

[Federal Shariat Court]

Before Dr. Agha Rafiq Ahmed Khan, C.J. and Dr. Fida Muhammad Khan, J

The STATE—Appellant

versus

ZAFAR IQBAL—Respondent

Criminal Appeal No.38/P of 2004, decided on 18th February, 2014.

Mujahid Ali Khan, Deputy Advocate-General, Khyber Pakhtunkhwa for the State.

Gulab Khan Chaudhry for Respondent.

Date of hearing: 16th January, 2014.

Law Involved:

- Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979), Section 17(3).
- Pakistan Penal Code (XLV of 1860), Sections 324, 353.
- Criminal Procedure Code (V of 1898), Section 417(2-A).

JUDGMENT

{DR. FIDA MUHAMMAD KHAN, Justice}.....This appeal, filed by The State through Advocate-General, Khyber Pakhtunkhwa, is directed against the judgment dated 27-5-2004 passed by the learned Additional Sessions Judge-II, Abbottabad whereby he has acquitted the respondent/accused Zafar Iqbal from charge under section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance), read with sections 324/353, P.P.C.

2. The instant case has arisen out of F.I.R. lodged on 15-12-2003 at Police Station City Abbottabad under the said Ordinance read with sections 324, 411 and 353, P.P.C.

3. Initially the facts of the case in brief are that while on gasht, Ejaz Ahmed, SHO Police Station City, Abbottabad received an information that some one had snatched money from Aurangzeb Khan at pistol point. The SHO along with other police party, headed by ASP, rushed to the place of occurrence. The said accused/respondent armed with .30 bore pistol was seen running in Sarafa Bazaar, Abbottabad. Mushtaq constable attempted to stop him but the accused/respondent opened fire at him. However, the accused was overpowered and the SHO recovered .30 bore pistol along with 13 live rounds from his possession. On further search of the accused Rs.7,000 and a mobile phone were recovered. In the meanwhile Aurangzeb, complainant was also attracted over there. He identified the accused/respondent and reported that while he was busy in shopping at a General Store near Iqbal Hotel Masjid Bazar Abbottabad, he (complainant) took out Rs.7,000 from his pocket for payment to the shopkeeper but in the meanwhile the accused snatched the said amount at pistol point from him and ran away from the spot. The case was duly registered as stated above.

4. The case was investigated and challan was submitted to court, after completion of legal formalities.

5. The learned trial Court framed charge against the accused/respondent under the said Ordinance read with sections 324 and 353, P.P.C. The accused however did not plead guilty and claimed trial.

6. At the trial statements of only two prosecution witnesses namely Aurangzeb P.W.I and Mushtaq Ahmed, LHC No. 1073 were recorded.

7. The learned trial Court then recorded statement of accused/respondent under section 342, Cr.P.C. wherein he denied the allegations levelled against him. He claimed innocence and stated that he has been falsely involved in this case. Neither he made statement on oath nor produced any evidence in defence. The learned trial Court on coming to the conclusion acquitted the accused/respondent by giving him the benefit of doubt. Hence the present appeal.

8. We have heard learned Deputy Advocate-General, Khyber Pakhtunkhwa as well as the learned counsel for respondent and perused the record with their assistance. The learned Deputy Advocate-General submitted that:—

- * the impugned judgment of trial Court is against law, facts and circumstances of the case and as such it is not maintainable;
- * the impugned judgment has been passed hastily and except a few P.Ws , the other P.Ws. have been abandoned;
- * the offence is heinous in nature and was committed in the centre of the city which created insecurity and terrorism in the general public;
- * the accused snatched money from the complainant in broad-daylight;
- * the judgment of the trial court is based on misreading and non-reading of the prosecution evidence brought on record;
- * the stolen property as well as crime weapon were recovered from the possession of accused/respondent when he was apprehended red-handed at the spot and thus by acquitting him grave miscarriage of justice has been done.

9. Learned counsel for the respondent, however, fully supported the impugned judgment and submitted that the star witnesses have been examined and their evidence has totally shattered the case of prosecution.

