JUDGMENTSHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

(JUDICIAL DEPARTMENT)

Criminal Appeal No. 157 of 2016

Riffat Shamim

Versus

Malik Hassan Raza Agraal and another

Appellant by:	Malik Mushtaq Ahmad, Advocate.
Respondent No.1:	Ms. Rakhshanda Younis, Advocate.
State by	Mr. Hammad Saeed Dar, State counsel alongwith Shahid Khan, A.S.I. Police Station Margalla, Islamabad.
Date of hearing:	18.09.2020

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Ghulam Azam Qambrani, J.:- Appellant (Riffat Shamim) seeks setting aside of impugned order dated 11.06.2016, passed by learned Additional Sessions Judge, Islamabad-West, whereby respondent No.1 (hereinafter be referred to as "***respondent***") was acquitted from the charge in case F.I.R No.592 dated 28.11.2012 under Section 506 (ii) P.P.C 25-D, Telegraph Act, registered at Police Station Margalla, Islamabad.

2. Briefly stated facts of the prosecution case are that the instant F.I.R/ EX.P-B was lodged on direction of the learned Justice of Peace, Islamabad, with the facts as narrated by the complainant are that on 25.10.2012 at about 02:00/ 03:00 p.m., the appellant/ complainant was sitting in her car in front of NADRA office, Islamabad, and the respondent/ accused came there with pistol, extended her life threats, thereby criminally intimated her. Respondent also used obnoxious cellular calls to the appellant.

3. After registration of F.I.R, the investigation was conducted and report under Section 173 Cr.P.C was submitted before the learned Judicial Magistrate, Islamabad-West. After taking cognizance by the learned trial Court/ Magistrate 1st Class, Islamabad, and after

fulfilling codal formalities, charge was framed against the respondent, which was denied, upon which, the prosecution was directed to produce witnesses. In order to proof its case, the prosecution produced the following witnesses:-

- *PW-1 Mst. Riffat Shamim (Complainant),*
- *PW-2 Muhammad Ashfaq (Sub-Inspector/investigation officer).*

After closure of the prosecution evidence, the respondent/accused was examined under Section 342 Cr.P.C wherein he denied the whole accusation and pleaded innocence. However, in reply to question No.7 that will you produce evidence in your defense, he has replied as under:-

> *"Yes documentary evidence which demonstrate the successive fabrication and preparation of the forged public documents in order to grab the Quranic share of the legal heirs of Azhar Hussain which speaks volume of the conduct of the complainant as I am perusing the interest of the legal heirs of the deceased Azhar Hussain being their attorney and the complainant took me as a stumbling block in her designs and this prompted her to lodge FIR ."*

On completion of the trial, after hearing arguments of the parties, the learned Judicial Magistrate vide judgment dated 24.03.2016 convicted the respondent for the commission of offence under Section 506 P.P.C with fine of Rs.15000/- as punishment and in case of default in payment of the fine, he shall further undergo 15 days as simple imprisonment.

4. The respondent feeling aggrieved from the conviction filed an appeal before the Court of learned Additional Sessions Judge, Islamabad. In the meantime, the appellant/ complainant also filed a criminal revision against the respondent before the same Court for enhancement of the sentence. The learned appellate Court allowed the appeal filed by the respondent by acquitting him, while dismissed the revision petition filed by the appellant, vide consolidated judgment dated 11.06.2016, therefore, the appellant has filed instant appeal against acquittal of respondent.

5. The learned counsel for the appellant has contended that the impugned judgment dated 11.06.2016 passed by the learned Additional Sessions Judge, Islamabad, is illegal, against the facts and manifestly wrong; that the judgment passed by the learned appellate Court is perverse and arbitrary. Further contended that sufficient evidence is available against the respondent/ accused to connect him with the alleged offence. Next contended that accused is nominated in the F.I.R, it was a broad day light occurrence; that the case was proved against the respondent but the learned appellate authority ignored the material evidence and passed the impugned judgment, therefore, the same is not sustainable. Lastly, urged for setting aside the impugned judgment.

