

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

P.S.L.A. No.21 of 2019  
Syed Sajjad Hussain Bukhari  
Versus  
Hina Imtiaz and 3 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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14.09.2020	Mr. Arsheed Ali, Advocate for applicant. Mr. TahirAfzalAbbasi, Advocate for respondent. Syed Shahbaz Shah, State Counsel.
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Through the instant application, applicant (Syed Sajjad Hussain) seeks leave to appeal in terms of Section 417 (2) Cr.P.C. from the judgment dated 30.11.2019, passed by learned Judicial Magistrate Section-30, Islamabad (West), whereby in his private complaint under Section 338-b, 109 and 201 PPC, respondents 2 to 4 were acquitted of the charge.

2. Facts, relevant for the disposal of instant application, are that the applicant filed a private complaint against respondents 2 to 4 with the averments that his marriage with respondent No.2 was culminated in divorce by way of '*khula*' on 04.05.2017, when the latter was pregnant of four months and three days; that the respondent No.2 in connivance with respondents 3 and 4 caused abortion of his child hence, committed offence punishable under Sections 338-b, 109 and 201 PPC.

3. In order to substantiate the complaint, applicant appeared as PW-1 and got examined one Dr. Zeenat Usman as PW-2. The

documentary evidence comprised of Exh.PA and Exh.PB. The respondents in their respective statements under Section 342 Cr.P.C denied the allegations and termed the same as an attempt to settle the score as a counterblast of family dispute. The learned trial Court after hearing the parties, acquitted the respondents 2 to 4 vide judgment dated 30.11.2019, sought to be assailed through the instant P.S.L.A.

3. Learned counsel for the applicant contends that the documentary evidence comprising Ex.PA and Ex. PB coupled with the statement of Medical Officer/PW-2, it is established that the respondent No 2 unlawfully aborted the child, therefore, the acquittal on hypothesis and without dilating any observation upon the evidence, is liable to be set-aside.

4. On the contrary, learned counsel for private respondents contends that essentials to constitute the alleged offence are missing in the instant case and there is not an iota of evidence to establish abortion, as alleged, had taken place.

5. Heard, record examined.

6. In order to upset an order of acquittal, it is mandatory to explore non-reading, misreading of the evidence besides departure from the law on the subject or that the findings arrived at are perverse, fanciful and erroneous.

7. In the present case, the learned trial Court considered the evidence led by the

applicant. Moreover, PW-2 Dr. Zeenat Usman in her cross-examination stated that Medical Certificate Ex. P2 depicts previous history of miscarriage of respondent No 2; that neither she inspected the said document nor signed the same. The said witness did not utter even a single word regarding alleged abortion.

8. Even otherwise, applicant in his statement while appearing as PW-1 did not state anything about the alleged abortion except an allegation that the respondent No 2 in connivance with respondents 3 and 4 about 5-6 months before aborted his child. There is no allegation with certainty that on what date, time and place the alleged incident took place. Mere an entry respecting previous history of miscarriage is not enough to hold the respondents 2 to 4 guilty for the alleged offence. It was also for the reason that the litigation in the shape of four cases including the one at hand was initiated by the applicant after the filing of suit for dissolution of marriage by respondent No 2. It was so mentioned by the applicant in the beginning of his cross-examination.

9. Till this day, it is a settled law that an accused who is acquitted by any court of competent jurisdiction carries double presumption of innocence, strong and cogent reasons are required to dislodge such presumption. Reliance is placed upon case laws reported as *Jehangir V. Aminullah (2010 SCMR 491)*, *Mst. Anwar Begum V. Akhtar Hussain alias Kaka (2017 SCMR 1710)*, *Zaheer*

***Sadiq V. Muhammad Ijaz (2017 SCMR 2007),  
Muhammad Azam V. State (2009 SCMR 1232),  
Muhammad Shafi alias Kuddoo V. State (2019  
SCMR 1045).***

10. Moreover, in identical cases reported as ***Sajawal Khan and 4 others V. Amir Sultan and 11 others (2016 P.Cr.LJ 929) and Muhammad Shaft V. The State and others (1992 P.Cr.LJ 1391)***, petition for special leave to appeal assailing order of acquittal was dismissed by observing that “*when an accused is acquitted of the charge, he would enjoy double presumption of innocence in acquittal appeal under Section 417 Cr.P.C which could not be dislodged.*”

11. In view of above, there exists no justification to call for record and re-appreciate the evidence which would be a futile exercise as no apparent or even remote infirmity has been pointed out in the impugned judgment. Consequently the instant application is accordingly **dismissed** and leave refused.

**(FIAZ AHMAD ANJUM JANDRAN)  
JUDGE**