

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

Criminal Appeal No. 88/2018

Saira Bibi
Versus
Muhammad Rashid & two others

Appellant by:	M/S Saad Ali Sheikh & Ali Waqas Advocates
Respondents 1 to 3 by:	Mr. Ali Hussain Bhatti, Advocate alongwith respondents 1 & 3.
State by:	Mr. Hammad Saeed Dar, State Counsel alongwith Fazal SI.
Date of Hearing:	25.08.2020

Ghulam Azam Qambrani, J.: This appeal has been filed against the impugned judgment dated 18.04.2018, passed by the learned Additional Sessions Judge, Islamabad- West, in case F.I.R 75/2015 dated 07.04.2015, under Sections 354-A, 452, 506/34 PPC registered at Police Station Secretariat, Islamabad, whereby respondents No. 1 to 3 were acquitted.

2. Briefly stated facts of the case as narrated by the complainant, Mst. Saira Bibi daughter of Gul Zareen Shah, are that on 07.04.2015 at about 10:00 AM, she was present alone in a room of her house, in the meanwhile, accused Muhammad Rashid entered into the house and tried to outrage her modesty, also torn her shirt and removed her dupatta, while giving her life threats. When she started raising hue and cry, accused left the house. He also gave beating to her father. On hearing the noise, paternal aunt of the complainant namely Mst. Khursheed Bibi also came there. The occurrence was witnessed by her father and paternal aunt. Meanwhile, brothers of accused namely Basit, Yasir, his mother and sister namely Mehwish came in the street. They alongwith accused Rashid used filthy language and gave life threats to her and she, in order to save her life, closed the door of the house. 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 accused/ respondents to which they pleaded not guilty and claimed trial. Therefore, the prosecution evidence was summoned. In order to prove the case, prosecution examined the following witnesses:-

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| (i) | PW.1 | Mst. Saira Bibi daughter of Gulzareen, is complainant, |
| (ii) | PW.4 | Khurshid Bibi w/o Munir Hussain Shah, is eye witness of the occurrence, |
| (iii) | PW.5 | Gul Zareen Shah s/o Ameen Shah, is father and eye witness of the occurrence. |
| (iv) | PW.6 | Fazal e Khaliq A.S.I had recorded formal F.I.R, inspected the place of occurrence, prepared unscaled site map place of occurrence. He is also recovery witness of case property i.e torn shirt and prepared the recovery memos. |
| (v) | PW.7 | Noor Ellahi ASI, second I.O of the case got issued the warrants of the accused persons and subsequently proclamation Under Section 87 Cr.P.C was got from the Court and submitted the challan Under Section 512 Cr.P.C. |
| (vi) | PW.8 | Muhammad Ali A.S.I, I.O of the case, had investigated the case to the extent of accused Basit. |

4. Statements of the accused/ respondents No. 1 to 3 under Section 342 Cr.P.C. were recorded. They claimed innocence. They did not opt to record their statements on oath as envisaged under Section 340 (2) Cr.P.C.

5. After recording evidence and hearing arguments of the learned counsels for the parties, the learned Additional Sessions Judge, Islamabad (West), passed impugned judgment, dated 18.04.2018. Feeling aggrieved, the appellant/complainant has filed the instant appeal.

6. The learned counsel for the appellant has contended that the impugned judgment dated 18.04.2018 passed by the learned Trial Court is manifestly wrong, perverse and unreasonable; that the reasons given by the learned Trial Court while acquitting the accused/respondents 1 to 3 are result of mis-reading and non-

reading of the evidence available on record; that the findings arrived at by the learned Trial Court are artificial and not sustainable in the eyes of law. Further contended that no major discrepancies are in the statements of witnesses; that the incident took place in a broad day light and F.I.R was promptly lodged with specific role attributed to the accused/respondents; that the prosecution has successfully proved its case against the accused beyond any shadow of doubt. Lastly prayed for setting aside of the impugned judgment.

7. Conversely, learned counsel for the accused/ respondents opposed the contentions raised by the learned counsel for the appellant contending that the accused have been falsely involved in this case; that the statements of the witnesses are contradictory with each other which has made the case highly doubtful; that witnesses have made dishonest improvements in their statements just to strengthen their case; that no medical certificate was produced by the prosecution in order to prove the allegation of beatings; that there is in-ordinate and un-explained delay in registration of the F.I.R. Further contended that the witnesses were not proved to be natural; that no case is made out against the respondents and lastly urged for dismissal of the appeal. The learned State Counsel supported the judgment passed by the learned Trial Court and requested for dismissal of the instant appeal.

