

Form No: HCJD/C-121
JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Appeal No. 361/2019

Chaudhry Sohail Inayat
Versus
The State and others.

Petitioner By : Mirza Hasib Hussain, Advocate.
Respondents : Mr. Farhat Ullah Jan, Advocate.
No.2,3 & 5 By : Hafiz Malik Mazhar Javed, State
State By Counsel along with Iftikhar, A.S.I & Gul
Khan, ASI, with record.
Date of Hearings : 25.02.2020

Ghulam Azam Qambrani, J.:- Through the instant appeal, the appellant has assailed order, dated 05.10.2019, passed by the learned Judicial Magistrate Section-30 (West), Islamabad, whereby respondents No.2 to 8 have been acquitted under Section 249-A of Cr.P.C. from the charges in case F.I.R No.25, dated 20.01.2017 registered under Sections 395 & 412 PPC at Police Station Ramna, Islamabad.

2. Brief facts of the case are that on 20.01.2017, one Chaudhry Sohail Inayat lodged FIR No.25/2017 at Police Station Ramna, Islamabad, with the averments that on 16.01.2017 at about 12:15 p.m. when he reached at his workshop (S.S Traders), he found that door was opened, the articles in the office were scattered and further found that the employees namely, Saif Ullah and Aziz Imran

were tied with ropes with each other. In the meanwhile, he made a call to 15 and the police reached at the spot. On scrutiny it was found that two Toyota vehicles Land Cruiser Model 1992 white colour, AFP and Honda diesel, Model 2014 DJ-788, original registration book, TV, laptop, printer, batteries and nine keys of all the above mentioned vehicles, Rs.38,000/-, two mobile phones and others documents were missing. On query, the above mentioned employees explained that in the past night at about 11:00 p.m., when they came to the workshop, four armed persons overpowered, roped and confined them in a room and looted the articles mentioned hereinabove.

3. During the course of investigation, the police on 12.10.2017 recorded the statements of the witnesses namely, Saifullah and Aziz Imran, under Section 161 Cr.P.C. Pursuant to identification parade, the respondents were arrested on 27.10.2017. Recovery of two batteries, a laptop and Q-mobile phone was affected from the respondents.

4. The learned counsel for the appellant has contended that; the impugned order is based on surmises and conjectures; after framing of charge the learned trial Court while entertaining application under Section 249-A Cr.P.C, acquitted respondents No.2 to 8 holding that the case of the prosecution was highly doubtful and there was no possibility of conviction of the respondents on the basis of evidence

available on record. Hence, prayed for setting aside the impugned order.

5. Conversely, the learned counsel for respondents opposed the contentions raised by the learned counsel for the appellant and contended that the respondents are not nominated in the FIR; the faces of the dacoits were not seen by the witnesses, as it were muffled at the time of commission of the alleged offence; the eye witnesses namely, Saifullah and Aziz Imran, in their statement recorded under Section 161 Cr.P.C have clearly stated that they could not identify the culprits due to their muffled faces; the details of the alleged snatched mobile phones, laptop, batteries have not been mentioned in their statements by the prosecution witnesses on the basis whereof the alleged recoveries become highly doubtful and the learned trial Court has rightly acquitted the respondents.

6. Arguments heard, record perused.

7. Perusal of record reveals that the FIR has been registered after an inordinate and un-explained delay of five days on 20.01.2017 while the date of occurrence has been mentioned as 15.01.2017. In the case in hand, the complainant himself is not the eye witness of the alleged occurrence. Perusal of the eye witnesses of the incident shows that they could not identify the accused, as their faces were muffled at the time of commission of the offence. The respondents/accused persons were arrested on 12.10.2017 and

the identification parade of the accused namely, Tabbasum Ibrar and Naik Nawaz was conducted on 27.10.2017, while the identification parade of other accused persons namely, Khalid Zaman and Gul Wali Shah was conducted on 02.03.2018.

8. The mode of conduct of the identification parade is totally against the principles and law. The structure, wearing and height of the dummies have not been mentioned therein and the mode of conduct has not been stated during the course of identification parade. The crucial point to the prosecution case with regard to identification of accused is that on the very day the eye witnesses in their statements have clearly stated that they cannot identify the culprits due to the fact that the culprits were with muffled faces. On the other hand, witnesses in their statements have not explained the details to the effect of height and body structure of the culprits and after such a span of time it was impossible for the eye witnesses to have identified the above mentioned accused persons in the identification parade.

9. The proceedings of the identification parade in the above manner cannot be accepted by a prudent mind which makes the case of the prosecution highly doubtful. So far as the alleged recovery of laptop, mobile phone, batteries is concern, to this effect it is stated that the complainant failed to mention the details made of, model, colour of the alleged looted articles and subsequent alleged recoveries cannot be said to be the same which were looted

from the crime scene. It is also important to mention here that the recoveries of batteries and mobile phone also cannot be said that these are the looted articles, which also create doubts in the case of prosecution. It is also a fact that none of the vehicles was recovered from the possession of the respondents/accused. Only alleged recovery of above mentioned articles is not sufficient to connect the respondents with the commission of offence. The contention of the learned counsel for the appellant is that the statements of all the prosecution witnesses have not been recorded by the learned trial Court. Even if the evidence of the other witnesses who are formal in nature is recorded, it would not be beneficial or useful to the prosecution and will tantamount to be a futile exercise. From the statements of the eye witnesses and the available material on record reveal that the prosecution has failed to prove the case beyond any shadow of doubt and the learned trial Court has rightly acquitted the respondents from the charge.

10. It is pertinent to mention here that considerations for interference in an appeal against acquittal and 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 of law for the appreciation of appeals against acquittal as have been held by the Hon'ble Supreme

Court in the judgment reported 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 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 learned trial Court, after proper appraisal of the material available on record has rightly concluded that the prosecution has failed to prove the case against the respondents/accused beyond any shadow of doubt. I have found no illegality or irregularity in the

impugned order nor same is suffering from any misreading or miss-appreciation of evidence. I see no reason to interfere in the impugned order. Resultantly, this Criminal Appeal having no force is hereby **dismissed.**

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in an open Court, on 3-3.2020.

JUDGE

**A. Rahman Abbasi.*