

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

Crl. Jail Appeal No. S-13 of 2024 (New)

Crl. Jail Appeal No. S-75 of 2018 (Old)

Muhammad Usman : through Mr. Zubair Ahmed Khuhawar
Appellant Advocate.

State : through Mr. Shahzad Saleem Nahyoon,
Additional Prosecutor General Sindh.

Date of hearing: : 10.06.2024

Date of Judgment : 10.06.2024

J U D G M E N T

Muhammad Saleem Jessar, J:- Through instant appeal, appellant Muhammad Usman son of Muhammad Qaim has impugned the judgment dated 13.03.2018 passed by learned Additional Sessions Judge-I, Mirpurkhas (Trial Court), vide Sessions Case No. 146 of 2012, Re; State vs. Muhammad Usman, arisen out of F.I.R No.64 of 2012 registered with P.S Digri, for offences punishable under Sections 302, 324, 337-A(i), 34 P.P.C r/w Article 17(4) of the offences against Property Enforcement of H.O, 1979 (The Ordinance). The trial Court framed charge against appellant under sections 302, 337-A(i), 34 PPC r/w Article 17(4) Offences against Property (Enforcement of Hudood) Ordinance, 1979 (The Judgment). However, after recording evidence as per the charge, learned trial Court convicted and sentenced the appellant for offence under Section 302(b) r/w section 34 PPC for life as Ta'zir with fine amount of Rs.2,00,000/- as compensation under section 544-A Cr.P.C to be paid to legal heirs of deceased Muhammad Hayat, in case of default he shall suffer S.I for five months more, and for offence U/S 324 r/w section 34 PPC, to suffer R.I for seven years with fine of Rs.20,000/- and Rs.1,00,000/- as compensation in terms of section 544-A Cr.P.C to be paid to injured Muhammad Ibrahim and in case of default he shall suffer S.I for three months more and for offence U/S 337-A(i) r/w section 34 PPC, Rs.50,000/- as Daman and also to suffer R.I for one year as Ta'zir.

2. This appeal was admitted for regular hearing on 06.04.2018, thereby notice was issued to learned Addl. P.G., R&Ps were called and Paper Book was also directed to be prepared.

3. Before proceeding with the appeal, this Court called upon learned counsel for the appellant to satisfy the Court, as to jurisdiction of this Court, whether the appeal in hands would lie before this Court or before the Federal Shariat Court in view of the fact that the case/ F.I.R was registered for the offences under Sections 302, 324, 34 P.P.C r/w Article 17(4) of the ordinance, whereas appellant was convicted under sections 302(b), 324 and 337-A(i) r/w section 34 of P.P.C.

4. Heard learned counsel for the appellant and learned A.P.G appearing for the State.

5. Learned counsel for the appellant re-iterates that the appeal would lie before this Court as the appellant has been convicted and sentenced to under the provisions of P.P.C., therefore, this Court is competent to entertain the appeal, hence it need not to be transferred to Federal Shariat court.

6. Conversely, learned A.P.G contended that the appeal would lie before Federal Shariat Court, as the charge was framed under Hudood Laws, besides, the complainant has specifically mentioned in the FIR that whilst committing robbery, the deceased was murdered. Learned Addl. P.G, further points out that after recording evidence as per the charge, the trial Court has not amended it nor made discussion upon the evidence before passing the Judgment. In support of his argument, he relied upon case of *Ali Dino and another v. The State* reported in 2017 P.Cr.L.J 578 and *Juman and another Vs. The State* reported in PLD 2016 Sindh 191.

7. The complainant got registered instant FIR Exh.04/A under the provisions of the Ordinance, 1979. After submission of challan, learned trial Court had framed the charge Exh.02 under the provisions of the Ordinance, 1979 as well as PPC. The complainant was examined before the trial Court as PW-1 on 06.01.2015 at Exh.4/A. In his examination-in-chief, the complainant has categorically deposed that "I received information that some unknown persons caused injuries to my nephew and cousin Ibrahim while committing robbery of motor cycle from them at village Badal Shah". The appellant was tried in consonance of the charge. And on conclusion of trial, the appellant was convicted and sentenced to under the provisions of P.P.C, but before handing down the judgment the learned trial Court did not alter the charge.

