

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Criminal Appeal No. 178 /2015**

Aamir Qayyum Janjua  
Versus  
The State

Appellant by: Adnan Qamar, Advocate.  
State by: Mr. Nazar Hussain Shah, AAG with  
Shehryar SI/F.I.A.  
Date of Hearing: 21.08.2020

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**Ghulam Azam Qambrani, J.:** The appellant, through the instant Criminal Appeal has assailed impugned judgment, dated 31.10.2015, passed by the learned Additional Sessions Judge- IV- West, Islamabad, in case F.I.R No.22, dated 24.06.2014 registered at Police Station F.I.A Cyber Crime Circle, Islamabad, for the offence under Sections 36, 37 ETO , 2002 read with Section 419 P.P.C, whereby the appellant was acquitted under Sections 36/37 ETO,2002, but was convicted under Section 419 PPC and sentenced for a period of three years with fine of Rs. 25,000/-, in default whereof to further undergo S.I for one month. Benefit of Section 382-B Cr.P.C was also given to the accused/appellant.

2. The brief facts of the prosecution case are that appellant/accused Aamir Qayyum Janjua illegally and un-authorizedly accessed the information system in the name of daughter of complainant namely Shaheen Akhtar and created following face-book profiles with malafide intention to defame/harass the daughter of the complainant Shaheen Akhtar and his family:-

- (i) [www.facebook.com/janjua.?fref=ts](http://www.facebook.com/janjua.?fref=ts)
- (ii) [www.facebook.com/profile.php?id=1000055455650098fref=ts](http://www.facebook.com/profile.php?id=1000055455650098fref=ts)
- (iii) [www.facebook.com/paree.gul.5?fref=ts](http://www.facebook.com/paree.gul.5?fref=ts)
- (iv) [www.facebook.com/profile.php?id=100008308787948 &fref=ts](http://www.facebook.com/profile.php?id=100008308787948&fref=ts)
- (v) [www.facebook.com/sofigee.94](http://www.facebook.com/sofigee.94)

- (VI) [www.facebook.com/profile.php?id=100008308787948](http://www.facebook.com/profile.php?id=100008308787948) & fref=ts  
 (vii) [www.facebook.com/sheena.pari.35](http://www.facebook.com/sheena.pari.35)

The accused person also transmitted vulgar comments, uploaded photos and audio material on the said face book profiles, hence, above mentioned FIR was lodged against the appellant/accused.

3. After usual investigation, the challan was submitted before the learned Trial Court. After taking cognizance, and after fulfilling the codal formalities, charge was framed against the appellant under Sections 36 & 37 of Electronic Transaction Ordinance, 2002 and Section 419 PPC to which the appellant/accused pleaded not guilty and claimed trial.
4. In order to establish the case, the prosecution examined following six witnesses.-

PW-1	Wasif Waseem Shah, Constable
PW-2	Imran Haider, Senior Investigator Technical FIA,
PW-3	Fazal Din son of Muhammad Din (Complainant)
PW-4	Shaheen Akhtar d/o Fazal Din ( victim),
PW-5	Fazal Mehmood s/o Abdul Khaliq SI, Cyber Crime Circle F.I.A
PW-6	Mehmood ul Hassan, Deputy Director Forensic Laboratory F.I.A.

5. After closure of the prosecution evidence, the appellant/accused was examined u/s 342 Cr.P.C., wherein he categorically denied the accusation and stated that he was falsely implicated in this case by F.I.A in connivance with the complainant and claimed innocence. The accused did not opt to record his statement under Section 340 (2) Cr.P.C.

6. After hearing the final arguments, the learned trial Court convicted the appellant by means of impugned judgment dated 31.10.2015 and observed “ *I do find that the accused is not guilty under Section 36/37 ETO, 2002 and hence he is acquitted of these two charges. However the accused is found guilty and, I convict him under Section 419 P.P.C and sentence him for the term of three years with fine of Rs. 25,000/- and in default of payment of fine he will further undergo S.I for one month. The benefit of Section 382-B Cr.P.C is given to the accused*”. Feeling

aggrieved from the impugned judgment, the appellant/accused has filed instant appeal.