6. Conversely, learned counsel for the accused/ respondent opposed the contentions raised by the learned counsel for the appellant contending that no such incident has ever occurred; that no evidence with regard to obnoxious phone call was brought on record; that witnesses namely Raja Qayyum and Raja Abdul Sattar were not produced by the complainant in support of the allegation; that the alleged place of occurrence is a thickly populated area, where the office of S.S.P is also situated in the said premises; that there is dispute on the property of deceased Azhar Hussain, who was the ex-husband of the appellant; that the respondent is attorney of co-sharer in the property, who is pursuing the civil cases with regard to the said property, therefore, he was malafidly involved in the instant case. The learned State counsel also supported the arguments of the learned counsel for appellant.

7. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

8. Perusal of the record reveals that F.I.R was lodged on the direction of learned Justice of Peace. On the written application, Ex.P-A, F.I.R Ex.P-B was registered by Sub-Inspector, Ishtiaq Ahmed. The allegation against the respondent was that he used to make obnoxious calls to the appellant through different persons and different telephone numbers. During the investigation, the

Investigation Officer failed to produce any such evidence on record on the basis whereof, the learned Judicial Magistrate acquitted the respondent under Section 25-D, Telegraph Act. The other allegation against the respondent was that on the fateful day, at about 02:00/ 03:00 p.m., when complainant was sitting in her car, in front of NADRA Office situated at F-8 Markaz Islamabad, adjacent to the Sessions Courts, Islamabad-West, the respondent/ accused came there with pistol and extended her life threats but on intervention of Raja Qayyum and Raja Abdul Rashid, she was rescued. During the trial, the prosecution failed to produce the above said witnesses in support of the allegation, although, the statement of Raja Abdul Qayyum was recorded under Section 161 Cr.P.C. During the trial, in her cross-examination, the appellant has admitted that she contracted marriage with Azhar Hussain, who is maternal uncle of the respondent. She also admitted that the relations with deceased Azhar Hussain were strained, therefore, a family suit was also pending in between them. She has also admitted that a defamatory suit was also filed by her against the present respondent. That admittedly, the alleged place of occurrence was nearby the office of S.S.P, where the security personal remained present. The non-examination of the above said witnesses i.e. Raja Abdul Qayyum and Raja Abdul Rashid, by the prosecution, creates a presumption under Illustration (g) of Article 129 of Qanoon-e-Shahadat Order, 1984 that had the said witness examined in the Court, their evidence would have been unfavorable to the prosecution. Although, the prosecution was not bound to produce each and every witness, but the above witnesses were those persons, who could support the allegations leveled against the respondent and who were central figures and all the story revolved around them. The non-examination of the said witnesses has created doubts in the prosecution story. Reliance in this regard is placed on the case of "*Hunar Shah aliasAnar Shah and another vs. Khan ZadGul and another*" (**2014 YLR 1180**). The relevant portion is reproduced herein below:-

> *"The inference regarding non-production of this important independent witness would go against the prosecution that*

> *had he been produced his statement wouldn't have been favourable to prosecution. It would also reflect that prosecution wanted to suppress material evidence."*

9. Even otherwise, the general principle in criminal jurisprudence is that the prosecution is to prove its case beyond doubt and this burden does not shift from prosecution, even if the accused person takes up any particular plea and fails in it.

10. The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is double. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.

11. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against

conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached, in the latter case Reliance in this regard is placed upon the case of "*Inayatullah Butt v. Muhammad Javed and 2 others*" **[PLD 2003 SC 562]**. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence, no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice, the Court will not exercise jurisdiction under section 417 Cr.P.C.

12. The learned counsel for the appellant has failed to advance any ground to justify the setting aside of the acquittal judgment. There is neither misreading, non-reading of evidence nor the findings of the learned appellate trial Court are patently illegal. The findings of acquittal, by no stretch of imagination, can be declared as perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence.

13. For what has been discussed above, the instant appeal having no force is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on 29th day of September, 2020.

JUDGE

Rana M. Ijz