

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No.95/2020**

Mst. Nasira Bibi

*versus*

The State & 02 others

Appellant by: Mian Sohail Mehmood, Advocate.

Respondents by: Ch. Muhammad Jahangir, Advocate for  
Respondents No.2 & 3.  
Darya Khan, S.I., P.S. Khanna, Islamabad.

Date of Decision: 05.07.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:** Through the instant criminal appeal, the appellant has called in question judgment of the learned Judicial Magistrate (East), Islamabad, dated 13.03.2020, whereby respondents No.2 and 3 have been acquitted of the charges in case FIR No.277, dated 15.04.2018, under Sections 354, 506(ii) PPC read with Section 25-D Telegraph Act, P.S. Khanna, Islamabad.

2. Succinctly, Mst. Nasira Bibi submitted a complaint (Exh.PA) to S.H.O. P.S. Khanna, Islamabad alleging that on 25.02.2018, when she was going to pick her children from school, Rafaquat Taj (Respondent No.2) hit her from back with motorcycle and threatened her with life to go with him on motorcycle, though the complainant managed to free herself. Later on, Mst. Noreen Bibi (Respondent No.3) i.e. sister of respondent No.2, arranged the complainant's mobile number for respondent No.2, whereafter respondent No.2 kept on threatening the complainant of dire consequence if she refuses to have relationship with him. After conversion

of the complaint (Exh.PA) into FIR No.277/2018 (Exh.PC), respondents No.2 & 3 were indicted on 24.07.2019, to which they pleaded not guilty and claimed trial. The learned trial Court after recording of pro and contra evidence acquitted respondents No.2 & 3 of the charges vide impugned judgment dated 13.03.2020. Hence, instant criminal appeal.

3. Learned counsel for appellant contends that the learned trial Court has not appreciated the prosecution case in its true perspective and passed the impugned judgment without recording any cogent reason on each and every point of determination; that the prosecution has brought on record sufficient material against the respondent accused persons but the learned trial Court overlooked the same while acquitting the accused persons of the charges; that neither there is any dishonest improvement in the statements of prosecution witnesses nor there is any question of false implication of the respondent accused persons, as such, the learned trial Court has passed the impugned judgment in a slipshod and hasty manner, which is liable to be set-aside.

4. Conversely, learned counsel for respondents No.2 & 3 in support of the impugned judgment stressed that the entire case is based on malafide as the alleged incident had taken place on 25.02.2018, whereas the FIR has been registered with considerable delay on 15.04.2018, as such, the appellant had allegedly received injuries through motorcycle ridden by respondent No.2 but no medical certificate with respect to such injuries has been brought on record; that no independent witness has been produced by the complainant, even the Investigating Officer has not put any effort to record evidence of the people residing in nearby locality; that the

prosecution case as set out is full of doubts and improvements, as such, the learned trial Court has rightly acquitted respondents No.2 & 3 of the charges.

5. Arguments heard, record perused.

6. Perusal of record reveals that the appellant has lodged a complaint Exh.PA to S.H.O. P.S. Khanna, Islamabad, which was converted into FIR No.77/2018 (Exh.PC), with the allegations that on 25.02.2018, at about 11.45 a.m., when the appellant was going towards school to pick her children up, respondent No.2 hit the complainant from back side through his motorcycle, whereupon she fell down and received injuries, as such, respondent No.2 had also allegedly grabbed her hand and forced her to sit on the motorcycle, whereupon the appellant raised hue and cry. Respondent No.2 had also allegedly drawn a pistol and threatened the appellant that he will kill her and her family. Due to hue and cry of appellant, the people of vicinity gathered at spot, as a result whereof respondent No.2 fled away from the scene. As per stance of the appellant (PW-1), she being a serious patient of asthma went back to her home instead of going towards the school, whereafter her mother had gone to the school to take the children. On the following day, Mst. Noreen Bibi (respondent No.3) i.e. real sister of respondent No.2, visited her house and started threatening her on yesterday's incident.

