

JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 179 of 2018

Riffat Shamim
Versus
Rizwana Faisal and another

Appellant by: Malik Mushtaq Ahmad, Advocate.
State by Mr. Zohaib Hassan Gondal, State
counsel alongwith Shazia A.S.I. Police
Station Women, Islamabad.
Respondent No.1: In person.
Date of Decision: 28.07.2020

Ghulam Azam Qambrani, J.:- Appellant (Riffat Shamim) seeks setting aside of impugned judgment dated 18.07.2018, passed by learned Magistrate 1st Class, Islamabad,, whereby respondent No.1 (Rizwana Faisal) was acquitted in case F.I.R No.41 dated 21.12.2016 under Section 29 Telegraph Act registered at Police Station Women, Islamabad.

2. Briefly stated facts of the prosecution case are that the accused/respondent No.1 (Rizwana Faisal) made threatening messages and threatening calls of dire consequences from her mobile phone to the complainant's mobile phone, hence the appellant lodged the above F.I.R.

3. After registration of F.I.R, the investigation was completed and report under Section 173 Cr.P.C was submitted. After taking cognizance by the learned Trial Court/Magistrate 1st Class, Islamabad, the respondent/accused filed an application under Section 249-A Cr.P.C. After hearing the arguments of the learned counsel for the parties, learned trial Court passed the judgment dated 18.07.2018 and acquitted the accused/respondent No1 by accepting her application under Section 249-A Cr.P.C.

4. Feeling aggrieved from the impugned order dated 18.07.2018; the complainant has filed this appeal against acquittal.

5. Learned counsel for the appellant has contended that the impugned order is illegal, unlawful, arbitrary and capricious; that no opportunity of hearing has been provided to appellant; that the matter requires recording of evidence while it has been decided in a slipshod manner without adhering the legal formalities and the impugned order of acquittal of respondent No.1 is not sustainable in the eyes of law and liable to be set aside.

6. Conversely, learned State Counsel submitted that sufficient material is available against the accused/ appellant and the case of prosecution is based on sound footings. Lastly, he prayed for setting aside of acquittal of the accused/respondent No.1.

7. The accused/ respondent No.1 present in person claiming her innocence in the case and pray for dismissal of the appeal.

8. I have heard the arguments of learned counsel for the appellant, State Counsel and have perused the available record.

9. Perusal of record reveals that F.I.R was registered against the respondent No.1 under Section 29 of the Telegraph Act, 1885 with the allegation of extending threat messages, allegedly sent by the respondent (Mst. Rizwana Faisal) to the complainant. Except the accusation made by the complainant, there is no evidence on record to connect the respondent with the commission of the alleged offence. Perusal of the record further reveals that no time and date of the occurrence has been mentioned. Furthermore, neither the mobile phone of the complainant nor the mobile phone of accused/ respondent has been taken into possession by the Investigation Officer, during the course of investigation so that the threatening messages or any indecent message could be retrieved through Forensic Science Laboratory. The record further transpires that photo copies containing messages were handed over by the complainant herself to the Investigation Officer authenticity whereof is highly doubtful. It is a case of no evidence at all. There was no

possibility of conviction of the respondent in any manner. The learned Trial Court keeping in view the facts and circumstances of the case, has rightly acquitted the accused/respondent from the charge leveled against her.

10. It is pertinent to mention here that considerations for interference in an appeal against acquittal and an appeal against conviction are altogether different because presumption of double innocence is attached with the former case. The well settled principles for appreciation of appeal against acquittal, as have been held by the Hon'ble Supreme Court of Pakistan in the judgment reported as "Muhammad Iqbal Vs. Abid Hussain alias Mithu and six others" (1994 SCMR 1928), are as under:-

- i. *That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his Trial a Court below has confirmed the assumption of innocence;*
- ii. *That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;*
- iii. *That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;*
- iv. *That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and*
- v. *That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.*

11. The Hon'ble Supreme Court of Pakistan in case titled as "Inayatullah Butt Vs. Muhammad Javed & two others" [PLD 2003 State counsel 562], has held that "No other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under Section 417 Cr.P.C."

12. For what has been discussed above, the appellant has failed to establish circumstances whereby impugned order can be interfered with by this Court. The learned Trial Court after proper appraisal of the material available on record has rightly acquitted the accused/respondent under Section 249-A Cr.P.C. I have found no illegality or irregularity in the judgment impugned.

13. Resultantly, the instant appeal having no force is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

S.Akhtar