

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

Criminal Appeal No. 102/ 2018

Syeda Tahireen Fatima

Versus

The State and another

Appellant by:	Mr. Khurram Mehmood Qureshi, Advocate.
Respondent No.2 by:	Mr. Muhammad Fakhar Hayat Awan, Advocate.
State by:	Mr. Hammad Saeed Dar, State Counsel with Mr. Shahid Warraich, Sub-Inspector.
Date of Hearing:	15.09.2020

Ghulam Azam Qambrani, J.: This appeal has been filed against the impugned judgment dated 27.09.2016 passed by the learned Additional Sessions Judge-V, Islamabad-East, whereby the respondent/ accused was acquitted from the charge, in case F.I.R No.50 dated 26.05.2015, under Sections 324, 109, 34 P.P.C and 25-D of Telegraph Act, 1885, registered at Police Station Khanna, Islamabad.

2. Briefly stated facts of the prosecution case are that the on the application of petitioner/ complainant above-mentioned F.I.R was registered, wherein, she alleged that the respondent/ accused followed her vehicle and the respondent Sohail Altaf opened two fires shots with pistol at her which landed on mirror and door of the car, wherein, she was travelling but miraculously saved. However, she identified Sarfaraz and Sohail who had pistol in their hand. Motive behind the said incident was that she had filed family suits against her husband and she was continuously receiving threat calls from his husband and others, and has further alleged that the respondent/ accused Sohail and others, at the behest of her husband, tried to kill her.

3. After registration of the F.I.R. investigation was carried out; during the course of investigation, respondent surrendered himself, joined the investigation with the plea that at the time of alleged occurrence, he was out of country and in support of his contention produced his original passport. Thereafter, the petitioner/ complainant filed an application, which was made part of the challan wherein she had mentioned that the person who made fires at her was looking like the respondent namely Sohail and had further mentioned that it was a service road where there was dim light. The investigation officer has also verified the travel history of the respondent/ accused through the record of F.I.A.

4. After completion of the investigation, report under Section 173 of Cr.P.C., was submitted before the learned Court of Judicial Magistrate, Section-30, Islamabad-East. The respondent/ accused and co-accused Sarfaraz Ahmed filed applications under Section 249-A Cr.P.C before the learned trial Court, which were dismissed, vide order dated 21.05.2016. Feeling aggrieved from the dismissal order, both filed separate revision petitions before the learned Court of learned Additional Sessions Judge-V, Islamabad-East. The learned Court of Additional Sessions Judge, after hearing the parties accepted the revision petition of present respondent, whereby, he was acquitted from the charge whereas, the revision petition filed by the accused, Sarfaraz Ahmed, was dismissed. The petitioner/ complainant through her attorney has filed the instant acquittal appeal.

5. Learned counsel for the appellant has contended that the impugned order is against the law, facts and circumstances of the case; that two crime empties were recovered during the course of investigation and there is statement of a witness namely Muhammad Niaz. The learned counsel further argued that the respondent is nominated with a specific role; that still the learned trial Court has not examined the prosecution witnesses at a premature stage, the application under Section 249-A Cr.P.C was

allowed in favor of the respondent/ accused resulting into miscarriage of justice. Lastly, prayed for the acceptance of the instant appeal with the direction to the learned trial Court to record the statement of witnesses.

6. *Per Contra*, learned counsel for the respondent opposed the contention of the learned counsel for the appellant stating that the appeal itself is not competent on the ground that the same has not been filed by the complainant herself; that the appeal in hand was filed on 04.11.2016 and thereafter on 11.12.2018, Miscellaneous Application No.513/2018 was filed seeking permission to sign the memo of appeal by the complainant/ appellant, which was not pressed and the same was dismissed as withdrawn vide Court order dated 18.12.2018; that the appeal has been filed through Muhammad Niaz who is stated to be the attorney for complainant Syed Tahireen Fatima; that in criminal cases, filing of appeal through attorney would not be competent; that without signatures of the appellant, it has been filed; that prior to alleged incident respondent was at United Kingdom, admittedly, he was not at the spot at the time of alleged occurrence; that the respondent has been malafidly involved in the case; that when it came into the knowledge of complainant that the respondent has produced documentary evidence that he was out of country, then she made a statement on 08.06.2015, to the police that the person who fired at her was likely to be the respondent; that number of opportunity were provided to the complainant for recording of her statement and for production of any evidence before the Court but she failed; that there is no evidence on record against the respondent; that there was no probability of conviction of the respondent; that the acquittal of respondent is in accordance with law, warrants no interference and lastly, urged for dismissal of the instant appeal.