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

9. Perusal of the record reveals that on the complaint Ex.PW.1/A of PW-1 Saira Bibi, F.I.R Ex.PW-1/2 was lodged on 07.04.2015 at the Police Station, Secretariat, Islamabad, with the allegation that the respondent Muhammad Rashid entered in the room of her house and tried to outrage her modesty by tearing her shirt and also putting off her scarf. After registration of the F.I.R, the police started investigations, prepared site map. In her statement as PW-1, during cross-examination, the complainant has stated that the site plan Ex.PW.1/D was prepared on her given

information. In her statement, she has stated that on the alleged day, she was alone in her room and her father was sleeping in another room of their house. The gate of the house was open. The accused/respondent Muhammad Rashid entered into their house and directly entered in her room and tried to outrage her modesty, torn her wearing shirt. It has been further deposed by her that she raised hue and cry due to which the accused left the room and went in the courtyard of the house. It has also been stated by her that the accused started beating to her handicapped father. It has also been recorded by her that on hearing her cries, her aunt Khurshid Bibi PW-.4 also came over there.

10. A careful perusal of the statement of PW-4 Mst.Khurshid Bibi depicts that the occurrence started from the 'Galli' when PW-.1 Mst.Saira Bibi was fetching water to her house and the accused Rashid had hit on her leg, she then entered into her house, where the quarrel started and it is also apparent from the statement of PW-.4 that at that time, the family members i.e brothers and mother of accused Muhammad Rahid were also there and a quarrel started between both the parties, she herself was not an eye witness of the alleged occurrence.

11. The police visited the place of occurrence on the same day and statement of the PW.4 was recorded on the next day of occurrence. The delay in recording of her statement has raised question on the veracity of the statement of this witness that whether she was a witness to the occurrence or not ? Perusal of Ex.PW.1/D does not suggest anywhere the presence of this witness, PW-.4 Mst.Khurshid Bibi. During the course of cross-examination, PW-.1 has admitted that many persons of the locality gathered on the spot at the time of incident, but no independent private witness was associated by the Investigation Officer to know the actual controversy. The wearing shirt of the complainant was also not sealed into parcel rather was kept in a shopper and was taken into possession through Ex.PW.1/C and witnesses of the said seizure memo are only the complainant and her father. It is transpired from the record that while recording her statement under

Section 161 Cr.P.C she has narrated a different story by stating that accused had completely undressed /naked her, but this fact has not been mentioned in the complaint Ex.PW.1/A. She has also admitted the fact that she recorded in her statement to police that the accused had given fist blows to her father, but the same was also not mentioned in the complaint Ex.PW.1/A. It is an admitted fact that the alleged incident has been stated to have occurred at 10: 00 am while F.I.R shows the time of report as 4:10 pm, while the distance of police station is exactly two kilometers away from the house of the complainant. It is evident from the statement of PW-4 that the incident had taken place in the 'Galli' and that the mother, brothers of the accused came into the house of the complainant where a quarrel had taken place. The in-ordinate and un-explained delay in registration of the F.I.R and nomination of the whole family members of the accused, the fact of deliberation and consultation cannot be ruled out. Further more, Ex.PW.1/D also does not show the presence of accused Yasir, Basit, their mother and Mehwish at place of occurrence. From the entire scenario, even if it is presumed that there may be a quarrel, but it is hard to believe that the accused, in presence of his mother, brothers and sister, could dare to outrage the modesty of a lady. It is transparent from the record that initially Section 354 P.P.C was levelled against the respondents and later on Section 354-A P.P.C was inserted. From the evidence, the ingredients of Section 354-A P.P.C are not attracted. There is no allegation of making the complainant naked and exposing her to public. The manner of alleged occurrence, from the contradictory and dishonest improvements in the statements of prosecution witnesses, the case of prosecution is not free from doubts.

12. 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.

13. The learned counsel for the appellant has failed to advance any ground to justify the setting aside of the acquittal judgment. There is no misreading or non-reading of evidence nor the findings of the learned 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.

14. For what has been discussed above, there is no merit in the instant appeal; therefore, the same is hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 27th day of August, 2020.

JUDGE

S.Akhtar