

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No.123 /2013

Iftikhar Ahmad
Versus
Gul Sher, etc.

Appellant by: Mr. Anis Yaqoob Rathore, Advocate.
Respondents No.1& 2 by: Mr. Muhammad Irfan Ghazanfar,
Advocate alongwith both respondents.
State by: Mr. Hamaad Saeed Dar, State Counsel
alongwith Muhammad Farooq S.I.
Date of Hearing: 17.09.2020

Ghulam Azam Qambrani, J.: This appeal under Section 417 (2-A) Cr.P.C. has been filed against the impugned judgment dated 05.11.2013, passed by the learned Additional Sessions Judge-East, Islamabad, in case F.I.R 192 dated 17.04.2012, under Section 408 PPC registered at Police Station Shahzad Town, Islamabad, whereby respondents No.1 & 2 (hereinafter be called as “**respondents**”) were acquitted.

2. Briefly stated, facts of the case as narrated by the complainant Iftikhar Ahmad in the complaint are that the appellant is the owner of vehicle Suzuki Pickup having Registration No. CH-8258, Model 1994. Fifteen days ago, the appellant handed over the vehicle to Gul Sher as a driver. He was living with the appellant temporarily. He used to arrive back to the house of the appellant at about 10: 00 p.m. On 13.03.2012 he did not return and the appellant contacted him on his cell phone, who replied that he would be returning within ten minutes, whereafter his cell phone was turned-off. The appellant made efforts to find his vehicle and the respondent No.1, but all in vain. The respondents No.1 & 2 in connivance with each other have defrauded the appellant; hence, the above said F.I.R was lodged.

3. After registration of F.I.R, the investigation was completed and report under Section 173 Cr.P.C was submitted. Formal charge was framed against the respondents, to which they pleaded not guilty and claimed trial, therefore, the prosecution evidence was summoned.

4. In order to prove its case, the prosecution examined the following witnesses:-

- i. *PW-1, Iftikhar Ahmad (complainant),*
- ii. *PW-2, Syed Qaim Ali Shah ASI,*
- iii. *PW-3, Muhammad Niaz Khan ASI,*
- iv. *PW-4, Ghulam Sarwar Naheemi A.S.I.*

After closure of the prosecution evidence, the accused/ respondents were examined under Section 342 Cr.P.C wherein they denied the allegations leveled against them. The accused did not opt to record their statements on oath as envisaged under Section 340 (2) Cr.P.C. After hearing the arguments of the learned counsel for the parties, the learned Judicial Magistrate Section-30 (East), Islamabad, convicted the respondents under Section 408 P.P.C, and sentenced to undergo 03 years S.I and also to pay a sum of Rs.50,000/- each as fine and in default whereof to further undergo six months S.I. The accused were also given benefit of doubt under Section 382-B Cr.P.C, vide judgment dated 09.09.2013. Being aggrieved of the said judgment, the respondents preferred an appeal before the learned Additional Sessions Judge (East), Islamabad and the appellant also filed Criminal Revision Petition for enhancement of sentence. The learned Additional Sessions Judge (East), Islamabad, vide judgment dated 05.11.2013 accepted the appeal filed by the respondents and acquitted them by extending benefits of doubts whereas the Criminal Revision Petition was dismissed. Hence, this appeal.

5. Learned counsel for the appellant has contended that the impugned judgment is against the law and facts of the case; that the learned Appellate Court has wrongly disbelieved the prosecution evidence; that the impugned judgment is based upon misreading

and non-reading of evidence; that the impugned judgment is based on conjectures and surmises. Further contended that judgment of acquittal passed by the learned appellate Court is not in accordance with law and facts of the case; therefore, the same is liable to be set aside.

6. Conversely, learned counsel for the accused/ respondents submitted that no recovery of vehicle was affected from the accused Gul Sher, who is a handicapped person; that no private witness was associated by the police to prove the factum that the vehicle was entrusted to the accused. Lastly prayed for dismissal of the instant appeal. Learned State Counsel submitted that no recovery was affected from the accused.

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

8. In order to prove the case, the prosecution examined four witnesses including the investigating officer whereas the appellants in their statements under Section 342 Cr.P.C pleaded their innocence, but the learned Judicial Magistrate Section 30-East, Islamabad, vide judgment dated 09.09.2003, convicted both the respondents to undergo three years R.I under Section 408 PPC and to pay a sum of Rs.50,000/- each as fine and in default whereof to further undergo six months S.I. Being aggrieved, the respondents preferred an appeal, which was accepted by the learned Additional Sessions Judge vide impugned judgment and sentence awarded by the learned Trial Court was set aside, hence, this appeal.