Besides, the sentence awarded to the appellant also exceeds the terms of two years.

8. Per ordinance-II of 1982, second proviso to Article 24 of Offences against Property (Enforcement of Hudood) Ordinance, 1979 was inserted which provides the offences punishable under Article 9 or 17 shall be triable by the Court of Sessions not by the Magistrate authorized under section 30 of Criminal Procedure Code, 1898 (Cr.P.C.) hence, an appeal from an order under either of said Articles or from an order under any provision of this Ordinance which impose a sentence of imprisonment for a term exceeding two years shall lie to Federal Shariat Court. It will be appropriate to reproduce sub-Article (2) of Article 24 of the Ordinance, which reads as under: -

“2 (provided further that an offence punishable under section 9 or 17 shall be triable by the Court of Sessions and not by a Magistrate authorized under section 30 of the said Code and on appeal from an order under either of the said Section 3 (or from an order under any provision of this Ordinance which impose a sentence of imprisonment for a term exceeding two years) shall lie to Federal Shariat Court”.

9. According to Article 203-DD of Constitution of Islamic Republic of Pakistan 1973, the Federal Shariat Court call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of Hudood for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by criminal court.

10. In order to reach at right conclusion, I have gone through different case laws. In case reported as Falak Sher v. State (1996 P Cr. LJ 804), the view taken was that every case, arising out of Hudood Laws irrespective of the fact whether the conviction is recorded under Hudood or General laws appeal would be competent before the Federal Shariat Court alone. As per the judgment of Federal Shariat Court reported as 2011 PLD FSC 1, Federal Shariat Court is only competent to decide the case under Article 203-DD of the Constitution Islamic Republic of Pakistan 1973 and there is bar on jurisdiction for other Court(s).

11. In case of Ghazanfar Ali v. State (2010 YLR 657), it is held that since the accused was charged and tried under Article 17 of the Ordinance, 1979 notwithstanding the fact that he was acquitted from the charge under said ordinance but convicted only under penal Code, the appeal would lie to the

Federal Shariat Court and not to the High Court. Reference for Confirmation of death sentence would also be competent before Federal Shariat Court.

12. In case reported as State through Advocate-General Sindh v. Munir Ahmed and 2 others vide PLD 2007 Karachi 184, this Court while deciding the Criminal Acquittal Appeal No. 293 of 1993 decided on 22-11-2006 held "we have gone through the case of Muhammad Sharif v. State PLD 1999 SC 1063 and found that the appellate Bench of the Honourable Supreme Court of Pakistan after considering the conflicting judgment of various High Courts and interpreting the Article 27 of Offences against Property (Enforcement of Hudood) Ordinance, 1979 decided that word "Court" appearing in section 417 Cr.P.C. would mean the Federal Shariat Court after giving interpretation to the word "Mutatis mutandis" appear in Article 27 of the Order. It was held that appeal against judgment lies to Federal Shariat Court and not High Court. In case of State v. Parik reported in 1997 P Cr .LJ 1900 it was held that under Article 24 of the Ordinance, 1979 "whether a case is registered under this Ordinance, irrespective of the fact whether conviction is awarded or acquittal is made, the appeal shall lie to Federal Shariat Court except in those cases where sentence is less than two-years."

13. In a case {Re: Qurban Ali v. State} Criminal Appeal No.14 of 1998 decided on 18.8.1998 it was held by this court that all appeals arising out of cases of which cognizance was taken under Hudood laws would be competent only before the Federal Shariat Court and not before the High Court even though the conviction has been recorded under general law.

