

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.291/2019

Mussarat Zafar
Vs.
Akhter Iqbal, etc.

Sr.No.	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	27.01.2020	Mian Nadeem Aziz Jatala, Advocate for the appellant.

GHULAM AZAM QAMBRANI. I. Appellant
(Mussarat Zafar wife of Zafar Iqbal) seeks setting aside of impugned judgment dated 09.07.2019, passed by the learned Senior Civil Judge-I (Judicial) Islamabad-East, whereby respondents No.1 to 3 were acquitted.

2. Briefly stated, prosecution case is that the complainant/ appellant got registered F.I.R No.260 dated 28.09.2017 with Police Station Khanna, under Section 427/380/506 PPC, Islamabad, with the averments that on 23.07.2017, when complainant was returning from market, saw that respondents No.1 to 3 after breaking the back door/mirror of her vehicle with brick, took her purse which was containing cash of Rs.8500/-, ATM/credit cards and as the accused persons saw her, they ran away while extending threats of dire consequences to the complainant. Appellant identified them and immediately called 15 police who visited and inspected the place of occurrence.

Investigation of the case was conducted. Investigating Officer recommended for submission of cancellation report, however, DSP/SDPO directed for submission of report u/s 173 Cr.P.C. by placing accused in Column No.2 of the report.

3. Charge against the accused was framed to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined the following witnesses:-

- i. PW-1 Musarrat Zafar (complainant),
- ii. PW-2 Zafar Iqbal,
- iii. PW-3 Zulifqar Ali,
- iv. PW-4 Iftikhar Ali Khan- A.S.I/
Investigation Officer,
- v. PW-5 Sarfaraz Ali Nasir- H.C,

After closure of the prosecution evidence, the accused/respondents No.1 to 3 were examined under Section 342 Cr.P.C wherein they denied the entire allegations leveled against them and they did not opt to record statement on oath as envisaged under Section 340 (2) Cr.P.C. The learned Trial Court after hearing the arguments of the learned counsel for the parties passed the judgment dated 09.07.2019, (hereinafter be called as the impugned judgment.)

4. The appellant being aggrieved of the impugned judgment has challenged the same through the instant appeal.

5. Learned counsel for the appellant contended that impugned judgment is against the law and facts of the case; that the learned Trial Court while

acquitting the accused persons has failed to appreciate that the occurrence was promptly reported to the police; that the impugned judgment is based on surmises and conjectures, therefore, not sustainable in the eye of law; that there was sufficient material available on record against the accused persons, as such the impugned judgment is liable to be set-aside.

6. Heard arguments of the learned counsel for the parties and perused the available record.

7. Minute perusal of the record reveals that there are material contradictions in the statements of all the five prosecution witnesses. PW-2 during cross-examination admitted that he did not see any of the three persons striking the mirror of the vehicle of the complainant. PW-3 in his cross-examination deposed that he did not see any person breaking mirror of the vehicle and further stated that he saw Akhter and his two sons at the place of occurrence whereas Zafar was not present there. Even the Investigation Officer of the case has not supported the prosecution version and admitted that according to his investigation, no such occurrence had taken place and also deposed that he had submitted the discharge report of the instant case.

8. 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 for the appreciation of appeals against acquittal and in an appeal from conviction are altogether different. The well settled principles for appreciation of appeal against acquittal as has been held by the Hon'ble Supreme Court of Pakistan 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. *That 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.

9. Keeping in view the above principles, it transpires from the record that there are material contradictions in the statements of all the PWs, even the Investigating Officer deposed that according to his investigation, no such occurrence had taken place and even he has prepared the discharge report of the instant case. As such the learned Trial Court has rightly acquitted the accused persons by giving them benefit of doubts.

10. The Hon'ble Supreme Court of Pakistan in the case reported as *Muhammad Karim Vs. The State* (2009 SCMR 230) has held as under:-

"in case of doubt, the benefit thereof must be given to accused as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to benefit, not as matter of grace and concessions, but as matter of right."

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."

In the case reported as **Raheel and others Vs. The State and others** (2015 P.Cr.L.J. 470), it has been held that:-

"If any doubt would arise from the prosecution evidence, benefit of same was to be extended to accused."

11. The learned Trial Court after proper appraisal of evidence available on record has rightly concluded that the prosecution has failed to prove the case against the accused/ respondents No.1 to 3. I have found no illegality or irregularity in the judgment impugned, nor the same is suffering from any misreading or non-reading or misappropriation of evidence.

12. Resultantly, the instant appeal having no force, is **dismissed in limine**.

(GHULAM AZAM QAMBRANI)
JUDGE

INTIAZ*