9. As per stance of the complainant, he purchased the said vehicle a few days ago and handed over the same to Gul Sher for driving, whereas he stated that Gul Sher was temporarily residing with him. He further deposed that he accompanied Gul Sher to Sargodha and purchased the vehicle on credit for the accused Gul Sher, but he has misappropriated his vehicle. PW.4 Ghulam Sarwar Naeemi ASI, second Investigating Officer of the case, deposed that he obtained 13 days physical remand of the accused, but during his

investigation, no vehicle could be recovered from the accused. The accused in their statement under Section 342 Cr.P.C have stated that a false case has been registered against them. The accused Gul Sher specifically stated that the complainant did not pay him the salary for three months and upon his demand, he had involved him in a false criminal case, whereas the accused Fareed Ahmad deposed that he has been involved only due to the reason that he was present with Gul Sher when the police came there to arrest him and upon his inquiring the reasons of arrest of Gul Sher the police also involved him in the instant case. Perusal of the statement of the complainant and contents of the complaint, it prima facie proves that the complainant had taken different version in his complaint and examination-in-chief, as in his complaint, he has mentioned that Gul Sher was temporarily residing with him and he handed over his vehicle to him for running the same on rent, whereas in his examination-in-chief, he deposed that he purchased the said vehicle for the disable Gul Sher so that he could easily perform his business of milk supply. In his cross-examination, the complainant admitted that Gul Sher had been working as his servant at Johar Abad, where the complainant has been running his business of meat. It is also established on record that the complainant had been running the business of meat at Islamabad which proves that the complainant has made improvement just to prove that at the relevant time, Gul Sher was not working with him as his servant. The false involvement of the accused Gul Sher is also established when the complainant admitted during his cross-examination that his brother Mukhtar was also working with him at his shop, but he failed to produce his brother to establish the case against the accused persons with regard to the entrustment of vehicle to the accused Gul Sher.

10. From the above, it can be gathered that prosecution failed to prove its case beyond reasonable shadow of doubt, when no recovery of any vehicle was effected from the accused during physical remand. No motive of the occurrence has been stated or proved against the accused. On the basis of solitary statement of the complainant when there are improvements in his complaint and

examination in chief of the complainant, accused persons cannot be held guilty of the offence, because the prosecution has to establish its case beyond reasonable doubt, but it failed in the instant case. In this regard, I am fortified by the law laid down in the case reported as **Muhammad Arif Vs. The State (2019 SCMR 631)**, wherein it has been held as under:-

“It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge.

It was observed by the Honourable Supreme Court in the case of **“Tariq Pervez v. The State” [1995 SCMR 1345]** that for giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is circumstance, which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right. In this regard, I am also fortified by the law laid down in the case of **Ghulam Akbar and another Vs. The State (2008 SCMR 1064)**, wherein it has been held as under:-

“It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely relied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof.”

Moreover, on the basis of relationship of master and servant, the accused Gul Sher cannot be convicted for the breach of trust when no recovery of any vehicle was effected from him. Further prosecution failed to produce any evidence against the accused Fareed Ahmad to connect him with the commission of the alleged

offence. Keeping in view all the facts and circumstances, the learned Additional Sessions Judge, Islamabad has rightly held that findings of conviction recorded by the learned Trial Court against the accused are not sustainable for not being based on relevant sufficient evidence and reversed the judgment passed by the learned Trial Court by accepting the appeal of the respondents/accused and dismissing the CrI. Revision Petition, filed by the appellant and acquitted the accused/ respondents of the charge, by extending benefit of doubt. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in the case reported as **Muhammad Karim Vs. The State** (2009 SCMR 230) wherein it has been held as under:-

"in case of doubt, the benefit thereof must be given to accused as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to benefit, not as matter of grace and concessions, but as matter of rights."

In the case reported as **Raheel and others Vs. The State and others** (2015 P.Cr.L.J 470), it has been held that:-

"If any doubt would arise from the prosecution evidence, benefit of same was to be extended to accused."

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.

11. The reappraisal of the evidence reveals that the learned appellate Court after appreciation of evidence has rightly come to a conclusion of acquitting the accused/ respondents. The prosecution has miserably failed to prove the allegations against the respondents beyond reasonable shadow of doubt.

12. I have found no illegality or irregularity in the impugned judgment passed by the learned Additional Sessions Judge, warranting interference by this Court, nor the same is suffering from any misreading or non-reading or miss-appreciation of evidence.

13. Resultantly, the instant appeal having no force, is dismissed.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced in open Court on this 30th day of September, 2020.

M.Ift

~~JUDGE~~