

JUDGMENT

JUSTICE ZAHOR AHMED SHAHWANI, J:- The

appellant Ali Khan son of Dinak has challenged the judgment dated 12.01.2012, whereby the learned Sessions Judge Loralai, has convicted him under Sections 392/34 Pakistan Penal Code and sentenced him to four (4) years rigorous imprisonment and imposed a fine of Rs:30,000/- (rupees thirty thousand) or in default there to further undergo S.I. for four months with the benefit of Section 382-B Cr.P.C.

2. It is the case of the Prosecution that on 24.08.2011 instant FIR Ex.P/4-A was lodged on the basis of written report of complainant Haji Mohammad Yaqoob. He alleged therein that on 17.08.2011 his truck bearing No.357 was loaded from Punjab and was coming towards Khanozai, at about 11.30 p.m. when the truck reached at a distance of some kilometer from Mekhtar three persons equipped with the pistols came intercepted the truck de-boarded the cleaner and driver from the vehicle and gave them beatings and snatched Rs.50,000/- and one mobile phone from driver Abdul Rehman. The report was lodged against accused persons. Hence, FIR No.17/2011 Ex.P/4-A was registered at Levies Station Mekhtar, under Section 17(3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with Sections 392/34 PPC. Thereafter complainant gave supplementary report, wherein he nominated the appellant.

3. After completion of investigation, challan was submitted before the Court of learned Sessions Judge Loralai, for trial of the appellant.

4. Learned trial Court framed the charge against appellant on 06.10.2011 under Section 17(3) of The Offences Against Property (Enforcement of

Hudood) Ordinance, 1979 read with Sections 392/34 PPC. The appellant did not plead guilty and claimed trial.

5. The prosecution produced four (04) witnesses in order to prove its case. **P.W-1** Haji Yaqoob, complainant reiterated the same facts as narrated in the FIR Ex.P/4-A, **P.W-2** Shah Muhammad deposed that on 17.08.2011 at mid night he alongwith Yahyah Khan and Abdul Rehman proceeded in truck No.TKW-357 from Punjab towards Khanozai, when they reached to Zar Ghar, three persons equipped with pistols came and de-boarded them from truck and beaten them, and also snatched Rs:50,000/- from them and made aerial firing and then decamped, **P.W-3** Yahyah Khan narrated the same story as described by P.W-2 Shah Mohammad, **P.W-4** Syed Muhammad, Tehsildar is the Investigating Officer of the case, who prepared site sketch Ex.P/4-B, recorded the statement of witnesses, apprehended the accused on 25.08.2011, prepared incomplete challan as Ex.P/4-C.

6. On close of prosecution evidence the statement of accused/appellant was recorded under Section 342 Cr.P.C. wherein he denied the allegations leveled against him by prosecution. The convict/appellant neither got recorded statement on oath as envisaged under Section 340(2) Cr.P.C. nor produced any witness in his defence.

7. At the conclusion of trial, learned trial Court convicted and sentenced the appellant in the manner as mentioned above.

8. Being aggrieved and dissatisfied from the impugned judgment dated 12.01.2012 passed by learned trial Court, the appellant has preferred the above mentioned appeal.

9. Learned Counsel for the appellant contended that convict/appellant is innocent and has committed no offence but he has been involved falsely; the prosecution failed to produce any independent witness; that the appellant was not nominated in the initial application dated 18.08.2011 and was subsequently nominated in the FIR after six days of the occurrence; that the prosecution evidence suffers from material contradictions and discrepancies and witnesses have not corroborated each other on material points; neither anything has been robbed by appellant nor any crime weapon has been recovered from possession; and prosecution has been unable to prove its case against the appellant beyond shadow of doubt, but the learned trial Court without proper appreciation of evidence convicted and sentenced the appellant which is not sustainable in the eye of law.

10. On the other hand, learned Additional Prosecutor General Balochistan argued that prosecution witnesses in their evidence has fully implicated the appellant and corroborated each other with regard to material points; no material contradiction/discrepancy appeared in the deposition of prosecution witnesses to be fatal to the case of prosecution and prosecution has fully established its case against the appellant and the trial Court has rightly convicted and sentenced the appellant.

