

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : Criminal Appeal No.13-2012
Rana Imran Latif
Vs.
The State

Appellant by : Mr. Qaiser Imam, Advocate
Respondent by : Mr. Sajjad Haider Malik, Advocate
Mr. Yasir Barkat, State Counsel
Date of hearing : 04.04.2017

AAMER FAROOQ J. This appeal is directed against judgment dated 18.02.2012 in case FIR No.228 dated 14.07.2009 under sections 501/502/506/409 PPC & Sections 7, 8 & 9 of Prevention of Electronics Crimes Ordinance, 2007 registered with P.S. Industrial Area, Islamabad.

2. The case of the prosecution, against the appellant, is that in the year 2009 he, in connivance with his co-accused Syed Abid Hussain (P.O.), printed defamatory material, transferred the data of complainant's family, interpolated the same by misusing it from the electronic system of NADRA and published the same.

3. The prosecution, in support of its allegations, produced four witnesses namely Umar Shahab (PW-1), Tanvir Shahab (PW-2), Muhammad Sarfraz Malik (PW-3), Haibat Ullah (PW-4) & Abdul Sattar (PW-5). The statement of the accused was recorded under section 342 Cr.P.C. and he denied the allegations leveled against him. The learned trial court, vide the impugned

judgment, acquitted the appellant of the charges under Prevention of Electronics Crimes Ordinance, 2009, however, convicted him for the offence under section 501 PPC and he was accordingly punished with Simple Imprisonment of two years with a fine of Rs.1,00,000/-, in default thereof, to further undergo three months imprisonment. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

4. Learned counsel for the appellant, *inter alia*, contended that the prosecution failed to prove *mensrea* required for the offence in question hence the appellant could not have been convicted. It was further contended that the definition of defamation is provided in Section 409 PPC and under explanation to the same, the statement or the action does not amount to be defamatory unless the imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person or lowers the character of that person in respect to his caste or of his calling etc. In support of his contentions, learned counsel placed reliance on cases reported as PLD 2001 Karachi 1151, 2013 P.Cr.LJ 1737 & PLD 1996 Lah. 410).

5. Learned State Counsel, *inter alia*, contended that the prosecution duly proved its case beyond reasonable doubt. It was further contended that the witnesses, appearing on behalf of

prosecution, specifically stated that the appellant had published/printed defamatory material and there is nothing in the cross-examination, which shatters the same.

6. The submissions made by learned counsel for the parties were heard and the record of the case examined with their able assistance.

7. The appellant, at the material time, was the Chief Editor of Roznama 'Unity', 'Urdu Times' & 'Sehpehr'. The charge against him is that he allowed printing of material against the complainant and his family which was defamatory in nature. It has also been alleged that he interpolated personal data of complainant's family which he obtained in connivance with Syed Abid Hussain from NADRA and after distorting the same, published it. The prosecution, in support of its case, led oral and documentary evidence. In this behalf, five witnesses including the complainant, tendered evidence to the effect that the appellant, being the Chief Editor of the referred Dailies, started vilification campaign by publishing defamatory news/remarks against him and his family and in this behalf, obtained data in connivance with Abid Hussain, an employee of NADRA and published the photos in the said newspapers after making changes.

8. The definition for the offence of defamation is provided in Section 499 of Pakistan Penal Code, which reads as under: -

“499. Defamation. *Whoever by words either spoken or intended to be read or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person”*

The bare reading of the above definition shows that *actus reus* of the offence is that by words either spoken or intended to be read or by sign or by visible representations, making or publishing any imputation concerning any person which harms the reputation of such person. Likewise, the *mensrea* for the offence is that referred words which are spoken or the sign or visible representations should be with the intention to harm or knowledge or reason to believe that the same will harm the reputation. Under Explanation 4 to the said Section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person or causes it to be believed that the body of that person is in loathsome state, or in a state generally considered as disgraceful.

