

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

Present

MR.JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR.JUSTICE SALAHUDDIN MIRZA

JAIL CRIMINAL APPEAL NO.302/I OF 2006

Yar Khan son of Hero,
Caste Jangwani Khetran,
resident of Rakni,
District Barkhan.

Appellant.

Versus

The State.

Respondent.

For the appellant:

Mr. Manzoor Ahmed
Rahmani, Advocate.

For the State:

Shaikh Ghulam Ahmed,
Advocate.

No. & Date of FIR/PS

No.nil dated 16-7-2003
P.S. Barkhan.

Date of judgment of
trial court

12-10-2006

Date of filing of appeal

15-12-2006

Date of hearing

15-5-2008

Date of decision

28-5-2008

JUDGMENT

HAZIQUL KHAIRI, CHIEF JUSTICE.- The appellant Yar Khan has preferred this appeal against the judgment dated 12-10-2006 passed by learned Additional Sessions Judge, Barkhan at Rakni, whereby the appellant was convicted under section 392 PPC and sentenced to suffer R.I. for 10 years and to pay fine of Rs.50,000/- and in case of default of payment of fine to further suffer R.I. for one year. The appellant was also convicted under section 337-F(v) PPC to suffer R.I. for four years or to pay Rs.50,000/- to the complainant as Daman. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the case are that on 16-7-2003, complainant Dost Muhammad lodged FIR with Levies Thana, Barkhan, that on the same day at about 11.30 AM he alongwith driver Abdul Rehman and two labourers loaded tomatoes and chilli in his Datsun and proceeded from Barkhan to Dera Ghazi Khan, Punjab. When they reached the area of Katha post near Khetran Petrol Pump, at about 12.30 PM, six persons who were armed with Kalashinkov appeared on National Highway, stopped their vehicle and surrounded it. One of the accused was Nadir Shah son of Hassad Khan. He asked the complainant to hand over the keys of the vehicle to him and to get down. On the resistance of the complainant, the accused persons fired upon him, due to which he was severely injured. They snatched the keys and drove away the Datsun towards Rakni whereas he was taken to Civil Hospital, Barkhan, in injured condition. Other five persons were the family members of accused Nadir Shah. He could recognize them by

their faces. However, if their names become known to him, he would nominate them.

3. After registration of case, the usual investigation commenced and appellant Yar Khan was nominated by the other eye witnesses in their statements under section 161 Cr.P.C. on 19-7-2003. He was arrested on 22-2-2006 i.e. after about 2-1/2 years. Other accused were declared absconders.

4. The appellant was charged on 26-5-2006 which he denied and claimed trial.

5. PW.1 complainant Dost Muhammad who was also injured in this occurrence reiterated what he had stated in FIR. He was taken to Civil Hospital, Barkhan, for medical treatment. He recognized appellant Yar Khan as one of the accused who fired upon him and snatched the Datsun from him. In cross-examination, he admitted that he did not sign his statement, as he was in a semi conscious condition. On the day of occurrence, Abdul Rehman, Driver and two labourers who were with him in Datsun went to doctor alongwith him. He recorded his statement in Civil Hospital.

6. PW.2 Zaman deposed that on 16-7-2003 at about 11.00 AM, they loaded tomatoes and chilies in a Datsun pickup, proceeded from Barkhan to D.G.Khan. When they reached Khetran petrol pump near Katha Choki, six persons armed with Kalashinkovs surrounded their Datsun. He recognized appellant Yar Khan as one of them, whereas the other accused were Muhammad Jan, Nadir Shah and others. Accused Nadir Shah demanded the keys of Datsun from the complainant but he refused to hand over him keys and got down from the vehicle. The accused persons fired on the complainant, due to

which he was injured. Accused took the datsun and went towards Rakni. He recognized appellant Yar Muhammad. In cross-examination, he replied that on the day of occurrence, he did not meet Tehsildar. He did not know whether the complainant had met Tehsildar on that day or not.

7. PW.3 Abdul Rehman, Driver, an eye witness of occurrence deposed how the Datsun pickup was stopped on 16-7-2003 as stated by PW.1 and PW.2. When the vehicle was stopped, he recognized the accused as Nadir Shah, Muhammad Jan and appellant Yar Muhammad, however, could not recognize the other persons. Accused Nadir Shah demanded the keys of Datsun from Dost Muhammad. On his refusal, he fired on him, due to which the complainant was severely injured and taken to hospital. The accused persons forcibly took the keys from the pocket of complainant and drove away the datsun. On the same day he recorded his statement with Tehsildar.