11. I have heard the learned counsel for the parties and perused the record.

12. Prosecution in order to bring home the charge against the appellant had relied upon the evidence of four witnesses. P.W-1 is the complainant; P.W-2 and P.W-3 are the eye witnesses, while P.W-4 is the investigating officer of the case. According to complainant that in the night between 17/18 August 2011, at about 12.00 mid night three unknown

persons on pistol point snatched Rs.50000/- (fifty thousand and mobile phone from driver and cleaner of his truck. It is evident from the written report Ex.p/1-B, the complainant has not nominated any person but later on, complainant again filed his supplementary second report on 24.08.2011 Ex.P/1-A wherein he nominated the appellant to be one of the culprits who had snatched money and mobile from his driver and cleaner, But the supplementary report as well as the deposition of complainant are silent with regard to the source by means of which he came to know about the name of culprit/appellant. As the complainant has not disclosed the source/person who unearthed the name of appellant who was allegedly involved in the commission of offence, Therefore, the supplementary report and deposition of complainant to the extent of implication of appellant and his identification in the court stands highly doubtful and cannot be relied upon. Reliance is place on Falak Sher Vs. The State (1995 SCMR page 1350) wherein it has been observed that any statement or further statement of the first information recorded during the investigation by police would neither be equated with first information report nor read as part of it and the involvement of additional accused in such statement was fake improvement which made the basis for other eye witnesses as well as for false implication. The learned Lahore High Court in case title Muhammad Saleem Vs. The State (2010 YLR page 2115) also hold such view.

13. The ocular account has been furnished in the deposition of P.W-2 and P.W-3 being cleaner and driver of the truck, according to P.W-2 and P.W-3 accused persons, armed with pistols had snatched Rs.50000/- (fifty thousand) and mobile phone from them. Both the witnesses have identified the appellant in the court as one of the culprits, but the deposition of P.W-2 is silent regarding snatching of mobile phone as he has not uttered

a single word that any mobile was snatched from him or Driver (P.W-3). In the cross examination P.W-2 had replied that appellant was known to him prior alleged incident, Meaning thereby, that P.W-2 was acquainted with the appellant and already known to him, but surprisingly he had not disclosed the name of appellant to the complainant nor P.W-3 (driver). It is in mystery why the P.W-2 remained mum about the name of appellant which makes the credibility of P.W-2 highly doubtful and his deposition to the extent of identification of accused is not safe to be relied upon.

14. The identification of appellant by the complainant P.W-1 and the eye witness/driver (P.W-3) in court is concerned, the same can not improve the case of the prosecution because the appellant was not known to them earlier nor any description of the accused was mentioned in the written report and under section 161 Cr.P.C. statement, Therefore, without conducting the identification parade of appellant by witnesses, the identifications of appellant cannot be relied upon. The deposition of eye witnesses further stands highly doubtful, as, P.W-2 in cross examination replied that his statement under section 161 Cr.P.C. was recorded after 6/7 days, whereas P.W-3 replied that his statement was recorded by Tehsildar on same night, so the statement of PW-2 has been recorded with considerably delay while the statement of PW-3 had been recorded when at that time no report had been lodged by complainant.

15. Moreover PW-2 and PW-3 have deposed that accused persons had also beaten them but neither the witnesses had been produced before any medical officer for examination, nor any medico legal certificate had been obtained and produced in the Court. Even no specific role has been attributed to the appellant, either he was equipped with any pistol, snatched money or mobile from PW-2 and PW-3 it may be mention here that neither

crime weapon nor snatched article had been recovered from the possession of appellant during the course of investigation. The evidence collected and led by prosecution against the appellant is not convincing and trust worthy. According to Honorable Supreme Court when there is single doubt in the mind of the Court which may effect the delivery of justice the benefit should go to the accused. It is not necessary there should be many circumstances creating a doubt in purden mind about the guilt of accused, he would be entitled to benefit of doubt. Reliance is place on Munawar Hussain Vs. The State (1993 SCMR page 785).

16. What has been discussed above, the case of prosecution is highly doubtful, but the learned Trial Court without proper appreciation of evidence convicted and sentenced the appellant by mean of impugned judgment dated 12.01.2012, which is not sustainable. As such appeal filed by appellant is accepted and appellant convict is acquitted of the charge.

17. Theses are the reasons of my short order dated 25.02.2016. Appeal is accepted.

MR. JUSTICE ZAHOOR AHMED SHAHWANI

Islamabad, the
12th March, 2016
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APPROVED FOR REPORTING

MR. JUSTICE ZAHOOR AHMED SHAHWANI