

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Appeal No. 405/2019

Muhammad Gull Qazi

Vs

Said Hazrat

Appellant by: Ch. Naeem Ali Gujjar, Advocate
Respondents 1 to 3 by: Hafiz Farman Ullah, Advocate
Respondent No.4: Mr. Tahir Hameed Khan, State
Counsel
Date of Hearing: 04.03.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant criminal appeal, appellant assails order dated 20.11.2019 passed by learned Judicial Magistrate Section 30, Islamabad-West whereby application under section 249-A Cr.PC had been allowed and respondents 1 to 3 were acquitted in a case registered through FIR No.201 dated 16.04.2014, under section 506 (ii) PPC, Police Station Sabzimandi, Islamabad.

2. Precisely, facts relevant for the disposal of instant criminal appeal are that appellant got registered the subject FIR with the allegations that on 22.03.2014 at evening time, respondents 1 to 3 alongwith others extended threats to kill and to kidnap his son. After submission of report under section 173 Cr.PC, accused/ respondents 1 to 3 moved an application under Section 249-A Cr.PC which was allowed by the learned Illaqa Magistrate vide impugned order, hence instant criminal appeal.

3. Learned counsel for the appellant contends that on most of the dates of hearing one or the other accused remained absent and without adverting to this important point, the learned trial Court has accepted the application under section 249-A Cr.PC; that even no notice of the said application was issued to the appellant/complainant and

the impugned order had been passed on his back without taking his stance on record.

4. On the other hand, learned counsel for respondents/accused submits that the allegations leveled in the instant FIR are just of general nature and no specific role had been attributed to any of the accused persons; that offence under section 506(ii) PPC though alleged in the FIR but ingredients of the same are not existing; that section 506(ii) PPC is not attracted when there are allegations of only threats; that most of the accused persons are unknown and in the event of their arrest, prosecution has to go for identification parade but features like height, colour, physique and other antecedents of the accused persons have not been mentioned in the FIR, therefore, the instant criminal appeal may be dismissed.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. First of all, this Court has to see that, for setting aside the impugned order in the circumstances of the case even if appellant/complainant is heard and material available on record is evaluated, then respondents/accused persons could be convicted in the offence or not. Previously, prosecution had prepared cancellation report regarding the said accused persons but same was not agreed upon by the then learned Judicial Magistrate. As per investigation, the police was of the view that the occurrence, as alleged, is dubious. Only witness of the case is the complainant and if his statement is recorded as per law even then conviction cannot be awarded in the case as per offence mentioned in the FIR, the occurrence took place at a public place but, admittedly, not a single private witness had been associated with the investigation who could support the allegation / version of the complainant.

7. As far as application of Section 249-A Cr.PC is concerned, as held by the Hon'ble Supreme Court in case reported as "*The State Vs Asif Ali Zardari & anothers (1994 SCMR 798)*" the Presiding Officer can acquit accused person at any stage of trial and the requirements to be fulfilled are firstly, hearing is to be given to the prosecutor and counsel of accused and secondly, reasons are to be recorded in support of conclusion arrived at. That there is no probability of accused being convicted. It is also laid down that application under Section 249-A Cr. PC can be filed at any time and there is no requirement that such application should only be filed after recording the evidence of all witnesses. On evaluation of the impugned order in the light of requirements laid down in the referred case law, it reveals that the same had been passed after giving due hearing to the learned counsel for the accused persons and learned Prosecutor, material available on record was evaluated properly and the reasons were also recorded in support of the conclusion arrived at.

8. No specific role had been attributed to any particular accused rather a general type of allegations had been alleged that such and such accused along-with pistol came and extended threats to the complainant. There is no specific attribution as to who was holding the pistol and how they extended threats? or whether any act of criminal intimidation had been committed by any of the accused persons or not and on these points whole prosecution story is silent. In that eventuality, if prosecution was allowed to produce evidence, even then there was no probability that accused persons could be convicted. It is also matter of record that parties are in other litigation, therefore, possibility of false implication could not be ruled out.

9. After evaluating the available record I am of the view that even if opportunity of hearing is provided to the appellant/complainant even then the result would be the same and no exception could be taken for the impugned order. Mere fact that there can be a contrary view on re-appraisal of the evidence by the Court hearing the acquittal appeal, simpliciter would not be sufficient to justify interference with acquittal judgment. Guidance in this respect is sought from the law laid down by the Hon'ble Apex Court in case reported as "*The State Vs Bashir (PLD 1997 SC 408)*".

10. Till this day, it is a settled law that an accused who is acquitted by any court of competent jurisdiction carries double presumption of innocence. Strong and cogent reasons are required to dislodge such presumption. Reliance is placed upon case law reported as *Jehangir Vs Aminullah (2010 SCMR 491)*, *Mst. Anwar Begum Vs Akhtar Hussain alias Kaka (2017 SCMR 1710)*, *Zaheer Sadiq Vs Muhammad Ijaz (2017 SCMR 2007)*, *Muhammad Azam Vs State (2009 SCMR 1232)*, *Muhammad Shafi alias Kuddoo Vs State (2019 SCMR 1045)*.

11. In view of above, the instant criminal appeal is devoid of merits and accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

M.A. Raza