

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Revision No. 101 of 2019

Shakeel Ahmed Abbasi

Vs

The State

PETITIONER BY: Mr Jan Muhammad Khan, Advocate.

COMPLAINANT BY: Complainant in person.

STATE BY Mr Rabi Bin Tariq, State Counsel.
Mr Mukhtar Ahmed, ASI with record.

DATE OF HEARING: 29-01-2020.

ATHAR MINALLAH, CJ.- Through this petition the petitioner has assailed judgments, dated 16.05.2019 and 24.04.2019, passed by the learned appellate Court and the learned trial Court, respectively.

2. The facts, in brief, are that pursuant to a written complaint Ex-PF submitted by Asif Mehmood (hereinafter referred to as the "**Complainant**"), FIR no. 309, dated 06.08.2018, Ex-PA was registered. According to the facts narrated in the FIR, it was alleged that the Complainant met the petitioner in the car parking of Pakistan Institute of Medical Sciences. The latter offered him juice which contained some intoxicating drug. After drinking the juice, the Complainant became unconscious and the petitioner taking advantage took various items which have been described in the FIR. The incident had taken place at about 10.00 a.m on 04.08.2018. The FIR was

registered on 06.08.2018. Charge against the petitioner was framed on 29.09.2018. The prosecution produced three witnesses. The petitioner preferred not to be examined under oath and, therefore, his statement under section 342 of Criminal Procedure Code, 1898 (hereinafter referred to as "**Cr.P.C**") was recorded. The learned trial Court after concluding the proceedings and affording opportunity of hearing to the parties convicted and sentenced the petitioner vide judgment, dated 24.04.2019. The petitioner preferred an appeal, which was partially allowed by the learned Additional Sessions Judge vide judgment, dated 16.05.2019.

3. Mr. Jan Muhammad Khan, AHC was requested to extend assistance in this petition on behalf of the petitioner. He has been heard at length. He has mainly argued that the petitioner was not known to the Complainant and there is no explanation on record as to how had he recognized him; the petitioner was already arrested in another criminal case and his arrest in the instant case has not been explained; the recovery is doubtful; the delay in registration of the FIR has also not been explained; the prosecution was not able to prove its case beyond a reasonable doubt.

4. The Complainant has appeared in person. He was given an opportunity to argue his case. He was not able to explain as to how he had identified the petitioner as the person who was alleged to have committed the offence.

5. The learned State Counsel has argued that; the prosecution had established its case beyond a reasonable doubt; the Complainant had an opportunity to spend some time with the petitioner before

becoming unconscious and thus he was in a position to identify him; the petitioner is also involved in other cases of similar nature.

6. The learned counsel for the petitioner, Complainant and the learned State Counsel have been heard and the record perused with their able assistance.

7. It is an admitted position that when the petitioner was arrested in this case, he was already incarcerated in relation to some other FIR. Perusal of the record shows that the delay in submitting an application and pursuant thereto registration of a criminal case has not been explained. The recovery is also shrouded in mystery. It is the Complainant's case that the petitioner was not known to him prior to meeting him at the crime scene but there is no plausible explanation for recognizing him without an identification parade having been conducted. It has not been denied that the petitioner was already incarcerated in relation to some other criminal case when he was arrested in the instant case. The depositions of the prosecution witnesses do not inspire confidence. All these factors raise doubts regarding the prosecution case. The impugned judgments are based on misreading and non reading of the evidence brought on record. The prosecution had not succeeded in establishing guilt of the petitioner beyond a reasonable doubt. The benefit of doubt ought to have been extended in favour of the petitioner.

8. For the above reasons, this petition is allowed and consequently the impugned judgments, dated 16.05.2019 and 24.04.2019, are hereby set aside. The petitioner, therefore, stands acquitted of the charge framed against him. If his incarceration is not required in some other case then he shall be released forthwith.

8. The office is directed to send a certified copy of this judgment to the Superintendent, Central Prison, Adala Rawalpindi so that it could be delivered to the petitioner.

(CHIEF JUSTICE)

Saeed