

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

“Criminal Appeal No. 61 /2017”

Muhammad Shahbaz
Versus
Muhammad Bashir and others.

Appellant by:	Syed Zeeshan Haider, Advocate.
State by:	Mr. Zohaib Hassan Gondal, State Counsel.
Date of Hearing:	16.07.2020

Ghulam Azam Qambrani, J.: This appeal has been filed against the impugned judgment dated 20.03.2017 passed by the learned Additional Sessions Judge, Islamabad- East, whereby the respondents No.1 to 5 were acquitted in the complaint case.

2. Briefly stated facts of the case as narrated by the complainant, Muhammad Shahbaz, are that he was not supplied copies of the statement and documents under Section 295-c, Cr.P.C and statements recorded under Section 161 Cr.P.C of Ikram Afzal and Rashid Naeem. Further stated that Ikram ul Haq and Rashid Naeem PWs, whose statements were recorded on 14.07.2006 by the I.O, as eye witnesses, subsequently, through the forgery, substituted Usman Ali and Mohammad Yasir Aslam, Whose statements were recorded on 15.03.2011 and these witnesses were also witnesses of identification parade which was held on 15.03.2011, the report under Section 173 Cr.P.C dated 10.05.2010, whereby Ikram Fazal and Rashid Naeem were shown as witnesses at Serial No.4 and 5 but subsequently in report under Section 173 Cr.P.C dated 04.05.2011, Usman Ali and Yasir Aslam were inserted as witnesses, in place of above named two witnesses and the statements of Mumtaz Bibi and Asim Naveed, Scaled and un-scaled site plan were also changed. In this regard, an inquiry was conducted by Malik Mohammad Yousaf, the then S.S.P, Islamabad, and another inquiry was also conducted by Sajid

Kiyani S.S.P and prayed for the prosecution of respondents under Section 476 Cr.P.C read with section 195 Cr.P.C and requested for conviction and sentenced under Section 466, 194 & 109 P.P.C, read with Section 5 of Anti Corruption Act and Rule 155 Police Order 2002 to the respondents.

3. After the complaint was admitted and the respondent was summoned by the learned trial Court, Malik Bashir Investigation Officer, Mst. Mumtaz Bibi widow of deceased Zahoor Khan who were formally charged sheeted and accused facing trial pleaded not guilty and claimed Trial.

4. In order to prove its case, the appellant/ complainant produced Muhammad Shahbaz and Muhammad Riaz Karim as PW.1 & PW.2, respectively, whereas Muhammad Yousaf S.S.P appeared before the Court as CW-01 to bring home the guilt of the accused/respondents. The appellant, Muhammad Shahbaz, himself appeared as PW.01 and stated that F.I.R No.251 dated 14.07.2006 under Section 302/ 109 P.P.C read with Section 34 P.P.C was registered against unknown person but subsequently the appellant, Riaz Karim and others were arrayed an accused persons. During the investigation, respondent No.1 fabricated the statement of Ikram ul Haq, Rashid Naeem, Mst. Mumtaz Bibi and Asim Naveed and they also fabricated un-scaled site plan Ex.PE and report under Section 173 Cr.P.C dated 10.05.2010 Ex.PF. This fabrication came on surface when the file was inspected and it was revealed that statements of Ikram-ul-Haq and Rashid Naeem witnesses were available in report under Section 173 Cr.P.C but subsequently, through forgery, both the witnesses were substituted as Usman Ali and Muhammad Yasir Aslam. This forgery was committed by accused Muhammad Bashir-Inspector in connivance with the other respondents. PW.2 Muhammad Riaz Karim stated in line with the statement of PW.1. Muhammad Yousaf CW.01 who was entrusted the inquiry by the learned Additional Sessions Judge vide order dated 01.12.2012 for ascertaining genuineness of two reports under Section 173 Cr.P.C and to report which one is correct, who submitted his report as Exh.PK. Thereafter,

statements of the accused/ respondents under Section 342 Cr.P.C were recorded wherein they denied the allegation leveled against them by the complainant. In reply to the question, "why this case & PWs deposed against you," Mst. Mumtaz Bibi replied as under:-

"In order to escape conviction in the case F.I.R No. 251 dated 14.07.2006 offence under section 302/34/109 P.P.C registered with police station, Margalla Islamabad, and to caste shadow of doubt, complainant Muhammad Shahbaz filed instant baseless application in connivance with Riaz Karim (PW.) to create doubt in Trial Court's mind and have deposed falsely in the Court now to stop from pursuing further proceedings against them. The CW has also been managed by complainant to make a false deposition in order to protect their self-serving vested interests.

