

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Revision No. S – 58 of 2016

Applicant/accused	:	Khair Muhammad Chachar, through Mr. Ghulam Shabbir Dayo Advocate
Complainant	:	Ghulam Ali through Mr. Shabbir Ali Bozdar Advocate
Respondent	:	The State, through Mr. Khalil Ahmed Maitlo, Deputy Prosecution General
Date of hearing	:	28.10.2019
Date of decision	:	28.10.2019

JUDGMENT

AFTAB AHMED GORAR, J.- Through instant Criminal Revision Application, the applicant / accused has called in question the impugned judgment dated 16.4.2016 passed by learned 1st Additional Sessions Judge Ghotki, in Criminal Appeal No.13/2015 re- Khair Muhammad vs. The State, whereby the conviction and sentence awarded to the applicant vide judgment dated 25.07.2015, passed by learned 1st Civil Judge & Judicial Magistrate Ghotki in Criminal Case No.100/2015 St. Vs. Khair Muhammad and others arising out of Crime No.44/2014 registered at Police Station 'A' Section Ghotki, was maintained.

2. The facts of the prosecution case are that on 11.02.2014 at about 1900 hours the complainant Ghulam Ali Chachar lodged his FIR at P.S 'A' Section Ghotki in respect of the incident which took place on 01.2.2014 at 1300 hours, stating therein that on the date of alleged incident he along with his cousins Haji Sono and Muhammd Essa came on their motorcycle and parked the same at Askari CNG outside the Madresah Anwerul Quran and went inside the Madresah, when they reached at 1300 hours, he saw that accused Rindal, (2) Khair Muhammad (present applicant), 3) Irshad Ahmed Chachar, while stealing and drove away his motorcycle, due to inconvenience, he could not chase the accused. Thereafter he went to the

accused persons, but they kept him on false hopes and ultimately refused, therefore, he went to police station and lodged the FIR.

3. After registration of the FIR and usual investigation, the applicant/accused was challaned to face his trial for the above said offence in accordance with law, whereas, the co-accused Randal alias Muhammad Randal and Irshad Ahmed were declared proclaimed offenders by the learned trial Court.

4. The formal charge was framed against the applicant/accused, which he denied and prosecution to prove its case, examined PW-1/complainant Ghulam, PW-2 Haji Sono; PW-3 mashir Abdul Hameed, PW-4 mashir Mir Muhammad; PW-5 Mehboob Ali. Thereafter the learned State counsel closed the prosecution side.

5. The applicant/accused was examined under Section 342 Cr.P.C, in which he denied the prosecution allegations by pleading his innocence. The applicant neither examined himself on oath nor led any evidence in defence.

6. On conclusion of the trial and after hearing the learned counsel for the parties, the learned trial Court convicted and sentenced the applicant/accused for offence under Section 381-A PPC to suffer Simple Imprisonment for three years, he is also punished to pay fine of Rs.40,000/- (Rupees forty thousand only) which will be paid to the complainant as compensation, in case of default in payment of fine amount, the accused will suffer sentence Simple Imprisonment for a period of two months more.

7. The applicant impugned the conviction and sentence recorded against him by learned 1st Civil Judge and Judicial Magistrate Ghotki by way of filing an appeal which was dismissed by learned 1st Additional Sessions Judge Ghotki with the following modification and observation;

“In view of my findings on point No.1 the impugned judgment is hereby maintained. Consequently the appeal stands dismissed. Accused Khair Muhammad son of Noor Muhammad by caste Chachar present on bail, his bail bond stand cancelled and surety discharged. The accused is taken into custody and remanded to jail to serve out the sentence awarded as per impugned judgment passed by learned trial Court.”

8. It is contended by the learned counsel for the applicant/accused that the case is false and the applicant has been implicated by the complainant with malafide intentions due to enmity; that there is delay of ten days in lodgment of the FIR without any plausible explanation, therefore, the false implication of the applicant cannot be ruled out; that the alleged motorcycle has not been recovered from the physical possession of the present applicant and only it was alleged to have been thrown by him; that the learned trial Court has wrongly observed that the stolen property i.e. motorcycle has been recovered from the possession of present applicant; that there is no recovery from the present applicant; that there are material contradiction in the evidence of the prosecution witnesses. He lastly prayed that the impugned judgments passed by two courts below are liable to be set-aside and the applicant may be acquitted of the charge.