8. PW.4 Dr. Sher Zaman deposed that on 16-7-2003, he was posted at Civil Hospital, Barkhan as Medico Legal Officer. On the same date, injured Dost Muhammad was brought by Levies officials. He examined the same injured person and found the following injuries on his person:-

- i) Fire arm injuries on right knee medial side and exit side of right knee. There is severely bleeding from the wound.
- ii) There is fracture of right tibia bone. Patient is semi conscious.

Source of injuries : Fire arm.

Nature of injuries : Grievous.

Emergency treatment was given to the patient. For X-ray and further treatment, he was referred to Nishtar Hospital, Multan/DHQ Hospital, Loralai.

He produced Medico Legal Certificate and recognized his signature on it. He had not received the final report either from Nishtar Hospital, Multan or DHQ Hospital, Loralai.

In cross-examination, he denied that a false medical certificate was issued by him at the behest of complainant Dost Muhammad.

9. PW.5 Muhammad Akram, Levies Constable stated that on 16-7-2003 he alongwith Naib Tehsildar and Levies personnel reached the place of occurrence. On site inspection, two empty cartridges of China, one live cartridge of China were taken into Levies possession through memo and sealed parcel was prepared. On 19-7-2003, the blood stained shalwar of injured Dost Muhammad was produced by his brother Jan Muhammad to police (not produced) which was also taken into Levies possession through memo. In cross-examination, he replied that place of occurrence was shown to Tehsildar by a Dafedar. No private person was present there.

10. PW.6 Noor Muhammad reiterated what was stated by PW.1, 2 and 3. He deposed that when they reached Khetran petrol pump near Katha choki, six armed persons appeared and stopped the Datsun. He identified three of them as Nadir Shah, Muhammad Jan and appellant Yar Khan but could not recognize other three accused persons. They snatched the key of the vehicle, fired at the complainant and drove away the vehicle. He identified appellant Yar Khan.

In cross-examination, he stated that complainant is his uncle. He does the job of labour. He recorded his statement to Tehsildar on the day of occurrence and on 19-7-2003.

11. PW.7 Murad Muhammad, Investigation Officer, stated that on 16-7-2003, he was posted as Tehsildar, Barkhan. Complainant (PW.1) informed him about the occurrence. On his statement FIR was lodged. He proceeded to the place of occurrence, prepared site plan, recorded statements of eye witnesses, took into possession blood stained clothes of complainant/injured Dost Muhammad. After completion of investigation, on 06.03.2006 case documents were handed over to Muhammad Aslam, Tehsildar who prepared challan after arrest of accused Yar Muhammad.

12. Prima-facie the case falls under Section 17 (3) of the Ordinance, where-under the appellant was charged but could not be punished. Instead he was convicted under Section 392 & 337-F(v) P.P.C. to R.I for ten years and four years respectively alongwith Rs.50,000/- as fine for both counts. The evidence clearly establishes that dacoity had taken place and except the appellant, all the accused persons absconded and declared absconders by the trial court. What is noticeable is the fact that PW.6 Noor Muhammad is the nephew of PW.1 the complainant. PW.3 Abdul Rehman was the complainant's driver and PW.2 Zaman was his hired labourer, all of whom had fully recognized the appellant and remained with the complainant all the time till his FIR was recorded in hospital but it was strange that the complainant did not nominate his name in the FIR. Neither the appellant nor the said accused Mohammad Jan was relative of the appellant as alleged by the complainant. None of the prosecution

witnesses has stated anywhere that the appellant had opened fire on the complainant or that he had snatched away the key of Datsun pick up from him. In fact, according to the deposition of PW.2 Zaman and P.W.3 Abdul Rehman, it was Nadir Shah who had snatched away the key of the Datsun pickup and according to P.W.3, Nadir Shah had opened fire on the complainant due to which he received severe injuries. In his FIR, the complainant has not stated that the appellant snatched away the key of the vehicle and opened fire on him but in his deposition, he changed his version and stated that the appellant had opened fire on him contrary to what PW.3 had stated in his testimony.

13. The appellant was arrested on 22.2.2006 after more than two and ^ahalf years of lodging FIR. He was not named in FIR. There was no identification parade and no recovery of vehicle. P.W.3 is the driver of the complainant, P.W.6 is the nephew of the complainant and P.W.2 is the hired labourer working with the complainant. We agree with the learned counsel for the appellant Mr. Manzoor Ahmad Rehmani/^{that} with such glaring flaws and loopholes in the prosecution case, the appellant could not be convicted.

14. Accordingly we set aside the impugned judgment dated 12.10.2006 passed by the learned Additional Sessions Judge, Barkhan at Rakni, and accept the appeal with direction to jail authorities to release the appellant forthwith unless he is required in some other criminal case.


JUSTICE HAZIQUL KHAIRI
Chief Justice


JUSTICE SALAHUDDIN MIRZA

Announced on 27-5-2008
at M. Khalil
M. Khalil

Approved in
rehearing

28/5/08