

JUDGMENTSHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No.99/2020

The State
Versus
Zafran Mehmood Satti

Appellantby: Mr. Zohaib Hassan Gondal, State Counsel
with Iqbal SI.

Date of decision: 19.05.2020.

Ghulam Azam Qambrani, J.:-By invoking the appellate jurisdiction of this Court under Section 417 (2) Cr.P.C., the State through Advocate General Islamabad, has assailed the impugned judgment pronounced on 29.01.2020, by the learned Judicial Magistrate, Section-30, Islamabad-East, whereby the above named respondent had been acquitted. Through the captioned appeal a prayer for reversal of aforesaid judgment has been made.

2. Briefly stated facts of the instant appeal are that on the written report of Muhammad IqbalGujjar, S.I of C.I.A Staff, Islamabad, F.I.R No.69/2019, was registered with the Police Station Khanna, Islamabad, under Section 13/20/65 of ArmsOrdinance, 1965, with the averments that he along with other police officials was on area patrolling;that in the meanwhile, he received a spy information regarding a person having unlicensed arm standing at a bus stop. On receiving such information, the police party reached at the spot and at the indication of informer, the person, who disclosed his name ZafranMehmood,was overpowered. It has been alleged that on his personal search, 30-bore pistol was recovered from right side dub of his trouser; upon checking, it was found that the alleged recovered pistol was loaded with six alivecartridges, for which the accused/ respondent failed to produce any license or permit for keeping the said weaponin his possession.

3. The police after usual investigation, submitted challan under Section 173 Cr.P.C., before the learned Court of Judicial Magistrate, East-Islamabad. The learned trial Court after fulfilling codal formalities, framed the chargeagainst the respondent/ accused to which he pleaded not guilty

and claimed trial. In support of its case, the prosecution has produced as many as three witnesses, as follows:-

- PW- 1 Muhammad Anar, A.S.I
- PW- 2 Muhammad Iqbal, S.I/Complainant
- PW- 3 Arif Hussain, Head Constable

4. In order to prove its case, the prosecution examined PW- 1 who has stated that on 27.02.2019, at about 09:30 p.m., he was at Police Station Khanna, at that time, Head Constable Adnan placed before him the report prepared by PW- 2 S.I Muhammad Iqbal, upon which he lodged F.I.R No.69/2019 (Exh.P1), under Section 13/20/65 Arms Ordinance, 1965. During cross-examination, he has stated that the accused was never kept at the Police Station. He also has stated that alleged recovered arm was also not kept at the Police Station.

5. PW- 2 is the complainant and Investigation Officer of the case; he has narrated the whole story as mentioned in the contents of the F.I.R; he has produced the pistol 30-bore (Article P1) and alive cartages (Article P2-P7). During cross-examination, he admitted that he did not inform the high-ups about receiving of spy information. He has also admitted that after receiving such spy information, he did not mention the fact in Roznamcha. He also did not mention the fact in the Roznamcha that on spy information he is leaving the Police Station. He has admitted that the alleged place of recovery was a thickly populated area but he did not associate any independent witness from the locality. He has also admitted that he did not send the alleged recovered pistol to the Fire Arms Expert for opinion whether it was functional or otherwise.

6. PW- 3 Arif Hussain, he is the witness of recovery memo (Exh.PB). He has deposed that on the spy information at about 08:40 pm at Barma Town Bus Stop, the respondent/ accused was arrested by PW- 2, on his personal search a 30-bore pistol alongwith six alive cartridges was recovered from his possession, for which he failed to produce any license. The pistol was taken into possession through recovery memo (Exh.PB). During cross-examination, he admitted that at the place of occurrence, there was rush of people. The witness has shown his ignorance about associating any independent private witness from the locality. This witness also admitted that no sealed parcel of the alleged recovered pistol was prepared at the spot.

7. After closure of the prosecution evidence, the learned trial Court has examined the respondent/ accused wherein he has categorically denied the allegation leveled against him. The respondent/ accused has not opted to record statement on oath, as envisaged under Section 340 (2) Cr.P.C nor has produced any evidence. After hearing final arguments, the learned trial Court has acquitted the respondent/ accused vide judgment dated 29.01.2020, feeling aggrieved, the State through Advocate General, Islamabad, has filed the instant appeal.

8. Without dilating upon the details of prosecution evidence, besides material available on record elaborately discussed by learned trial Court, to ascertain perversity or otherwise of the impugned judgment stated to be fanciful and shocking, against facts and law, leading to miscarriage of justice, I would like to have a cursory perusal and scan of the impugned judgment, evidence and material on record with the valuable assistance of learned State counsel.

9. From minute perusal of the record, it reveals that on spy information, the police has allegedly recovered an unlicensed pistol from the possession of respondent/accused at a thickly populated area and no plausible explanation has been given by the prosecution for not associating any witness from the public though easily available and that there is no proof that any efforts were made to persuade any body from the locality to act as witness of the recovery which is a flagrant violation of Section 103, Cr.P.C. It is also important to mention here that on spy information the police reached at the place of alleged recovery and the police officials had sufficient time to call independent and respectable persons of locality to make them witnesses in this case which has not been done. Reliance in this regard is placed upon the case of **Qalandro alias Nazro Vs. The State** [1997 MLD 1632].

