extortion.

9. I have given my anxious consideration to the respective contentions of the learned counsel for the parties. The prosecution case is based on the ocular testimony of PW.7, i.e. the complainant, the evidence of identification, the confessional statements of the appellants and the circumstantial evidence. So far as testimony of the complainant is concerned it is not only confidence inspiring but finds corroboration from the medical evidence as well. The confessional statements of the appellants are also inconformity therewith. It is well settled that conviction can be recorded on the basis of retracted confession alone, particularly against its maker, if the same is found voluntary and true and corroboration thereof is sought for as a matter of prudence only. Reference, in this regard may usefully be made to the following reported judgments:-

1. Khuda Bakhsh Vs. The State 2004 SCMR 331;
2. Muhammad Gul and others Vs. The State 1991 SCMR 942;
3. The State through A.G. NWFP, Peshawar Vs. Waqar Ahmad 1992 SCMR 950;
4. Wazir Khan Vs. The State 1989 SCMR 446;
5. Muslim Shah Vs. The State PLD 2005 SC 168;
6. Muhammad Ashraf Vs. The State PLJ 2001 FSC 13; and
7. Emperor Vs. Lal Bakhsh AIR 1945 Lahore 43.

Since in the instant case it was confirmed by the Magistrate that he had recorded the confessional statements after satisfying himself that the appellants were confessing their guilt voluntarily and no evidence to the contrary, on record, was available therefore, the confessional statements in question were rightly taken into account by the learned trial Judge, in recording conviction against the appellants. Besides, identification of the appellants at the test, as well as in Court, lend further support to the prosecution version. Though in the instant case conviction has not been recorded on the basis of solitary statement of the complainant, as sufficient corroboratory evidence was available yet, there is no rule that conviction cannot be recorded on the basis of the testimony of a single witness. The only requirement is that it should be reliable and confidence inspiring. This view receives support from the following reported judgments:-

1) Dildar Hussain Vs. Muhammad Afzal alias Chala PLD 2004 SC 663;
2) Gulistan and others Vs. The State 1995 SCMR 1789;
3) Anil Phukan Vs. State of Asam 1993 SCMR 2236;
4) Allah Bakhsh Vs. Shammi PLD 1980 SC 225;

5) Rabnawaz and others Vs. The State 1991 P.Cr.L.J. 826;

6) Zulfiqar Ali alais Dittu Vs. The State 1991 P.Cr.L.J. 1125;

7) Khushi Muhammad and anaothr Vs. The State 1984 P.Cr.L.J. 1832; and

8) Vadivelu Thevar Vs. The State of Madras AIR 1957 SC 614.

Further, the complainant has had neither any enmity with the appellants nor had he any motive to falsely implicate them, rather he himself was victim of the crime hence, his statement was rightly believed by the learned trial Judge.

10. Adverting to the next contention of the learned counsel for the appellants that the instant was not a case of robbery but was of extortion, it may be pointed out here that since the offence of robbery is an aggravated form of theft or extortion therefore, in all robbery there is either theft or extortion. As per section 390 PPC theft becomes robbery when in order to committing of the theft or in committing the theft or in carrying away or attempting to carry away property obtained by theft the, offender voluntarily causes or attempt to cause to any person death or hurt, or wrongful restraint, or fear of

instant death or of instant hurt or of instant wrongful restraint whereas, extortion becomes robbery if the offender at the time of committing extortion puts any person in fear of his instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and by so putting in fear; induces the person to put in fear then and there to deliver up the thing extorted.

Main distinguishing element in theft and robbery is the "use of force to cause death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint" whereas, in extortion and robbery it is the "presence of fear of imminent violence". Illustrations (a) and (b) tagged to section 390 PPC are explicit in this regard. Here, it would be advantageous to have a glance at section 390 PPC alongwith the illustrations, referred to herein above, which read as follows:-

"Section 390 PPC. Robbery: In all robbery there is either theft or extortion. When theft is robbery: Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily

causes or attempts to cause to any person death or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery: Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear; induces the person to put in fear then and there to deliver up the thing extorted.

Illustrations

(a) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z, A has therefore, committed robbery.

(b) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt and being at the time of committing the extortion in his presence. A has therefore, committed robbery."

11. Since in the instant case the complainant was not only over powered by the appellants but was tied with a tree and the vehicle was

thereafter snatched from him and in doing so force was applied therefore, to my mind, it was a patent case of robbery. In this view, I am fortified by the following reported judgments:-

1) Muhammad Shafi and another Vs. The State PLD 1959 (W.P.) Karachi 648;
2) Mojibur Rahman and others Vs. Bazlur Rahman Chowdhury 1970 P.Cr.L.J.49;
3) Bilal Ahmad and 4 others Vs. The State PLD 1994 Lahore 141;
4) Karmun and others Vs. Emperor AIR 1933 Lahore 407;
5) Mahadeo Tukaram and others Vs. Crown AIR (37) 1950 Nagpur 214; and
6) Basu Domb and others Vs. State AIR 1959 Orissa 171.

The contention raised by the learned counsel for the appellants therefore, is devoid of force.

12. Upshot of the above discussion is that both these appeals, being misconceived, are hereby dismissed.

(CH. EJAZ YOUSAF)
Chief Justice

Islamabad, the
15th November, 2005.
Bashir/*

FIT FOR REPORTING.

CHIEF JUSTICE