

Form No: HCJD/C

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Criminal Appeal No.85 of 2020

Muneer Khan and another
Vs.
The State and another

Appellants by: Mr. Zahid Ali Khan, Advocate.
Respondents by: Awais Haider Malik, State Counsel.
M. Akbar, ASI.

Date of Hearing: 27.04.2021

AAMER FAROOQ, J.- The appellants namely Muneer Khan and Said-ul-Islam were tried in case FIR No.186 dated 21.08.2019 under Sections 381-A, 411 & 34 PPC, Police Station, Noon, Islamabad and were convicted and awarded five years rigorous imprisonment (R.I.) each alongwith fine of Rs.10,000/- each and in default thereof to serve one month each simple imprisonment (S.I.).

2. The case of the prosecution against the appellants was that on the complaint of Muhammad Sohail Akhtar, the aforementioned FIR was registered wherein it was alleged that on 16.08.2019 the complainant parked his car Suzuki Mehran bearing registration No. LEC-8961 in front of Mosque near Daewoo bus station and went for Juma prayer; upon his return he found that his vehicle is missing.

3. Learned counsel for the appellants, *inter alia*, contended that there is no direct evidence against the appellants; that the prosecution has failed to prove the case against the appellants beyond reasonable doubt; that none of the witnesses have stated that

they saw stealing of the vehicle by the appellants and the case of the prosecution is based on conjectures and surmises; that the USB containing Closed-Circuit Television (CCTV) footage is inadmissible in evidence and no reliance on the same could be placed.

4. Learned State Counsel, *inter alia*, contended that the prosecution proved its case beyond reasonable doubt; that under Article 164 of Qanun-e-Shahadat Order, 1984 the USB containing CCTV footage was admissible in evidence; that the appellants led to the recovery of stolen vehicle.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The case of the prosecution is mentioned hereinabove, hence need not be reiterated. The prosecution, in order to prove its case, led in evidence Muhammad Yousaf S.I. PW-1, Sohail Akhtar, PW-2, Muhammad Ramzan, Head Contable, PW-3, Muhammad Akbar ASI, PW-4, Tariq Zaman, PW-5 and Muhammad Naveed, PW-6. The documentary evidence was also led by the prosecution including the recovery memo of USB as Ex.P-C, copy of USB, Ex.P-I, unscaled site plan, Ex.P-J, pointation memo of theft place, Ex.P-E, recovery memo of theft, Ex.P-F.

7. It is an admitted position that as such there is no ocular account of theft of the motor vehicle of the complainant; however, during investigation the police authorities obtained the copy of

CCTV footage of the time duration for which the complainant had gone for offering of prayer. The copy of the footage shows that the appellants are stealing the vehicle. On the basis of identification of the appellants from CCTV footage, spy information was obtained and on the referred pointation the appellants were arrested and they led to the recovery of stolen vehicle vide Ex.P-D.

8. The prime evidence in the case is USB containing the copy of CCTV footage. The referred piece of evidence is admissible in evidence under Article 164 of Qanun-e-Shahadat Order, 1984 which provides that in appropriate cases the Court may allow to be produced any evidence that may have become available because of modern devices or techniques. Under proviso to the said Article conviction based on the modern devices or techniques may be lawful. Muhammad Naveed PW-6, who showed the Investigating Officer the CCTV footage and provided the copy of the same in USB, appeared in witness box and deposed to the effect; such practice is fairly in consonance with the dictum laid down by the Hon'ble Supreme Court of Pakistan in case titled **Asfandyar and another v. Kamran and another** (2016 SCMR 2084) wherein the august Apex Court observed that under Article 164 of Qanun-e-Shahadat Order, 1984 the Trial Court may allow production of Closed-Circuit Television footage but it is incumbent upon the defence to prove the same in accordance with the provisions of Qanun-e-Shahadat Order, 1984. It was also observed that in order to prove the genuineness of such footage it was incumbent upon the

defence or the prosecution to examine the person who prepared such footage from CCTV system. Similar observations were made with respect to the applicability of Article 164 *ibid* and use of modern devices for procuring conviction of accused and its evidentiary value in cases reported as *Sher Zaman v. The State* (2007 YLR 3160), *Collector of Customs and another v. Saeed ur Rahman and others* (PLD 1989 Supreme Court 249), *Government of Sindh through Advocate-General, Sindh v. Fahad Naseem and 3 others* (2002 P Cr. L J 1765) and *Shahid Zafar and others v. The State* (2015 P Cr. L J 628). As noted above Muhammad Naveed appeared as PW-6 and deposed categorically that he showed the CCTV footage to the Investigating Officer and also made a copy of the same. No dent was caused upon his testimony by the defence during the course of cross-examination, hence the same stood the test of cross-examination. Though attempts were made to cast doubt on the credentials of PW-6 as to the effect that he is not an expert and his opinion is immaterial; however, PW-6 did not appear as an expert but only made copy of CCTV footage/record in USB and hence is maker of the said document. Moreover, as already observed that the appellants also led to the recovery of the stolen vehicle which was identified by the complainant through Ex.P-D and was recovered through Ex.P-F. As per the said documents Muneer Khan led to the recovery of the vehicle in presence of two witnesses, one of them appeared as witness (PW-3). The vehicle was taken in custody vide memo dated 13.10.2019, Ex.P-G.

9. In view of the above position of law and facts the prosecution has proved its case against the appellants beyond reasonable doubt and they have been duly found to be guilty of stealing motor vehicle bearing registration No.LEC-8961.

10. For the above reasons, the instant appeal is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in open Court on the 16th day of July 2021

JUDGE

Approved for reporting

M.Naveed