

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD*Present: Omar Sial, J*

Criminal Appeal No. S - 187 of 2011

Appellants : 1. Mureed Hussain
2. Ghulam Ali
3. Asif Ali
through Mr. Imam Bux Khaskheli, Advocate.

Respondent : The State
through Ms. Sana Memon, A.P.G.

JUDGMENT**Background**

1. The case of the prosecution is that on 20-8-2008 at about 10:00 p.m., Mureed Hussain, Ghulam Ali, Asif, Niaz and Arbelo (out of 5, 3 appellants in this appeal) boarded a van for hire bearing registration no. CL-0501, the driver of which was Aijaz Ali (the complainant in the case), and asked to be taken to Nawabshah. The van set off to Nawabshah with the 5 men and about half a dozen ladies on board. On the way, the 5 men asked the driver to make a pit stop at a hospital where Mureed Hussain went in and brought a patient with him and requested the driver to drop them at his village. When the van reached close to the village, the 5 men whipped out pistols, forcibly took of the driver Aijaz Ali and the cleaner of the van and drove the said van away after taking some of their valuables with them too. According to Aijaz Ali, the accused were all identified by Sadoro, a colleague of the driver Aijaz Ali, when they had taken the van for hire. The complainant party contacted the family of the accused and while according to the complainant party, the accused offered to return the vehicle, yet subsequently failed to do so.

2. On 25-9-2008, a police party was doing spot checking on the road when they spotted the stolen van and signaled it to stop. The 5 accused persons disembarked from the van and opened fire on the police. After a shoot out, the police apprehended Mureed Hussain, Ghulam Ali and Asif Ali on the spot while the remaining 2 accused escaped. Pistols with live cartridges were recovered from Mureed Hussain and Asif Ali. The cash and the mobile phone that was taken

from the driver and cleaner at the time of the robbery were also recovered from the three arrested accused.

Trial

3. The accused pleaded not guilty to the charge of committing an offence under section 395 P.P.C. and claimed trial. At trial, the prosecution examined Khan Mohammad (the police officer who arrested the accused and made the ostensible recovery from them); Ghulam Rasool (the police officer who was the witness to the arrest and recovery), Aljaz Ali (the driver of the van and the complainant); Rasool Bux (the cleaner of the van); Sadoro (the starter who identified the accused) and Abdul Wahab (the police officer who prepared the memo of inspection of the scene of incident). The accused in their section 342 Cr.P.C. statement pleaded innocence

The impugned judgment

4. On 19-5-2011 the learned 3rd Additional Sessions Judge, Shaheed Benazirabad convicted the accused for an offence committed under section 395 P.P.C. and sentenced them to suffer 5 years rigorous imprisonment and pay a fine of Rs. 25,000 each (or remain imprisoned for a further period of 6 months in default).

Parties heard

5. I have heard the learned counsel for the appellants as well as the learned APG and also perused the record with their able assistance. The complainant did not effect an appearance despite notice. My observations are as follows.

Observations

6. I find the information given by the complainant quite unbelievable. The incident occurs on 20-8-2008 and no complaint or F.I.R. is lodged till 25-9-2008 when the police stop the vehicle and the shoot-out occurs. On that day the F.I.R. for the van which was stolen more than a month ago was lodged along with another F.I.R. for the police encounter as well as two other F.I.R.'s for the possession of unlicensed weapons. No cogent explanation for the delay is given especially when the complainant party, according to its own admission, apparently knew exactly who the robbers were together with their parentage and home addresses.

7. I find it unbelievable that after more than even a month of having allegedly robbed the van and the cash and phone of the driver and cleaner of the van, the accused would be in possession of the mobile phone and the cash when they were arrested.

8. I also find it unbelievable that a full scale shoot-out occurs between the police and the accused but that no one person or property is injured; no empties are recovered from the spot and none of the pistols recovered were sealed on the spot. None of the pistols were sent for forensic examination.

9. Aijaz Ali testified that the van in question did not even have a route permit to ply on the route it was said to be on when robbed. He further testified that Mureed Hussain was arrested from Karachi and the papers of the van were recovered from him. According to him, the van was recovered from Sukkur parked at a petrol station. No evidence was led as to who was the owner of that petrol station and how and who brought the van and parked it there. While the police showed the arrest of 3 accused from the Nawabshah jurisdiction when they stopped the vehicle during snap checking, Aijaz Ali testified that all three were arrested from Karachi. The van was not produced in evidence. No identification parade was held for the driver and cleaner to identify whether the arrested men were indeed the robbers. Nobody at trial could give a sensible explanation as to how the accused were identified so precisely when they had taken the van on hire. Sadoro, the starter, who was said to be the person who identified all accused, testified that he only knew the identity of Mureed Hussain, as Mureed had given him his NIC when he booked the van but that he knew none of the others. I find it unusual that Mureed, who knew he was going to rob the van, would leave his NIC with the van people when he hired the van. Rasool Bux, the cleaner of the van, contrary to the prosecution case testified that the names of the accused had been given to them by the police. Rasool Bux was a star witness, however he confirmed that the police had not even recorded his statement earlier. He further stated that the van had been recovered from a bus stop in Sukkur and that the recovery was made 2 days after the arrest of the accused. His testimony was in complete contradiction of the prosecution case.

10. The police lodged a separate F.I.R. bearing No. 137 of 2008 under sections 324, 353, 147 and 148 P.P.C. at the B section police station in connection with the

encounter that had occurred between the accused and the police. In this case all the accused were acquitted by virtue of judgment dated 6-11-2009 passed by the learned 2nd Additional Sessions Judge, Shaheed Benazirabad. Yet another F.I.R. bearing No. 139 of 2008 was registered under section 13-d of the Pakistan Arms Ordinance, 1965 against Asif Ali and Mureed Hussain in which they too were acquitted by orders dated 6.7.2009 passed by the learned 2nd Judicial Magistrate, Nawabshah.

11. I am at quite a loss to understand how the learned trial court, in view of the evidence recorded, came to the conclusion that the charge against the accused had been proved. The case is replete with material contradictions however in view of the observations recorded above I am of the view that the prosecution not only failed, but failed miserably to prove its case against the appellants. The appeal is therefore allowed and the appellants accordingly acquitted of the charge. They are on bail. Their bail bonds stand cancelled and sureties discharged.

JUDGE