

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.32 of 2020

Hajra Kayani
Vs.
Nasreen Younas and others

Sr.No.	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	14.02.2020	Mr. Muhammad Yahya Ahmed Minhas, Advocate.

GHULAM AZAM QAMBRANI J.:- Appellant

(Hajra Kayani) assailed the judgment dated 25.09.2019, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, in case F.I.R 228 dated 16-07-2016, under Sections 380 & 109 P.P.C registered Police Station Sabzi Mandi, Islamabad, whereby the respondents/ accused were acquitted from the charge.

2. Briefly stated facts of the prosecution case are that on 16.07.2016, the complainant namely Hajra Kayani lodged F.I.R No.228/2016 with Police Station Sabzi Mandi, Islamabad, with the averments that she along with family are residing at House No.1768, Street No.25, Sector I-10/2, Islamabad. On

14.06.2016, their relative Nasreen Begum came to visit them from Sahiwal and she was given a room in their house, where mother-in-law of the complainant was already residing. A briefcase was lying in the almirah wherein jewelry, Rs.29,000/- (twenty nine thousand only) cash etc, were kept. It has been alleged that on 28.06.2016, when the above said guest left their house, she checked the briefcase lying in the Almirah and found that the above said cash and jewelry were missing. After registration of the F.I.R, the brother of accused, namely Mureed Hussain, was also involved in the matter allegedly being the conspirator of the offence. Both, the accused persons namely Mureed Hussain and his sister Nasreen Begum, filed pre-arrest bail application which was dismissed due to their non-appearance. Resultantly, police arrested them. After thorough investigation, challan was submitted before the learned Judicial Magistrate, Section-30 (West), Islamabad.

3. The learned Judicial Magistrate, after fulfilling the codal formalities, framed charge against the accused persons to which they denied

and claimed Trial. The prosecution was directed to produce evidence. In order to prove the case, the prosecution produced only complainant of the case as PW-1. The accused persons filed an application under Section 249-A Cr.P.C. The learned trial Court heard arguments on the application and vide order dated 25.09.2019, acquitted the respondents/accused from the charge. Feeling aggrieved from the order dated 25.09.2019; the appellant has filed the instant appeal.

4. The learned counsel for the appellant contended that there were three other witnesses but their statements were not recorded by the learned trial Court and passed the impugned order, in a hasty manner, which is nullity in the eyes of law and prayed for acceptance of the appeal.

5. I have heard the learned counsel for the appellant and perused the available record.

6. The perusal of record reveals that the incident is stated to have been committed on 14.06.2016, while F.I.R has been registered on 16.07.2016, after about delay of more than one

month without any plausible explanation. There is no direct evidence available on record to connect the respondents/accused with the commission of the alleged offence. Both respondents were arrested and interrogated by the police but nothing was recovered from them. In the statement of complainant, she has made dishonest improvements with regard to the alleged stolen articles. Complainant is the only witness against the accused persons who initially nominated the accused Nasreen Younas and thereafter, she also involved her brother, namely Mureed Hussain on account that he had telephonic contact with Nasreen Begum. On the other hand, the lady accused was involved on the basis of doubt that she stayed at their house, as guest. There is not an iota of evidence to connect the accused persons with the commission of the alleged offence, even the specific date and time of the alleged occurrence has also not been mentioned.

7. The record further reflects that an affidavit of one Mst. Shaista Begum has been placed on record wherein she stated that the accused Nasreen

Younas, on 07.07.2016, came to their house on the Eid Day and gave Rs. 500/500 each to their child as Eidi and she saw some gold articles in her hand. She further stated that lady accused had no means to purchase such gold articles. There is statement of one Ejaz ul Haq wherein he has stated that the daughter of Nasreen Begum came at their house, she had been wearing gold articles and afterwards he came to know that the gold ornaments were infact stolen one from the house of complainant and another witness, namely Asif Javaid, has stated that the respondent/Nasreen had stolen her laptop and mobile phone from their house.

8. I have given anxious thought to the statements of these witnesses recorded under Section 161 Cr.P.C. Neither they are eyewitnesses of the alleged occurrence nor have given any sort of role in their statements to the respondents to connect them with the commission of the alleged offence. If the statements of these witnesses were recorded by the learned Judicial Magistrate, even then, these were not helpful to the prosecution.

9. 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 and rightly acquitted the accused persons. 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, warranting interference by this Court.

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

(GHULAM AZAM QAMBRANI)
JUDGE

Rana. M.Ift