Similarly, accused Malik Bashir replied that:-

PWs deposed against me only to satisfy their vengeance without any reason and purely on the basis of doubts and surmise and only on the basis of malafide because I arrested him in the instant case. They also deposed against me after earning acquittal and the appeal against acquittal filed by complainant which is admitted and still pending for adjudication before Hon'ble Islamabad, High Court. Even otherwise, the proceedings initiated before this Court is the violation of stringent provisions of law and accused is not competent to file the instant complaint as envisaged under Section 195 Cr.PC read with 476 Cr.P.C.

The respondents/ accused neither opted to appear as their own witnesses under Section 340(2) Cr.P.C nor produced any defence witness, however, Mst. Mumtaz Bibi produced attested copy of F.I.R No.251 dated 14.07.2006 Ex.DA, statement of Ghayyur Ahmed Ex.DB, un-scaled site plan as Ex.DC, scaled site plan Ex.DD, Nakal rapt No.48 dated 15.07.2006 Ex.DE, recover memos Ex.DF, non-bailable warrants of Muhammad Ansar EX.DJ, verification of report under Section 173 Cr.P.C Ex.DK, statement of accused under Section 342 Cr.P.C Ex.DL, reply of Muhammad Ansar under Section 265-F Cr.P.C Ex.DM, photo copy of appeal under Section 417 Cr.P.C against the judgment dated 11.03.2014 passed by learned District & Sessions Judge Islamabad-East, Ex.DN, order of the Hon'ble Islamabad High Court, Islamabad, in Criminal Appeal No.30/ 2014 titled "Mumtaz Bibi vs. Riaz Khan" Ex.DO and closed the defense evidence. The learned trial Court

vide judgment dated 20.03.2017, acquitted all the accused persons. The appellant being aggrieved of the impugned judgment has challenged the same through the instant appeal.

5. The learned counsel for the appellant has filed written arguments. Contention of the appellant is that during the investigation, documents and statements of Ikram Fazal, Rashid Naeem, Mst. Mumtaz Bibi and Asim Naveed were fabricated and also un-scaled site plan Ex.PE and report under Section 173 Cr.P.C dated 10.05.2010 Ex.PF but it revealed that statements of the witnesses are substituted as Usman Ali and Muhammad Yasir Aslam, as mentioned in para No.6 of the judgment. Further submitted that to prove the allegation of forgery, appellant appeared as PW.1 and produced Muhammad Riaz Karim PW.2 whereas Malik Muhammad Yousaf S.S.P Punjab Highways patrolling appeared as CW.01, but the objection raised by the defence was not tenable, as such, the findings of the learned trial Court are against laws and facts, that the non-production of Sajid Kiyani S.S.P in order to prove report Ex.PL will not damage the prosecution case as it was available on record whereas allegation of forgery were proved through the statement of Malik Muhammad Yousaf S.S.P and report Ex.PK. Further that the report under Section 173 Cr.P.C dated 31.05.2012 (Ex.P-5) was also a supporting document. Next contended that the findings of the learned trial Court that the best prosecution evidence was withheld, is totally incorrect; that non-production of the drawer of the site plan in this case is not fatal to the prosecution; that the case was fully proved against the accused persons but the learned trial Court failed to meet requirements of the judgment while passing acquittal order, therefore, the judgment of acquittal of the respondents is illegal and is liable to be set-aside.

6. On the other hand, learned State Counsel supported the impugned judgment dated 20.03.2017 and submitted that no time, venue and detail of tampering has been produced on record by the complainant; that no proof of conspiracy or abetment to tamper with

the record has been brought on record; that statements recorded under Section 161 Cr.P.C only for the contradiction purposes and they have no evidentiary value; that in the instant case, vicarious liability is not established and the complainant has failed to prove his case. Further submitted that the complainant Muhammad Shahbaz and Riaz Karim were nominated by Ansar accused in his statement under Section 164 Cr.P.C recorded before the Magistrate as such there was no malice on the part of Mst. Mumtaz Bibi to connive with Muhammad Bashir; that neither the original documents were produced before the Court nor any source was given from where the said documents were obtained.

