

## **JUDGMENT SHEET**

### **ISLAMABAD HIGH COURT, ISLAMABAD,** **JUDICIAL DEPARTMENT**

#### **Criminal Revision No.50/2015**

Munir Ahmed & another

v.

The State, etc.

Petitioners by: Mr. Ali Hussain Bhatti, Advocate along with petitioner.

Respondents by: Barrister Ayesha Siddique Khan, State Counsel.  
Ms. Rakhshanda Azhar, Advocate for Respondent No.2.  
Jamshed Khan, Inspector, P.S. Shalimar, Islamabad.  
Ghulam Abbas Khan, ASI, P.S. Shalimar, Islamabad.

Date of Hearing: 15.01.2020.

**MOHSIN AKHTAR KAYANI, J:** Through the instant criminal revision petition, the petitioners have called in question order dated 31.01.2015, whereby the petitioners were convicted in case FIR No.415, dated 28.08.2009, under Section 392/411 PPC, P.S. Shalimar, Islamabad by the learned Judicial Magistrate and sentenced to undergo rigorous imprisonment for three (03) years in each offence along with fine of Rs.20,000/- (each), in default of payment of fine, the petitioners have to further undergo simple imprisonment for the period of two (02) months. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner and the sentences shall run consecutively, and as such, the order of learned Judicial Magistrate was further maintained by the learned Additional Sessions Judge vide impugned order dated 30.03.2015.

2. Brief facts referred in the instant criminal revision petition are that on the complainant of Muhammad Ashraf Qureshi/respondent No.1, the aforesaid FIR No.415/2009 was registered against two unknown persons along with two co-accused ladies for committing robbery with the complainant's family by taking away gold ornaments, mobile phones, cash, etc. The petitioners were implicated in the instant case on the basis of supplementary statement recorded by the complainant and after completion of investigation/evidence, the learned trial Court convicted and sentenced the petitioners vide impugned order dated

31.01.2015. Feeling aggrieved thereof, the petitioners preferred their appeals, which were dismissed by the learned Additional Sessions Judge vide impugned judgment dated 30.03.2015. Hence, the instant criminal revision petition.

3. Learned counsel for petitioners contended that both the Courts below have erred in law and convicted the petitioners on the basis of insufficient prosecution evidence; that the impugned judgments of both the Courts below are the result of non-reading and mis-reading of the evidence as both the Courts below have ignored the ingredients of the alleged offences, regarding which there is no proof available on record against the petitioners; that the case as established by the prosecution is full of doubts but both the Courts below have misread the same and unlawfully convicted the petitioners, therefore, the same are liable to be set-aside and petitioners may be acquitted of the charge.

4. Conversely, learned State Counsel as well as learned counsel for complainant/respondent No.1 opposed the instant criminal revision petition and contended that both the Courts below have rightly appreciated the facts of the case and evidence produced by the prosecution; that the recovery of looted gold ornaments as well as weapon of offence from the petitioners connects them with the commission of offence; that there is sufficient evidence available on record against the petitioners, including the account of eyewitnesses, who corroborate the case as established by the prosecution, on the basis of which both the Courts below have rightly convicted and sentenced the petitioners vide impugned judgments, therefore, the instant criminal revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioners Munir Ahmad and Muhammad Waris have been convicted in case FIR No.415, dated 28.08.2009, under Sections 392/411 PPC, P.S. Shalimar, Islamabad by the learned Trial Court vide impugned judgment dated 31.01.2015 and sentenced each to undergo rigorous imprisonment for 03 years along with fine of Rs.20,000/- each, under Section 392 PPC, whereas they have also been simultaneously convicted and sentenced

under Section 411 PPC to undergo rigorous imprisonment for 03 years along with fine of Rs.20,000/- each. In default of payment of fine, the petitioners shall further undergo simple imprisonment for 02 months. The said judgment of the learned Trial Court has been maintained in appeal by learned Additional District Judge, Islamabad vide impugned judgment dated 30.03.2015.

