

Judgment sheet.
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Acquittal Appeal No.S-334 of 2010.

DATE JUDGMENT WITH SIGNATURE OF JUDGE

For regular hearing.

24.08.2017.

Mr. Aijaz Shaikh, Advocate for the appellant.
Mr. Shahid Ahmed Shaikh, D.P.G for the State.
Respondent Dileep is present in person.

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J U D G M E N T .

ABDUL MAALIK GADDI,J- Through this appeal, filed under section 417, Cr.P.C, the appellant Jalaludin has sought the indulgence of this Court to set at naught the judgment dated 23.8.2010 passed by the learned Civil Judge & Judicial Magistrate-I, Hyderabad in F.I.R. No.64 of 2010 under section 489-F, PPC at Police Station, Hussainabad, Hyderabad, whereby the learned trial Court acquitted the respondent from the charge.

2. Briefly the facts of the case are that on 24.5.2010 at about 1800 hours complainant Jalaluddin reported with Police Station that he is a businessmen and knows accused, who came to him for loan of Rs.1,50,000/-. Thus, he took him to the jewellery shop of Haji Umsan Ghani and bought him gold of Rs.90,000/-. Thereafter accused paid him installments of Rs.26,700/- and issued cheque of Rs.63,300/- in presence of Mir Ahmed. The said cheque was dishonour by the bank and thus, he lodged F.I.R. under section 489-F and 506, PPC and after usual investigation, accused was challaned by the police under section 489-F, PPC.

3. After his arrest and completion of investigation, the accused/respondent was put on trial where the provisions of section 241-A, Cr.P.C were complied with and the accused/respondent was finally charge sheeted. However, he professed innocence and claimed trial.

4. The prosecution in order to prove its case against the accused/respondent produced and examined six witnesses namely complainant Jalaluddin at Ex.4, who produced Court order dated 24.5.2010 at Ex.5, cheque at Ex.6, cheque memo at Ex.7 and F.I.R. at Ex.8, PW-2 Mir

Ahmed at Ex.9, who produced mashirnama of place of wardhat at Ex.10, PW-3 Ahmed Shah at Ex.11, who produced memo of arrest of the accused at Ex.12, Bank officer Waqarullah Khan at Ex.13, who produced his report at Ex.14, ASI Jhando Khan at Ex.15 and I.O. Muhammad Ilyas at Ex.16 and thereafter learned A.D.P.P. for the State closed the prosecution side vide his statement at Ex.17.

5. The statement of the accused/respondent was recorded under section 342, Cr.P.C, but he stands that he has been falsely implicated in this case at Ex.18. During his statement under section 342, Cr.P.C, he produced one receipt at Ex.19 and an application moved by him to the learned Sessions Judge/Director Human Rights, Hyderabad at Ex.20.

6. On evaluating the materials brought on record, the learned trial Court found the accused/respondent not guilty to the charge and thus acquitted him through the impugned judgment, which is now under challenge by the complainant/appellant through the appeal in hand.

7. Learned counsel for the appellant argued, with great vehemence, that the impugned judgment of acquittal in favour of the accused/respondent is not based on correct legal premises on the ground that accused has been arrested on the basis of documentary evidence and the learned trial Court did not consider it in its true prospective. He further submits that the prosecution witnesses have fully supported the prosecution case, who have no inimical terms with the accused/respondent. During the course of arguments, he has also reiterated the same facts and grounds, which he has taken in his memo of this appeal.

8. Learned D.P.G for the State has supported the impugned judgment by arguing that the prosecution had not been able to prove its case against the accused/respondent, as there are material contradictions in between the statements of PWs, besides the fact that the parties are already knows to each other and the learned trial Court for sufficient reason acquitted the accused/respondent, therefore, according to him, this appeal pertains to year 2010 may be dismissed.

9. Respondent present in person also supported the impugned judgment by arguing that he has not played any fraud or mis-appropriation with the complainant party and he has already paid all loan amount to the complainant, besides according to him, he has not issued a cheque to the

complainant, but complainant party has misused the same malafidely just to involve the respondent/accused in this case.

10. I have carefully scrutinized the entire record of the case with the valuable assistance of the learned counsel for the parties, in the light of their arguments advanced at the bar.

11. Perusal of the record indicates that there are material contradictions in the statements of the prosecution witnesses, which has been rightly pointed out by the learned trial Court in its judgment. It has also been brought on record that respondent/accused has stated in his statement that the PWs are related to the appellant/complainant, therefore, they deposed against him falsely.

12. I have given anxious thought to the evidence of prosecution witnesses and come to the conclusion that the evidence of prosecution witnesses are contradictory to each other on material particulars. It also appears from the record that there was some business transaction in between the parties over loan amount of Rs.63,300/-, which according to the respondent/accused has already been paid to the appellant/complainant.

13. It is well-settled law that principles for deciding appeals against conviction and acquittal are different from each other. Once an accused is acquitted by a competent Court of law after facing the agonies of a protracted trial, then he earns the presumption of double innocence, which cannot be disturbed by the appellate Court slightly.

14. On a close scrutiny of the material placed on file, I am of the view that prima facie reasonable grounds do not exist to believe that respondent/accused has committed the offence. The reasons for acquittal in favour of the respondent/accused by the trial Court appears to be quite sufficient/convincing and the learned trial Court has passed a speaking order in the circumstances of the case. I do not find any justification in this appeal, which is dismissed.

JUDGE.