7. Arguments heard, record perused.

8. Minute perusal of the record reveals that F.I.R No.50/2015 was registered under Section 324, 109, 34 P.P.C, 25-D Telegraph Act at Police Station Khanna, Islamabad, by the appellant against the respondent and some other accused person. During the course of investigation, only two empties had been recovered and in proof of the allegation, there is only the statement of one Muhammad Niaz who was stated to be the driver of the appellant. The investigation was carried out and initially the police reached to a conclusion that a fake and concocted report had been made, on the basis whereof, a final report was prepared on 25.02.2017 as no case was made out. During the investigation, the respondent surrendered himself before the learned Additional Sessions Judge, Islamabad-East, for the grant of pre-arrest bail, which was confirmed. The respondent also appeared before the police by submitting documentary evidence in the shape of his passport with the plea that at the relevant time he was in United Kingdom and was not in the Pakistan. The contention of the respondent was confirmed through the record of F.I.A and his travel history also confirmed that he was not inside the country. I have also gone through the supplementary statement dated 08.06.2015 made by the appellant wherein, she has clearly stated that the person who fired at her was looking like respondent/ Sohail Altaf. The record further reveals that the alleged occurrence was stated to have been occurred at a service road and admittedly, as stated there was dim light. The appellant in the contents of F.I.R has mentioned that it was the respondent who made fires at her but in the subsequent statement she has taken another stance that the person who fired was looking like the respondent. The reason behind the change of stance by the appellant was that the respondent appeared before the Court as well as cooperated with the investigation officer by submitting his original passport and other travelling document, wherefrom it was confirmed that at the date and time of alleged occurrence, he was at United Kingdom.

9. It is also transpired that the respondent is one of the close relative of the husband of appellant/ complainant, whereas family cases are pending in between spouses, as such, the malicious involvement of the respondent in the instant case cannot be ruled out.

10. The arguments of learned counsel for the respondent is that the instant appeal has not been filed by the appellant herself rather it has been filed through Muhammad Niaz being her attorney therefore, same is not maintainable. It is evident from the record that without obtaining signatures of the appellant it was filed on 04.11.2016, and thereafter C.M.No.315/2018 was filed by the learned counsel for appellant seeking permission for obtaining signatures thereon but later on, vide order dated 18.12.2018, the learned counsel for the appellant himself did not press the same and sought withdrawal of the same, which was allowed. It depicts that the appeal has not been filed by the appellant herself rather it has been filed by the signature of one Muhammad Niaz, who is not an aggrieved person and placing on record a copy of power of attorney, which has no concern with the instant appeal, therefore, the appeal in hand itself is not competent and not maintainable.

11. It has also been observed that from the date of framing of charge i.e. 12.10.2015 till the order sheet dated 17.07.2019 passed by Learned Senior Civil Judge-I, Judicial Magistrate, Islamabad-East, the complainant/ appellant and her witness, if any, failed to appear till such date for a considerable period of more than four year. Perusal of record further reveals that the complainant in the contents of F.I.R had nominated the respondent with a specific role, but, in subsequent statement, when it was surfaced that at the time of alleged occurrence, the respondent was in United Kingdom, then she changed her version that the person who made fires, was having resemblance with Sohail Altaf/ respondent and further in her subsequent statement dated 08.06.2015 she had also mentioned that there was dim light at the place of alleged occurrence, which made the case highly

doubtful and in such circumstances, there was no probability of the conviction of the respondent. The learned Additional Sessions Judge, East-Islamabad, through impugned order, has rightly accepted the application under Section 249-A Cr.P.C whereby, acquitted the respondent.

12. I have found no illegality or irregularity in the impugned judgment passed by the learned revisional Court, nor the same is suffering from any misreading, non-reading, or misappropriation of material available on record, warranting interference by this Court.

13. In the circumstances, there is no merit in the instant acquittal appeal; therefore, the same is hereby, **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 28th day of September, 2020.

Rana M. Ift.

JUDGE