7. Learned counsel for the appellant has contended that there is no evidence on record to connect the appellant with the commission of alleged offence; even the IP address was not confirmed; that during the evidence of the prosecution, it came on record that no facebook profile in the name of Ms.Shaheen Akhtar was mentioned in the report Ex.P3; that no offence is made out against the appellant/accused; that dishonest improvements were made by the PWs which were not taken into consideration by the learned Trial Court and nothing was recovered from the appellant/accused. Lastly prayed for setting aside of the impugned judgment.

8. Conversely, Assistant Attorney-General opposed the contentions raised by the learned counsel for the appellant/accused and contended that the prosecution has proved its case against the appellant; that computer was recovered which was provided by the brother of the appellant; password of the profile was given by the appellant himself and technical report Ex.P3 and forensic report Ex.P5/4 were prepared and produced. Lastly urged for dismissal of the appeal.

9. I have heard the arguments of the learned counsels for the parties and have perused the available record with their able assistance.

10. Perusal of the record reveals that the appellant was booked for commission of offence that he illegally and un-authorisidely accessed the information system in the name of daughter of complainant namely Shaheen Akhtar and created seven number of facebook profile on her name with the intention to defame and harass her. It has also been alleged that the appellant has transmitted vulgar comments, uploaded photos and audio video material on the above-mentioned facebook profiles.

11. It is evident from the statement of PW.4 Ms.Shaheen Akhtar that she was well acquainted with the appellant and she, with her consent had delivered her educational documents and photographs to him and the record further depicts that previously there was also criminal litigation in between them registered by the appellant against the complainant party. The prosecution has miserably failed to prove the

allegation against the appellant that he un-authorizedly accessed the information system in the name of daughter of complainant and created face-book profiles in the name of Ms. Shaheen Akhtar. The learned Trial Court being satisfied that there was no such evidence, therefore, acquitted the appellant under Section 36/37 of the Electronics Transactions Ordinance, 2002, however convicted him under Section 419 PPC for cheating by personation.

12. I have carefully gone through the statements of the witnesses. PW.2 Imran Haider, Senior Investigator Technical FIA Cyber Crime Circle, Rawalpindi, during his cross-examination has admitted that in the facebook profiles the name of Ms.Shaheen Akhtar was not mentioned and to another question, he has also admitted that the facebook profiles upon which he submitted the technical report Ex.P3/2 is not in the name of Ms.Shaheen Akhtar. He has also admitted that there is no naked photos and vulgar comments in Ex.P3/5 and Ex.P3/6. PW.6 Mehmood-ul-Hassan, Deputy Director Forensic Laboratory FIA, in his statement has deposed that on 10.07.2014 he received a letter from Deputy Director FIA, Rawalpindi, regarding Forensic Report in FIR No. 22/2014 and then he prepared such report consisting upon thirty one pages. He has produced the report Ex.PW.5/4. This witness has not explained anything in his statement and only has produced his above mentioned report. Perusal of report Ex.PW.5/4 consisting upon thirty one pages does not disclose any fact suggesting or proving that the appellant un-authorizedly accessed the information system of the ID of Ms.Shaheen Akhtar, and report is also silent that the appellant has created a facebook account in the name of Ms.Shaheen Akhtar representing himself to be facebook users as Ms. Shaheen Akhtar. There are material dishonest improvements in the statements of the witnesses. Further more, the recovery of computer and modem was made through Azhar Hussain vide Ex.PW.5/3, which is un-dated. Admittedly, the appellant was at Adiala Jail, Rawalpindi, in another case. The recovery of computer through undated recovery memo, has caste serious doubt in the case of prosecution.

13. For the forgoing reasons, I am of the considered opinion that there is no evidence on record that the appellant has created any facebook profile in the name of Ms. Shaheen Akhtar, therefore, no case under Section 419 PPC is made out against the appellant. The conviction recorded by the learned Trial Court is not sustainable,

therefore, this appeal is accepted and the impugned judgment dated 31.10.2015, passed by the learned Additional Sessions Judge- IV- West, Islamabad, is set aside and the accused is also acquitted of the charge under Section 419 PPC. The sentence of appellant was suspended by this Court vide order dated 11.06.2019 and convict/appellant was released on bail. The surety shall stand discharged of his liability.

~~(GHULAM AZAM QAMBRANI)~~  
JUDGE

Announced in open Court on this 27<sup>th</sup> day of August, 2020.

~~JUDGE~~

S.Akhtar