

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Criminal Appeal No.73/2013

Azhar Ikhlaq Abbasi

Versus

Mst Farah Asif & another

Appellant by : Sardar Shabbir Hussain, Advocate.
Respondents by : Malik Tahir Mehmood, Advocate.
Mr Rabi Bin Tariq, State Counsel.
Date of Hearing : 11-03-2019

ATHAR MINALLAH, C.J.- This appeal is directed against judgment, dated 18-04-2013, passed by the learned Additional Sessions Judge (VII), Islamabad (West), whereby Ms Farah Asif wife of Muhammad Asif (*hereinafter referred to as 'respondent'*) was acquitted in case relating to FIR No.25, dated 16-01-2009, registered at Police Station Margalla under sections 468, 471, 406 and 420 of Pakistan Penal Code, 1860 (*hereinafter referred to as the 'FIR'*).

2. The facts, in brief, are that pursuant to written complaint submitted by Azhar Ikhlāq Abbasi son of Babu Muhammad Ikhlāq Abbasi (*hereinafter referred to as the 'appellant'*) the FIR (Exh.PC) was registered. It was asserted that the appellant is engaged in the business of sale / purchase of vehicles and pursuant thereto the respondent had approached him for sale of her vehicle. It was further asserted that it was agreed that the sale consideration would be paid to the respondent after verification of the documents. On the request of the respondent, some amount was received and in order to guarantee payment of the entire sale consideration, cheque No.0829109 was given for an amount of Rs.950,000/-. It was alleged that the vehicle sold by the respondent turned out to be non-custom paid. It was further alleged that the letter regarding sale permission given by the respondent also turned out to be fake. Hence the FIR was registered. After recording of evidence and affording an opportunity of hearing to the parties, the learned trial Court vide judgment, dated 09-04-2012, convicted and sentenced the respondent. However, her appeal was allowed and consequently the conviction and sentence was set aside by the learned Additional Sessions Judge, Islamabad (West) vide the impugned judgment, dated 18-04-2013.

3. The learned Counsel for the appellant has been heard at length. He has argued that; the learned appellate Court has rendered the impugned judgment on the basis of misreading and non-reading;

section 406 of PPC was attracted; the cheque was handed over as guarantee; the ingredients of section 406 of PPC were fulfilled; during a separate trial relating to FIR No.01/2008, dated 06-05-2008, registered under section 156(1)14 of the Customs Act, 1969 (*hereinafter referred to as the 'Act of 1969'*) the respondent had unequivocally stated that she had purchased the vehicle from one Waseem Ejaz and that sale consideration was paid to the latter and the appellant; in the instant case a contrary stance was taken by the appellant.

4. The learned Counsel for the respondent has stated that the impugned judgment, dated 18-04-2013, does not suffer from any legal infirmity; the evidence was properly appreciated and, therefore, no interference is required; the prosecution could not prove its case beyond a reasonable doubt.

5. The learned Counsels have been heard and the record perused with their able assistance.

6. It was the case of the appellant that the respondent had approached him for sale of her vehicle and pursuant thereto he had given a cheque for an amount of Rs.950,000/- and that it was to be kept as guarantee for payment of the entire sale consideration. However, when the appellant appeared in the witness box as PW-2, he admitted having business relationship with the respondent and

that various transactions were made pursuant thereto. In his complaint, an impression was given as if the respondent had approached him for sale of the vehicle. The learned Counsel for the appellant has placed reliance on a statement recorded by the respondent in a distinct trial wherein she had asserted that the vehicle had been purchased by her through the appellant and another person. This statement recorded in another trial is not of help to the appellant's case rather raises doubts regarding the prosecution story in the instant case.

7. It is settled law that presumption of "double innocence" is attached where an order of acquittal of an accused is challenged. The presumption of "double innocence" can be rebutted if it could be shown that the order was passed as a result of misreading or non-reading of evidence or the same was patently illegal. It is also settled law that the appellate Court would not interfere with acquittal merely because on reappraisal of evidence a different conclusion or opinion could be formed. The finding of acquittal can only be reversed, upset or disturbed in exceptional circumstances such as when the same are perverse, shocking, alarming, suffering from error of jurisdiction or misreading or non-reading of evidence. Reliance is placed on case of Muhammad Zaman Versus The State and others [2014 SCMR 749], Muhammad Rafique Versus Muhabbat Khan and others [2008 SCMR 715], Jehangir Versus Amin Ullah and others [2010 SCMR 491], Mst. Askar Jan and others Versus Muhammad Daud and others [2010

SCMR 1604], Mst. Sughra Begum and another Versus Qaiser Pervez and others [2015 SCMR 1142].

8. For the above reasons, this appeal is without merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Luqman Khan/*