10. It is settled proposition of law that conviction under Section 13-D Arms Ordinance, cannot be maintained unless the weapon allegedly recovered was sealed at the spot and the opinion of the Forensic/ Ballistic Expert is obtained and produced on record to prove that the weapon so recovered from the accused, was in-fact functional. Non-sealing of the articles recovered, is another factor which impairs the prosecution case. In the case of **Saijan v. The State** [1998 PCr.LJ 1399], it has been observed that in the absence of that the weapon and ammunition having not been sealed upon the recovery and in the absence of the said weapon having

not been certified to be functional, renders the prosecution case against the respondent/ accused to be doubtful. In this regard, I am fortified by the law laid down in **Nazar Muhammad Vs. The State** [1996 P.Cr.L.J. 1410] and **Fareed Ahmed Langra Vs. The State** [1998 P.Cr.L.J. 1368], **Loung through Superintendent Central Prison, Hyderabad Vs. The State**, (1999 P.Cr.L.J. 595) **Mehar vs. The State** [2006 YLR 661] and **Sajjad Vs. State** (1998 P.Cr.L.J. 1299).

11. The non-preparation of sealed parcel of the allegedly recovered pistol at the spot and several other circumstances create doubts as to the truthfulness of the prosecution case. It is a settled principle of law that benefit of doubt always goes to an accused and for that purpose it is not necessary that there must always be multiple circumstances to create doubt but even a single circumstance creating a reasonable doubt as to the guilt of an accused entitles him to such benefit. In the case of **Tariq Parvez v. The State** [1995 SCMR 1345] while setting aside the conviction and sentence of an respondent/ accused therein, it has been observed that for giving an accused benefit of doubt it is not necessary that there should be many circumstance creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

12. It is pertinent to mention here that in criminal cases, the prosecution is duty bound to prove its case against the accused beyond reasonable shadow of doubt and if some doubt is created in the prosecution case then the accused is to be acquitted not as a matter of grace but as a matter of right. Perusal of the impugned judgment transpires that the learned trial Court while appraising the prosecution evidence, highlighted some material contradictions in the testimonies of PWs, beside inconsistencies. The learned trial Court after discussing the prosecution evidence in detail observed that the prosecution has miserably failed to prove its case against the respondent /accused. Admittedly conviction cannot be based on probabilities and that the suspicion cannot take the place of proof.

13. 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.”

14. It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely lies upon the prosecution. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof. Reliance in this regard is placed upon the cases of **Ghulam Akbar and another Vs. The State** [2008 SCMR 1064], **Sanaulah Vs. The State through Prosecutor General** [2015 P.Cr.L.J. 382 (Balochistan)], **Raheel and others Vs. The State and others** [2015 P.Cr.L.J. 470], **Loung through Superintendent Central Prison, Hyderabad Vs. The State**, (1999 P.Cr.L.J. 595) and **Tariq Parvez Vs. The State** (1995 SCMR 1345).

15. 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.*

16. Keeping in view the above principles, it transpires from the record that there are material contradictions in the statements of all the PWs, as such the learned trial Court has rightly acquitted the respondent/ accused person by giving him benefit of doubts.

17. Order of acquittal can only be interfered with, if it is found on the face it to be capricious, perverse, arbitrary in nature or based on misreading, non-appraisal of evidence or is artificial, arbitrary and lead to gross miscarriage of justice. Mere disregard of technicalities in a criminal trial without resulting injustice is not enough for interference. Suffice is to say that an order/judgment of acquittal gives rise to strong presumption of innocence rather double presumption of innocence is attached to such an order. While examining the facts in the judgment of acquittal, substantial weight should be given to the findings of the lower courts, whereby accused was exonerated from the commission of crime as held by the Hon'ble Supreme Court of Pakistan in the cases reported as "**Muhammad Ijaz v. Fahim Afzal**"[1998 SCMR 1281] and "**Jehangir v. Aminullah and others**"[2010 SCMR 491]. It is also settled principle of law that acquittal would be unquestionable when it could not be said that acquittal was either perverse or that acquittal judgment was improper or incorrect as it is settled that whenever there is doubt about guilt of accused, its benefit must go to him and Court would never come to the rescue of prosecution to fill-up the lacuna appearing in evidence of prosecution case as it would be against established principles of dispensation of criminal justice.

18. It is not out of context to say that conviction could only be based upon unimpeachable evidence and certainty of guilt. Suffice it to say that the impugned judgment is speaking one, does not suffer from misreading, non-reading or non-appraisal of evidence or lack of appreciation of material evidence or jurisdictional defects or evidence of material nature produced by the prosecution were not recorded or that the acquittal judgment is based on surmises, supposition, conjectures and the acquittal is based upon reasons which do not appeal to a prudent mind. In the instant matter, prosecution case is filled with dents, lacunas creating loop holes, doubts in a reasonable mind, ultimately leading to incredibility pertaining to actual commission of offence in the manner or mode set out

by the prosecution. There is hardly any improbability or infirmity in the impugned order of acquittal recorded by the learned trial court, which being based on sound reasons does not warrant any interference by this Court and is accordingly maintained.

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

(GHULAM AZAM QAMBRANI)
JUDGE

"Rana.M.Ift"

"Approved for reporting."

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