7. Arguments heard, record perused.

8. Minute perusal of the record reveals that the appellant filed the complaint under Section 476 Cr.P.C. read with Section 195 Cr.P.C. before the learned trial Court for initiation of proceedings against the respondents under Section 466, 471, 194, & 109 P.P.C read with Section 5 of the Anti Corruption Act No.II of 1947 and Rule 155 of Police Order, 2002. The allegations leveled by the appellant in the complaint were that statements of Ikram-Ul-Haq and Rashid Nazeem PWs were recorded on 14.07.2006 by the Investigation Officer as eye witnesses but subsequently, they were substituted with Usman Ali and Muhammad Yasir Aslam, whose statements were recorded on 15.03.2011; they were also the witnesses of identification parade held on 15.03.2011; that in the report under Section 173 Cr.P.C dated 10.05.2010, the names of Ikram Afzal and Rashid Naeem were shown as witnesses at Serial No.4 & 5 whereas, in another report under Section 173 Cr.P.C dated 04.05.2011, names of Usman Ali and Yasir Aslam were shown in place of above named two witnesses and that the statements of Mumtaz Bibi and Asim Naveed, scaled and unscaled site plans were also replaced. Record reveals that with regard to the said allegations, firstly, the inquiry was conducted by Malik Muhammad Yousaf, the then S.S.P Islamabad, who submitted his report Ex.PK and secondly, the inquiry was conducted by Sajid Kiyani S.S.P, who submitted his report Ex.PL.

9. For facilitation, Sections 476 and 195(1)(c) Cr.P.C. are reproduced below for ready reference and assistance:-

'Section 476. Procedure in cases mentioned in Section 195.

(1) When any offences referred to in Section 195, sub-section (1) clause (b) or clause (c) has been committed in, or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.

Section 195 (1) (c) of Cr.P.C is reproduced as ready reference;

(1) No Court shall take cognizance,

(a) "Prosecution for contempt of lawful authority of a public servants: of any offence punishable under section 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.

(b) Prosecution for certain offences against public justice: of any offence punishable under any of the following sections of the same Code namely sections 193, 194,195,196,199,200, 205,206,207,208,209, 210,211 and 228, when such offence is alleged to have been committed in, or in relation to any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate, or

(c) Prosecution for certain offences relating to documents given in evidence; of any offence described in Section 463 or punishable under section 471, Section 475 or Section 476 of the same code, when such offence is alleged to have been committed by a party to any proceedings in any Court in respect of a documents produced or given in evidence in such proceedings except on the complaint in writing of such Court, or of some other Court, to which such Court is subordinate."

10. Perusal of the record depicts that in the instant case, the complaint has not been filed on the direction of the Court where the alleged documents were produced rather the

appellant filed the complaint before the learned trial Court even after seven months of the alleged occurrence in his private capacity and further that the said complaint has not been got exhibited by the appellant in his examination-in-chief, as such, the same cannot be read as in evidence. Further, the appellant filed W.P No. 3433/2012 before this Court which was dismissed holding that "*Offence of forgery has been committed in relation to statements and record placed before a Court and cognizance of any offence in relation to proceedings before a Court, could not be taken unless on the complaint of that Court as required under Section 195 (1) © Cr.P.C.*" In view of the same, the complaint filed by the appellant was not competent.

11. Mr. Sajid Kiyani S.S.P author of inquiry report Ex.PL was not produced before the Court as witness, as such, Ex.PL is not admissible in evidence. The testimony of an interested or inimical witness cannot be relied upon without any independent corroboration. The police is not competent to hold the inquiry and findings of the Investigation Officer under Article 59 of Qanoon-e-Shahadat Order, 1984, is irrelevant and is not admissible in the eyes of law. The witnesses, who were allegedly substituted as stated by the complainant, were never produced before the Court; therefore, there is nothing on record to connect the respondent Malik Muhammad Bashir-Inspector with the commission of the alleged offence.

12. The complainant failed to produce the certified copies of statements under section 161 Cr.P.C of Ikram ul Haq and Rashid Nadeem dated 14.07.2006, statements of Mst. Mumtaz Bibi and Asim Naveed dated 18.09.2006, Inspection Notes dated 14.07.2006, copy of report under section 173 Cr.P.C dated 10.05.2010. However, proving the said document, the appellant was bound to produce the beneficiary of the same, but the author of the said documents was not produced by the appellant to prove their authenticity.