He also placed reliance on the following cases:—

- * (Secretary Home N.W.F.P v. Muhammad Ayaz Khan etc.
PLD 1996 Pesh. 76.
- * (Rashid Ahmed v. Muhammad Nawaz and others)
2006 SCMR 1152
- * (Rahimullah Jan v. Kashif and another)
PLD 2008 SC 298
- * (Khan v. Sajjad and 2 others)
2004 SCMR 215.
- * (The State v. Muhammad Raja and 3 others)
PLD 2004 Peshawar 1
- * (Imtiaz Asad v. Zain ul Abidin)
2005 PCr.LJ 393
- * (Muhammad Anwar v. Mst. Shagufta Ahmad and 2 others)
2004 PCr.LJ 1071
- * (Saqlain Haider v. The State)
2005 YLR 2800
- * (Muhammad Tahir v. The State)
1991 PCr.LJ 644
- * (Muhammad Asghar alias Nannah and others)
2010 SCMR 1706
- * (Muhammad Siddique v. Muhammad Shahnawaz and others)
2009 SD 162
- * (State through the Advocate-General N.W.F.P.)
PLD 1996 Peshawar 43

10. We have anxiously examined the evidence on record as well as the impugned judgment. It transpires that the prosecution has examined two P.Ws., one of whom is complainant Aurangzeb and the other is constable Mushtaq. In fact they are not only the two eye-witnesses of the occurrence but they are the only star witnesses available with the prosecution. Statement of complainant clearly shows that at the time of occurrence the accused had muffled his face and after snatching of Rs.7,000 he had made good his escape. It was thereafter that a young boy armed with .30 bore pistol was apprehended by constable Mushtaq and others, though after firing by the said young boy. A .30 bore pistol local made having three cartridges along with ten other live cartridges, was recovered from his possession. On his further search Rs.7,000 and a mobile phone were also recovered from his possession. The F.I.R. was lodged thereafter at 2-50 p.m. while the alleged occurrence had taken place at 2-30.p.m.

11. P.W.I is the complainant. In his statement before the Court he has nominated none. In cross-examination he has admitted that at the time of occurrence the face of the accused was muffled. He also admitted that he had been informed by the local police two days after the occurrence that they had arrested the accused. Regarding his identification, he admitted that he could not say with certainty whether the accused, present in court, was the same person who had snatched Rs.7,000 from him. P.W.2 is Mushtaq Ahmed, LHC. His statement is also of a general nature. He was the one who along with other colleagues had apprehended the accused who, after seeing them, had allegedly started firing and was thereafter apprehended. Though the recovery was effected in his presence but he is not a marginal witness of any recovery memo. Strangely, he admitted that the accused had already been arrested by the police when they had reached the spot. This admission totally shatters the case of prosecution as, according to the F.I.R., he was the one who himself had allegedly arrested the accused by "using some tactful means" despite the firing made by him at the police party. The place where the accused was allegedly arrested was admittedly a thickly populated place. It was situated at a distance of 2 kilometers from the police station. This P.W. is also unaware of the presence of any other police officials at the place of occurrence at that time.

12. As stated above, the complainant Aurangzeb as well as Mushtaq P.W., were the only two star witnesses of the case and they have made statements as mentioned hereinabove. None of the two P.Ws. has given specific statement regarding the respondent/accused being the actual offender. After their statements it is quite obvious that the rest of the proceedings would have been ineffective and just a wastage of precious time of the court.

13. We may mention that as held by the Apex Courts regarding consideration in an appeal against acquittal, the Appellate Court would not on principle ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different from that in an appeal against conviction where it is only reconsidered so as to see that benefit of any reasonable doubt could be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions: One initial, that till found guilty, the accused is innocent; and two that again after the trial, a Court below confirms the assumption of innocence. The acquittal will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result whether the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally.

In either case the well-known principles of re-appraisal of evidence will have to be kept in view when examining the strength of the view expressed by the Court below. They will not be brushed aside lightly on mere assumptions keeping always in view that a departure from the normal principle must be necessitated by obligatory observance of some higher principle as noted above and for no other reason.

14. We have thoroughly examined the impugned judgment also and have come to the conclusion that the respondents/accused Zafar Iqbal has been rightly acquitted by the trial Court. The Judgment suffers from no infirmity or illegality that may call for any interference by this Court. Hence this appeal against acquittal being without merit is, therefore, dismissed accordingly.

15. These are the reasons for our Short Order passed on 16-1-2014.