7. Muhammad Ashraf Qureshi/respondent No.2 being complainant of the instant case has appeared as PW-1 before the Trial Court and stated that on 28.08.2009, at about 8:30 a.m., he left his home for Mardan on his official vehicle leaving his two housemaids namely Mst. Shumaila and Mst. Sumaira as well as Tasawar Abbas/Chowkidar in the house and during the journey he received a telephonic call from his home informing him about commission of robbery, whereafter he informed the police and came back to Islamabad whereby he learnt that the said two housemaids in connivance with two other accused persons namely Muhammad Waris and Tasawar had tied up his wife as well as his children and snatched away gold ornaments, two mobile phones (Nokia and Sony Ericson) as well as cash amounting to Rs.50,000/-, and five star watches on gun point. The complaint was converted into FIR Exh.PA. After the occurrence, PW-1 Muhammad Ashraf Qureshi/complainant while going to Sector G-11, Islamabad with his family saw both the housemaids along with present petitioners, who were recognized and identified by his family members, whereafter he by informing the police has nominated those accused persons through supplementary statement. During the course of cross-examination, PW-1 Muhammad Ashraf Qureshi acknowledged that the accused persons were identified by his wife and daughter in Police Station and has also verified the fact that accused Munir Ahmad/petitioner got recovered two gold *Karha* (کڑا), three chains and three rings along with some other items comprising of earring tops and cash amounting to Rs.20,000/-. PW-1 Muhammad Ashraf Qureshi/complainant was further cross examined by the petitioners/defence

side, whereby he admitted that the accused persons were not known to his family members earlier, rather they had seen them during the incident.

8. The prosecution has produced the wife of complainant namely Naeema Ashraf as PW-2, who stated that on 28.08.2009, the two housemaids called two persons in the house, one of whom was armed with pistol, and all four of them collectively robbed jewelry, clothes, mobile phones, watches and cash amounting to Rs.50,000/- from her while they had locked her and her daughter in a room and fled away while extending life threats. She further stated that they had seen the accused persons in Sector G-11 (*Kachi Abadi*) after 04 weeks of the incident, upon which the police arrested them. During the course of cross-examination, PW-2 Naeema Ashraf acknowledged that the accused persons were identified in jail by her and her daughter as well. She also identified the recovered jewelry articles, however she reiterated that the female accused persons had snatched the jewelry while the petitioners being male accused persons had extended threats.

9. Sadia Ashraf i.e. daughter of complainant appeared as PW-3 and reiterated the stance of her mother and father while maintaining that she identified both the housemaids together with the petitioners and contended that accused persons had snatched their mobile phones, cash and jewelry as well as they extended life threats. She further confirmed that she identified accused persons near *Kachi Abadi* in Sector G-11 after 3/4 weeks of the incident, whereupon the accused persons were arrested.

10. The prosecution has also produced PW-3 Asma Bibi/Lady Constable, who is recovery witness of female accused person namely Munazza Bibi, who got recovered jewelry and cash amounting to Rs.4,700/- from Mehrabadi through Exh.PB. She also witnessed recovery of Rs.5,200/- from Sania Bibi alias Sumaira Bibi from her house through Exh.PC.

11. The prosecution has also produced another recovery witness i.e. Kifayat Ullah/HC as PW-5, who reiterated the stance that both female accused persons got recovered the amount and he witnessed the recovery proceedings and signed

the recovery memo Exh.PB and Exh.PC. He further stated that he witnessed the recovery of .30 bore pistol along with five live bullets on pointation of Munir Ahmad/petitioner from jungle area of Sector F-10/3 through Exh.PD and is recovery witness of jewelry recovered on pointation of Munir Ahmad/petitioner, which contains three earrings, three tops and one locket with chain vide recovery memo Exh.PE. Similarly, he has also witnessed the recovery on 18.10.2009 from Muhammad Waris/petitioner, who got recovered two *Karha* (کڑا), one locket and two gold chains through Exh.PF. However, PW-5 Kifayat Ullah/HC acknowledged that both the petitioners have separately got recovered the gold jewelry on their pointation. He also acknowledged that vehicle bearing registration No.TF-350 used in incident was also recovered.