13. Muhammad Yousaf S.S.P, author of report Ex.PK appeared before the learned trial Court as CW.1, during his cross-examination admitted that he was only entrusted the inquiry to the effect that which of the two reports under section 173 Cr.P.C is correct. He further admitted that probing of forgery was not within his domain. He further admitted that none of the said reports under Section 173 Cr.P.C. was submitted by Malik Bashir/ respondent No.1 as one report dated 10.05.2010 was prepared by the S.H.O concerned and the other report dated 04.05.2011 was prepared by Muhammad Fayyaz Tanoli. But neither of two was produced before the learned trial Court as witness nor they have been arrayed in the list of accused persons. The said witness further admitted in cross-examination that he had not collected any evidence regarding forgery as his main focus was the comparison of two reports under Section 173 Cr.P.C. He further admitted that he had not sent the signatures on both the reports under section 173 Cr.P.C to the handwriting experts for its comparison. Further admitted that he had not summoned Ikram-ul-Haq, Rashid Naheem, Usman and Muhammad Yasir Aslam to verify the forgery and that he also did not record the statements of witnesses who prepared both the reports under section 173 Cr.P.C. CW.1 further admitted that his mandate was only to ascertain as to which of the two reports under section 173 Cr.P.C is correct, but he travelled beyond his mandate, as such his report Ex.PL has no evidentiary value holding the respondents liable for the perjury.

14. It transpired from the record that the complainant failed to produce the S.H.O as witness, who prepared the report under section 173 Cr.P.C. The complainant also failed to produce Usman Ali and Muhammad Yasir Aslam, whose supplementary statements were recorded by the respondent Muhammad Bashir rather their statements were also not got

exhibited. It shows that the appellant as per his wishes exonerated the other persons and police officials. Further the appellant also failed to bring on record any piece of evidence against Asim Majeed and Mst. Mumtaz Bibi from where it can be gathered that they identified Usman Ali and Yasir Aslam in the jail or with regard to tampering of evidence by them. PW.2 Muhammad Riaz Karim in his cross-examination stated that the alleged conspiracy came to his knowledge through Yasir, but astonishingly the said Yasir was also not produced before the Court as witness. Further the appellant also exonerated Mst. Mumtaz Bibi during the course of arguments which shows the conduct of appellant to pick and choose the accused of his own choice which makes the case of the appellant doubtful.

15. Keeping in view all the facts and circumstances of the case, the learned Trial Court has rightly acquitted all the accused persons by giving them benefit of doubt including the absconding respondents namely Asim Naveed, Usman Ali and Yasir Aslam.

16. The interference of this Court would be warranted, if the reasoning of the trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. In the instant case, the learned trial Court has properly appreciated the evidence available on record and acquitted the accused/ respondents through a well-reasoned judgment. The learned counsel for the appellant has also not been able to show that there has been any misreading or non-reading of evidence. Reliance is placed on the cases titled as "Muhammad Zaman versus The State and others" [2014 SCMR 749], "Muhammad Rafique versus Muhabbat Khan and others" [2008 SCMR 715], "Jehangir versus Amin Ullah and others" [2010 SCMR 491], "Mst. Askar Jan and others versus Muhammad Daud and others" [2010 SCMR 1604]

and "Mst. Sughra Begum and another versus Qaiser Pervez and others" [2015 SCMR 1142].

17. In the case of "Ghulam Akbar and another Vs. The State" (2008 SCMR 1064), it has been held as under:-

"It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof."

In the case reported as "Sanaullah Vs. The State through Prosecutor General" (2015 P.Cr.L.J. 382 (Balochistan), it has been held that as under:-

"Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Accused had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of accused and not otherwise."

18. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record against the accused/ respondents. The learned trial Court, after proper appraisal of evidence available on record, has rightly concluded that the prosecution has miserably failed to prove its case against all the accused/ respondents, as such, acquitted them.

19. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance in this regard is placed upon the case of "Inayatullah Butt v. Muhammad Javed and 2 others" [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, 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.

20. The learned counsel for the appellant has not advanced any argument to justify the setting aside of the acquittal judgment. There is no misreading or non-reading of evidence nor the findings of the learned trial Court are patently illegal. The findings of acquittal, by no stretch of the imagination, can be declared as perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence.

21. In the circumstances, there is no merit in the instant appeal; therefore, the same is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 30th day of July, 2020.

JUDGE

M. 9/2 *