7. The appellant (PW-1) further maintained that in the year 2015, she remained a tenant of respondent No.2 for three months, where respondent No.3 had given her some intoxicant in vermicelli and respondent No.2 taking advantage of such situation had made some unethical videos and

photographs of the appellant, based on which respondent No.2 compelled the appellant to keep illicit relationship with him.

8. The incident alleged by the appellant in the FIR (Exh.PC) is only to the extent that when she was threatened by respondent No.2 and forced her to sit on his motorcycle but, surprisingly, the event was not reported to the police on the alleged day i.e. 25.02.2018, rather it was reported on 15.04.2018, for which no justified reason has been brought on record by the appellant as to why the case was not timely lodged or why the police was not informed, especially when the Police Station was only one kilometer away. Such delay on the part of appellant raises a presumption of consultation, deliberation and motivation to lodge a case against respondents No.2 & 3, as such, the presumption of suspicion in the prosecution story emerges on record. It is settled law that in absence of plausible explanation of delay, the prosecution case suffers with fatal defects as held in PLD 2019 SC 64 (Mst. Asia Bibi vs. The State).

9. During the course of cross-examination, the appellant made the following admissions:

- (a) یہ درست ہے کہ مورخہ 25/02/18 سے لے کر 10/04/18 میں تھانے میں FIR کے اندراج کیلئے نہ گئی۔ یہ درست ہے کہ Exh.PA میں مبینہ وقوعہ کا وقت نہ لکھا ہے۔
- (b) یہ بھی درست ہے کہ میں نے Exh.PA میں گرنے والی بات نہ لکھی ہے۔
- (c) یہ درست ہے کہ ملزم کی موٹر پر زبردستی بٹھانے والی بات Exh.PA میں درج نہ ہے۔
- (d) یہ بھی درست ہے کہ Exh.PA میں شور مچانے والی بات درج نہ ہے۔
- (e) یہ بھی درست ہے کہ Exh.PA میں میں نے یہ درج نہ کیا تھا کہ اگر میں ملزم کی ساتھ موٹر سائیکل پر نہ بیٹھی تو وہ مجھے قتل کر دے گا۔
- (f) یہ درست ہے کہ ضیاء مسجد والا علاقہ مصروف ترین علاقہ ہے۔ مبینہ جائے وقوعہ پر لوگوں کا آنا جانا تھا۔
- (g) یہ بھی درست ہے کہ Exh.PA میں لوگوں کے اکٹھے ہونے کے متعلق درج نہ ہے۔

- (h) یہ درست ہے کہ اس وقت وقوعہ کے وقت آنے جانے والے یا جو جمع ہوئے تھے لوگ ان میں سے ہم نے کسی کو شامل تفتیش نہ کیا ہے۔ ہم نے اپنے طور پر کسی کو پیش نہ کیا ہے۔
- (i) یہ درست ہے کہ میرے علاوہ دیگر کوئی گواہ تھانے میں میرے موقف کی تائید میں پیش نہ ہوا ہے۔
- (j) یہ درست ہے کہ Exh.PA میں ملزم کا دیگر لوگوں کی طرف پٹل لہرانے والی بات درج نہ ہے۔
- (k) یہ درست ہے کہ ExhPA میں یہ بات درج نہ ہے کہ لوگوں کے آنے پر پٹل لہراتا ہوا ملزم موقع سے فرار ہو گیا۔
- (l) یہ درست ہے کہ میں نے عدالتی بیان ریکارڈ کرواتے ہوئے اپنے بیان کی بات کوئی میڈیکل سرٹیفکیٹ بطور ثبوت پیش نہ کیا ہے۔
- (m) یہ درست ہے کہ ExhPA میں یہ بات کہ وقوعہ کے دوسرے دن والی بات نورین کے میرے گھر آکر دھمکیاں دینے والی بات درج نہ ہے۔
- (n) یہ بھی درست ہے کہ میں نے اس ضمن میں کوئی تہمتہ بیان اس وقوعہ کے بعد تھانے میں نہ دیا ہے۔
- (o) یہ درست ہے کہ ExhPA میں یہ بات درج نہ ہے کہ سویاں کھا کر میری حالت غیر ہو گئی اور مجھے ہسپتال لے جایا گیا۔
- (p) یہ درست ہے کہ میں نے ExhPA کے اپنے بیان میں یہ بات درج نہ کی ہے کہ ملزم کے پاس میری نازیبا ویڈیوز تھی جس سے بلیک میل کرتا تھا۔
- (q) یہ درست ہے کہ میں نے ملزم کی زیادتی والی بات Exh.PA میں نہ لکھوائی ہے۔
- (r) یہ درست ہے کہ رفاقت تاج نے میرے خلاف عدالت ہائے دیوانی میں بیسیوں کی ریکوری کی بابت ایک دعویٰ دائر کر رکھا ہے جو بعدالت جناب سنیزر سول جج کی زیر سماعت ہے جس میں میری طرف سے جواب دعویٰ داخل ہو چکا ہے۔