12. The last witness produced by the prosecution is PW-6 Jamshed Khan i.e. the Investigating Officer of this case, who prepared site plan Exh.PJ and confirmed that he arrested Tasawar Abbas, Azhar, Fakhar Imam and Altaf, whereas three accused persons were discharged of the charge due to lack of evidence. He further stated that he on receiving information that female accused persons working as housemaid in the house of complainant have been seen, whereupon he arrested them on 09.10.2009, who have been identified as Munaza and Sania, who disclosed the details of incident committed with the help of the petitioners, whereupon the other two accused persons were arrested and got recovered cash amount together with other jewelry articles and pistol from the petitioners. He also acknowledged that both petitioners have been identified in Adiala Jail in presence of Magistrate, however he has not attached the identification parade record with the final report.

13. Both the petitioners/accused persons have recorded their statement under Section 342 Cr.P.C. and denied their involvement in this case, however both were convicted under Section 392/411 PPC and sentenced to three (03) years rigorous imprisonment each along with fine.

14. I have minutely attended to the entire evidence and observed that the two eyewitnesses namely PW-2 Naeema Ashraf and PW-3 Sadia Ashraf remained consistent upon the following facts.

- a) The manner and mode in which the incident took place on 28.08.2009, both the housemaids namely Munaza and Sania as well as petitioners namely Munir Ahmad and Muhammad Waris were identified.
- b) Both the eyewitnesses namely PW-2 Naeema Ashraf and PW-3 Sadia Ashraf verified the fact that their jewelry articles, mobile phones, cash amounting to Rs.50,000/- and watches were snatched, whereas the petitioners extended life threats on gun point.
- c) The recovered jewelry articles have been identified by PW-2 Naeema Ashraf.
- d) Both the eyewitnesses i.e. PW-2 Naeema Ashraf and PW-3 Sadia Ashraf on seeing all the accused persons after 04 weeks of incident near Kachi Abadi, Sector G-11, Islamabad had informed the police, whereafter the accused persons were arrested.
- e) The accused persons have been identified through identification parade proceedings in jail, but no such record is available on record, whereas the eyewitnesses have identified the accused persons before the Trial Court.

15. Keeping in view the above position, the star witnesses, who are natural and having no animosity against the petitioners, have properly identified the petitioners after the incident and on their information the accused persons were arrested by the police, whereafter they led to recovery of gold jewelry, .30 bore pistol and cash amount, which has been placed on record through Exh.PB, Exh.PC, Exh.PD, Exh.PE and Exh.PF. The recovery proceedings have independently been proved through the testimony of PW-4 Asima

Bibi/Constable, PW-5 Kifayat Ullah/HC and PW-6 Jamshed Akhtar/I.O., wherein no discrepancy has been noted, who remained consistent on all scores.

16. I have taken into account the defence plea of the petitioners, which is silent qua any justified reason. Both the courts below have given detailed stance while appreciating evidence available on record in which the alleged incident dated 28.08.2009 was proved to be committed by petitioners as well as by the housemaids, who have absconded during the course of trial. Both the Courts below have rightly appreciated the evidence produced by the prosecution, which also fulfills the requirements of Article 40 of the Qanun-e-Shahadat Order, 1984 and as such, the defence has failed to justify any previous animosity, motive or false implication, on the basis of which the petitioners have rightly been convicted by the learned Trial Court, even otherwise, the findings are concurrent and no illegality has been observed.

17. The requirements of offence under Section 392 PPC are visible from record, whereby the petitioners have carried away the property of the complainant, PW-2 Naeema Ashraf and PW-3 Sadia Ashraf by way of extortion on gun point, which was later on also recovered on the pointation of petitioners, therefore, nothing is to be presumed in favour of petitioners, who have also been declared guilty by two courts below.

18. Keeping in view the above position, the captioned criminal revision petition filed by petitioners is hereby **DISMISSED**. Both the petitioners are on bail, they be taken into custody to serve their remaining sentence.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 03 Feb 2020.

JUDGE

Khalid Z.