9. The reading of the entire evidence tendered by prosecution in support of its case shows that none of the witnesses uttered anything about *mensrea*. The prosecution witnesses, including the complainant, did not depose directly or indirectly that the appellant had printed or published the defamatory material with the intention/knowledge or reason to believe that the same shall harm the reputation of the complainant. Similarly, under section 501 PPC, a person who prints or engraves any matter which is defamatory to any person either should know or had good reasons to believe that the same is defamatory. Likewise, under section 502 PPC, whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. In the instant case, the prosecution did not prove intention, knowledge or reasons to believe that the matter was defamatory as is required under sections 499, 501 & 502 PPC.

10. The basis of our criminal system is enshrined in the Latin Maxim *Actus non facit, nisi, mensit rea* (An act is not guilty unless the mind is guilty). The effect of the referred principle is that the prosecution, in order to prove the guilt of an accused, not only has to prove the guilty act/the *actus reus* and *mensrea* but also guilty mind/*mensrea* for each offence is to be discerned

from the definition of the offence. It is only in exceptional cases that the legislature, in its wisdom, can dispense with the requirement of *mensrea* and the referred offences are called crimes of strict liability. The offence in question is not one of strict liability and the prosecution was required to prove *actus reus* as well as *mensrea*, which as mentioned above, it has failed to do so. In a case reported as ‘Abdul Karim and 5 Others Vs. Abu Zafar Qureshi and 3 Others’ (PLD 2001 Karachi 115), the Hon’ble Sindh High Court observed as under: -

“Thus for constituting an offence of defamation the mens rea or intention is essential ingredient. The article so published must be libellous and it lowered down the reputation of the person”

Similarly, in case reported as ‘Mst. Shash Begum and others Vs. Bashir Ullah and others’ (2013 P Cr. LJ 1737), it was observed as follows: -

“25. From the above provisions of law, it is abundantly clear that the most essential ingredient for constituting an offence of defamation is mens rea or intention. (Reliance PLD 2001 Karachi 115). The following are the other necessary ingredients of defamation as defined under section 499, PPC:

- (i) the making or publishing of an imputation concerning any person;*
- (ii) such imputation must have been made:-*
 - a) by words either spoken or intended to be read; or*
 - b) by signs; or*
 - c) by visible representations, and*
- (iii) such imputations must have been made with the intention of harming or knowing, or having reason to believe, that it will harm the reputation of the person concerning, whom it is made”*

26. *However the accusation preferred in good faith against any person to any of those, who have lawful authority over that person or an imputation made in good faith by person for protection of his right or interest, as specifically mentioned in the above exceptions, do not fall within the definition of 'Defamation' as envisaged under section 499, PPC."*

11. Under Explanation 4 to Section 499 PPC, no imputation can be said to harm a person's reputation, unless said imputation directly or indirectly lowers the moral or intellectual character of that person or lowers the character of that person with respect to his caste or of his calling. The allegation against the appellant, leveled by the complainant, is that he published defamatory material alleging that the complainant and his family sent the people abroad by procuring their visas for monitory benefits. The prosecution did not produce any evidence to show that the said imputation printed in the newspapers lowered the reputation of the appellant in the estimation of other persons, especially with respect to his job/profession. The testimonies of the prosecution witnesses do not contain anything to the effect which shows that the reputation of the complainant and his family was actually harmed and that resulted in lowering of the same in the estimation of others hence on this count as well, the prosecution failed to prove that the material was defamatory and/or the appellant committed the *actus reus* of the offence. In view of the

above, the conviction of the appellant, vide the impugned judgment, is not sustainable and the same merits setting aside.

12. For the reasons set out above, the instant appeal is allowed and the judgment dated 18.02.2012 to the extent of convicting the appellant for an offence under section 501 PPC is set aside. Consequently, the appellant is acquitted of the referred charge.

13. As the appellant is on bail hence the surety tendered shall be discharged.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 30.06.2017

JUDGE

Zawar