10. Keeping in view the above admissions on the part of appellant (PW-1), the entire prosecution case becomes doubtful, even the story narrated by the appellant has been changed, which is full of improvements. It is settled law that the initial version, if improved by any witness in the witness box, could not be relied upon as such improvements are considered to be made with malafide, which otherwise casts a serious doubt on the credibility of such witness. Reliance is placed upon 2008 SCMR 6 (Akhtar Ali vs. The State).

11. The prosecution has produced PW-3 Muhammad Nawaz/ ASI being Investigating Officer of the case, who has also verified that the FIR has

been lodged with delay of one month and 25 days and the appellant's father was an ex-police official. He collected the CDR of appellant through Exh.PB, comprising of five pages (Exh.P1 to Exh.P5) as well as of respondent No.2 (comprising of Exh.P6 to Exh.P20). The Investigating Officer, with respect to the CDR, acknowledged that:

یہ درست ہے کہ برطابق CDR دونوں اطراف سے متعدد کالیں ایک دوسرے کو کرنا پائی گئی ہیں۔ یہ درست ہے کہ ریکارڈ

voice box مقدمہ ہذا میں نہ موصول ہوا ہے۔

12. This aspect of the matter primarily establishes the factum of subsistence of relationship between the appellant and respondent No.2, even it has also been confirmed by the Investigating Officer that the appellant remained tenant of respondent No.2. He further confirmed that the appellant has not verified the fact that on the alleged date of incident i.e. 25.02.2018, it was Sunday and the school was off. He confirmed that no independent witness was produced in this case to justify the stance of the complainant / appellant.

13. On the other hand, respondent No.2 accused has denied the entire incident in his statement under Section 342 Cr.P.C. and has produced DW-1 Raja Sajid i.e. owner of Public School near New Shakrial, Zia Masjid, in which appellant's children were studying at the relevant time, who confirmed that on 25.02.2018, the school was off due to Sunday and even there was no function on said date, neither the children of appellant visited the school on said date. Such defence version belies the entire stance of the appellant, who has failed to justify her testimony.

14. Having regard to the aforesaid circumstances, this Court is confident to hold that the entire case is fraught with doubts and the prosecution has

failed to discharge the burden in order to prove the allegations against the respondents accused, even there is not an iota of evidence qua the charges under Section 25 of the Telegraph Act, 1885 when there is no voice recording or messages recovered during the investigation, neither any mobile phone of respondent No.2 was taken into possession by the Investigating Officer. Keeping in view the facts and circumstances of the case, it can safely be held that the case in hand is based on a spurious story and this Court is mindful of the settled principle that even a single doubt is enough to dispel the entire story of the prosecution, as such, the prosecution case is fraught with doubts, therefore, benefit of doubt automatically emerges in favour of the respondents accused, which shall be extended not as a matter of grace but, as a right without any reservation. Reliance is placed upon 2021 SCMR 873 (The State v. Ahmed Omar Sheikh, etc.). Even otherwise, the parameters to deal with appeal against conviction and appeal against acquittal are different because acquittal carries presumption of double innocence, and, as such, there is no perversity in the judgment of acquittal passed by the learned Trial Court, which is within four corners of law, therefore, instant appeal is meritless and the same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)  
JUDGE