14. In a judgment reported in PLD 2003 Karachi 441, Fayaz Ahmed v. State it was held that result of the trial Court would not determine forum of appeal. First proviso to Article 24 of the Ordinance had enlarged the scope of authority of a Court trying the offence under said Ordinance if evidence on record had provided commission of offence other than one which the accused was charged. Trial Court could competently award punishment for such offence. If it was competent to try that offence Second proviso of Article 24 have provided that punishment resulting from the trial under Article 9 and 17 of said Ordinance, appeal would lie to Federal Shariat Court irrespective of question of sentence of imprisonment. Appeal of accused who was tried for committing Hudood under Article 17(3) of the Ordinance would lie before the Federal Shariat Court and not before the High Court even that he was convicted and sentence under section 392 of P.P.C. The appeal having been wrongly filed before the High Court memo of appeal was returned for presentation before the competent Court.

15. On the careful consideration of the facts and circumstances of the case and with particular reference to Article 24 of Ordinance, 1979, I find myself in agreement with the learned Additional Prosecutor General Sindh. It is accusation and the nature of offence for which the accused was initially tried and charged which would determine the forum of appeal and not the outcome of trial because forum of appeal would not change with the result of the trial. Any other view would render the provision contained under Article 24 of Ordinance, redundant.

16. The F.I.R of instant case (Ex.4/A page-56 of paper book) was registered under Article 17(4) of the Ordinance r/w section 302, 324 and 34 PPC, therefore, the charge (Ex.2, page-49 of paper book) was also framed by the trial court under Article 17(4), Offences against Property (Enforcement of Hudood) Ordinance, 1979 r/w section 302, 324, 337-A(i) and 34 PPC. Hence, the appellant was tried for said charges i.e. under Hudood Laws; however, after conclusion of the trial he was convicted under provisions of P.P.C only and sentenced to for the imprisonment of life, exceeding two years. Therefore, following the dictum laid down by learned Apex Court as well sub Article-2 of Article 24 of the Ordinance, 1979, I have no hesitation to say that this court has got no jurisdiction to hear and entertain the appeal against the judgment passed by the trial court. As far as contention of learned counsel for the appellant that after recording pro and contra evidence, the trial court had rightly reached to the conclusion that no case for Harabah was made out, therefore, the impugned judgment in view of the evidence is assailable before this court and that appeal has also been admitted for regular hearing by this court is concerned, it carries no weight. It is well settled principal of law that if a court not possessed of jurisdiction to try a case or wrongly assumed jurisdiction and exercises power not vested in it, appeal from its decision would lie in the same manner as an appeal would lie from a decision made with jurisdiction.

17. Since the complainant had specifically mentioned in the FIR, he received information that some unknown culprits while committing robbery from his cousin Muhammad Ibrahim and nephew Muhammad Hayat had caused injuries to them, therefore, he got registered above FIR U/S 302, 324, 337-A(i), 34 PPC r/w Article 17(4) of the ordinance. Hence, the trial court framed the charge against the appellant U/A 17(4) of the Ordinance and the appellant was also tried for said charges. At the time of evidence before the trial court, complainant Pir Dino while deposing in his examination-in-chief (Ex.4 page-53 of paper book) specifically deposed that "*he received*

information that some unknown persons caused injuries to his nephew Hayat and cousin Ibrahim while committing robbery of motorcycle from them at village Badal Shah”, therefore, result of the trial shall not change the jurisdiction of the court and view taken by learned counsel for the appellant is not much of consequences as it is not based upon correct appreciation of law which is hereby discarded. Accordingly, and in view of above legal position, appeal in hands is completely misconceived and not maintainable as it has wrongly been presented before this Court. Consequently, the Additional Registrar of this Court is directed to send the file of instant jail appeal alongwith its relevant record (R&Ps) including paper book etc to the Hon’ble Federal Shariat Court of Pakistan through its Registrar for further necessary action/proceedings. The office shall retain set of Photostat copies of the same for maintaining record of this court. The appellant, who is reported to be in jail, be informed accordingly through jail authorities.

J U D G E

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