9. Learned counsel for complainant submits that the delay in lodgment of the FIR has been properly explained by the complainant because he went to the accused persons for returning the motorcycle but they kept on hope; that the present applicant/accused along with co-accused Randal and Irshad Ahmed in the broad day light stolen away the motorcycle of the complainant; the evidence of prosecution witnesses is in line, although there are some minor contradictions, which are not sufficient to disbelieve their entire evidence, which is truthful and confidence inspiring. He prayed that the impugned

judgments have rightly been passed by two courts below; do not call for interference by this Court, which may be upheld.

10. Learned DPG appearing for the State supported the impugned judgment by stating that although there are minor contradictions in the evidence of prosecution witnesses, which are not fatal to record acquittal of the applicant/accused. He prayed that the instant criminal revision application may be dismissed.

11. I have considered the above arguments and perused the record. The FIR of the incident has been lodged with delay of about ten days without any plausible explanation hence the same could not be overlooked. In this regard, reliance is placed upon the case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, wherein the Honourable Apex Court has observed that;

“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.

12. The prosecution has examined the complainant, who in his evidence has deposed that on 01.02.2014 he along with his cousins Haji Sono and Muhammad Essa went to Madresah Anwarul Quran near Askari CNG where they parked the motorcycle and went inside the Madresah and on return at 1:00 p.m, they saw that accused Rindal, Khair Muhammad and Irshad while stealing his motorcycle were going away, due to non-availability of conveyance they could not chase the accused. Thereafter they continuously approached the accused upto 11.2.2014 but accused did not return the motorcycle, hence such FIR was lodged. PW Haji Sono, more or less has

stated the same facts. So far as the question of recovery of the alleged stolen motorcycle, there is evidence of PW-4/mashir PC Mir Muhammad which carries much weight. In his examination-in-chief, he states that on 22.2.2014 he along with SIP Qurban Ali and PC-Fayaz left the police station for patrolling in the area, during patrolling the SIP received spy information that accused Khair Muhammad is coming towards Tundo Phattak on a motorcycle, as such they proceeded towards the pointed place, on reaching there they saw that the accused was alone, who on seeing the police party left the motorcycle and fled away towards western side. The complainant has stated in his examination-in-chief that police arrested the accused Randal and recovered the said motorcycle from his possession, which is contradictory to mashir PC Mir Muhammad. The perusal of evidence of mashir clearly suggests that the recovery of the stolen motorcycle has not been affected from the physical possession of the present applicant/accused. Furthermore, one of the mashirs of the visiting the place of incident namely Ashique Mehmood appeared before the trial Court and filed an application on 14.2.2015 which was exhibited as (Ex.14), stating therein that since there is private dispute between the complainant and the accused, therefore, he is not willing to give evidence in the Court, and requested for giving up his evidence, hence his evidence was given up by learned ADPP by affixing a note on the said application. Further there is evidence of complainant and alleged eye-witness Haji Sono, they are related to each other being cousins, as such their evidence cannot be believed as trustworthy and confidence inspiring to the extent that they only saw the present applicant/accused along with two other accused persons while stealing the alleged motorcycle parked outside the Madresah Anwarul Quran. In such circumstances, the false implication of the applicant/accused cannot be ruled out. The learned two Courts below have misread the evidence adduced by the prosecution and have awarding the conviction and sentence on the basis of insufficient material.

13. In view of the facts and circumstances discussed above, the instant Criminal Revision Application is allowed, consequently the impugned judgments of learned trial and appellate Court are set aside and the applicant is acquitted of the offence for which he was charged, tried and convicted by learned trial and appellate Court. His bail bond stands cancelled and surety is discharged.

Judge

ARBROHI