JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

(JUDICIAL DEPARTMENT)

Criminal Appeal No.10 of 2018

Kalsoom Pervaiz

Versus

The State and another

Appellant by:	Mr. KhurramMahmoodQureshi, Advocate.
Respondent No.2 by:	Mr. Tabassum Rashid Siddiqui, Advocate alongwith respondent No.2.
State by:	Mr. Zohaib Hassan Gondal, State Counsel along withShaukat Ali, Inspector.
Date of Hearing:	09.07.2020.

GHULAM AZAM QAMBRANI, J.:- Through the instant appeal under Section 417(2-A) of Cr.P.C., the appellant (Kalsoom Pervaiz) has assailed judgment, dated 08.01.2018 passed by the learned Senior Civil Judge-II-cum-Magistrate, Islamabad (East) in case F.I.R No.366/2013, dated 15.11.2013 under Sections 380 & 411, P.P.C. registered at Police Station Koral, Islamabad, whereby respondent No.2 (hereinafter be called as **"respondent"**) was acquitted from the charge.

2. Briefly stated facts of the prosecution case are that the appellant got lodged above F.I.R, stating therein that on 30.10.2013, the complainant alongwith her daughter had proceeded to Lahore to attend marriage ceremony of her cousins. Where, she received call from her neighbour at about 6:00/7:00 p.m. that the accused alongwith five unknown persons had entered in her house and broken the lock thereof and loaded the articles of the house i.e. bed,

dressing table, chairs, LCD, Sofas, Juicer Machine, Pressure Cooker, Utensils, Water cooler, Dresses and Gold ornaments etc and had taken the same in two Shahzore vehicles, valuing Rs.10,00,000/-, hence, the above said F.I.R.

3. After registration of the F.I.R, the respondent/accused was arrested, after usual investigations, report under Section 173 of Cr.P.C. was submitted before the learned trial Court. After fulfilling codal formalities by the learned trial Court, charge was framed against the accused on 09.04.2014, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined following four witnesses:-

- *PW-1 Kalsoom Pervaiz (Complainant),*
- *PW- 2 Pervaiz Hussain Butt,*
- *PW- 3 Anwar Hussain ,*
- *PW-4 Shoukat Ali, (Sub-Inspector/Investigation Officer).*

5. The prosecution also tendered in evidence Exh.PA., Exh.PB., Exh.PC, Exh.PD, Exh.PE, Exh.PF and Exh.P1 to Exh.P13. After closure of the prosecution evidence, the accused/respondent was examined under Section 342 Cr.P.C., wherein he has denied the entire allegations leveled against him and he did not opt to record statement on oath as is envisaged under Section 340 (2) Cr.P.C. and did not produce any defence evidence. The learned trial Court after hearing the arguments of the learned counsel for the parties announced the judgment, dated 08.01.2018, (hereinafter be called as "**impugned judgment**"). The appellant being aggrieved of the impugned judgment has challenged the same through instant appeal.

6. Learned counsel for the appellant contended that learned trial Court while acquitting the respondent/accused has failed to appreciate the evidence available on record; that the learned trial Court has not concluded the matter of theft in correct lines as no observations have been recorded regarding proving or disproving the charge framed against the accused/respondent. Further submitted that the learned trial Court had drawn the points for determination inconsistent with the charge sheet and has failed to record cogent reasons on each and every point of determination in a requisite manner regarding guilt or innocence of the accused/respondent. Next contended that the prosecution has produced sufficient evidence to prove the charge but the learned trial Court has not appreciated the same in its true perspective; that the learned trial Court failed to apply its judicious mind while passing the impugned judgment, which resulted into grave miscarriage of justice; that the learned trial Court has not dealt with all the alleged offences for which specific charges were framed. He also submitted that the prosecution has proved the charge against the accused/respondent beyond reasonable doubt, the conclusion drawn by the learned trial Court on the points of determination is based on minor ignorable discrepancies; that the recovery was affected from the accused, which was proved through cogent evidence by the prosecution. Lastly, prayed for setting aside the impugned judgment.

7. On the other hand, the learned counsel for the accused/ respondent contended that there is violation of Article 103 Cr.P.C as no private witness was associated during alleged recovery

proceedings; PW.3/Anwar Hussain is not residence of the same locality where the house of the complainant is situated; that the respondent is ex-husband of the complainant; that as per the complainant, she received call from some neighbourers on 12.11.2013, who informed her that Adnan Naeem had taken away her household articles but she arrived at Islamabad on 15.11.2013, and lodged the above said F.I.R inspite of receiving the information of theft at her house on the relevant day; that the prosecution has failed to produce any witness of the vicinity. Next submitted that the complainant in her complaint alleged that forty three (43) articles were stolen, whereas in the memo of recovery (Exh.PC) only fifteen (15) articles are shown and that only thirteen (13) articles were got identified by the complainant; that none of the PW deposed in line with the statement of the complainant; that the respondent is innocent and has falsely been implicated in the instant case; that there is no direct or indirect evidence on record to connect the respondent with the commission of the alleged offence. The learned State counsel did not support the impugned judgment passed by the learned trial Court.

8. Heard arguments of the learned counsels for the parties and perused the available record with their able assistance.

9. Perusal of the record reveals that on the application of appellant, the above said F.I.R was got registered against the respondent who is ex-husband of the complainant. It is the case of the prosecution that on 12.11.2013, some neighbourers informed the complainant that four five days before, the accused Adnan Naeem

had taken away household articles from her house, but no such neighbourer was produced as a witness by the prosecution in support of its contention. As per the complainant, she received information on 12.11.2013, when she was in Lahore in connection with some marriage ceremony, and she came back to Islamabad on 15.11.2013, and lodged the above said F.I.R on the same day. She remained away from the house even after obtaining alleged information about theft at her house, which casts doubt on the prosecution story; that the doors of the house remained open for six/ seven days after the alleged theft. It is also on record that the complainant neither produced any such informer nor any such neighbourer, who disclosed the alleged occurrence to the complainant and even did not associate during the investigations by the Investigation Officer. Anwar Hussain who has appeared as PW.3 is not the resident of the same vicinity. Moreover, the complainant in her complaint Exh. PA mentioned about forty-three (43) articles, but the police shown fifteen recovered articles in the memo Exh.PC, whereas, only thirteen articles were allegedly got identified by the father of the complainant and no private witness of the locality was associated during identification test of the stolen articles; even no prosecution witness has deposed in line with the statement of the complainant with regard to commission of alleged offence by the respondent/accused, which makes the prosecution case highly doubtful.

10. Perusal of the record further reveals that civil litigation is pending between the complainant and the respondent with regard to the said house and probably to usurp that house, the complainant has

tried to involve the respondent in the instant case, as such, the malicious implication of the respondent in the instant case cannot be ruled out.

11. It is the case of prosecution that during course of investigation, the accused/respondent made disclosure about his guilt and the police at the pointation of respondent recovered the stolen articles but neither any disclosure memo was prepared nor produced in evidence. Even otherwise, any confession before the Investigation Officer is not admissible under Article 39 of Qanun-e-Shahadat Order. The prosecution has failed to bring on record any convincing piece of evidence against the respondent to connect him with the commission of the alleged offence. All the facts and circumstances of the case, prima facie, make the prosecution case doubtful.

12. The interference by this Court would be warranted, if the reasoning of the learned 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/ respondent through a well-reasoned judgment. The learned counsel for the appellant has 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].**

13. 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."*

14. I have been supported by the reported judgment of Hon'ble Apex Court titled as *"Mukhtar Ali v. The State"* **(PLD 1971 SC 725)**.

> *"It is well settled principle of administration of justice and rule of prudence stipulates that the prosecution has to prove its case beyond the shadow of any doubt. The contention of the learned State counsel does not find any place within the four corners of administration of justice that the petitioner has failed to discharge the onus of innocence. It is a well settled rule of prudence that the accused has not to prove his innocence until and unless proven guilty. The golden principle of administration of criminal law under the Islamic Jurisprudence is that benefit of slightest doubt shall necessary be extended in favour of the accused and not otherwise."*

15. It is pertinent to mention here that considerations for interference in an appeal against acquittal and in an appeal against conviction are altogether different. The appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from the appeal against acquittal because presumption of double innocence is attached with the latter case. The well settled principles for the appreciation of appeals against acquittal as has been held by the Hon'ble Supreme Court in the judgment report as *"Muhammad Iqbal Vs. Abid Hussain alias Mithu and 6 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. *The apex 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. As such, the learned trial Court has rightly acquitted the respondent from the charge giving him benefit of doubt.*

16. I have found no illegality or irregularity in the impugned judgment passed by the learned trial Court, nor the same is suffering from any misreading, non-reading, or misappropriation of material available on record, warranting interference by this Court.

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

(GHULAM AZAM QAMBRANI)
JUDGE

Announced In Open Court On 15th July /2020

JUDGE

Rana.M.Ifz.