

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Acq. Appeal No. S- 151 of 2019

Appellant / Complainant : Tarachand S/O Daryano Mal

Versus

Respondents : Imtiaz Ali and another

Date of Hearing & Decision: 20.09.2019

Mr. Imdad Ali Memon, Advocate for appellant

J U D G M E N T

ZULFIQAR ALI SANGI, J.- Through the captioned appeal, the appellant being complainant of FIR No. 100 of 2017 registered at police station Halal New, under Section 406(2), 420, 468, 502/2 & 34 PPC approached this court to set-aside the impugned judgment delivered on 09.08.2019 by learned Civil & Judicial Magistrate, Matiari @ Hala, whereby the accused/ respondents Nos. 1 & 2 were acquitted.

2. The facts of the prosecution case are that the respondents borrowed a loan amounting to Rs.16,25000/- from the complainant and kept / mortgaged the documents of three Toyota Corolla Cars. On or after due time the accused did not pay money to the complainant, therefore, the complainant on verification of documents came to know that the same are forged one. On 17.6.2017 complainant asked the respondents for payment of amount on which the respondents issued murderous threats by showing pistol, hence the above FIR was registered.

3. After necessary compliance, charge under Section 420, 468, 406, 506/2 & 34 PPC was framed on 10.02.2018 to which accused pleaded not guilty and claimed trial. The prosecution to establish its case examined all material witnesses; thereafter, the trial court recorded statement of accused under Section 342 Cr.P.C. and after hearing the parties recorded the impugned judgment of acquittal of accused persons with detailed reasons, by thrashing the depositions of prosecution witnesses.

4. I have heard learned counsel for the appellant and also carefully perused the impugned judgment and material available on record.

5. Counsel for appellant at the outset submits that there was sufficient evidence brought by the prosecution on record but the trial court has acquitted respondents without giving any cogent reasons although all prosecution witnesses supported the case of prosecution, therefore, he states that he has good prima facie case for reversal of acquittal findings.

6. I have considered the submissions and perused the impugned judgment delivered by the trial court.

7. On going through the depositions of complainant and prosecution witnesses, I have found several major contradictions which make the case of prosecution doubtful. Complainant nowhere in his evidence has stated a single word about the date and time of obtaining loan by accused and handing over documents of vehicles as mortgage. He stated in his examination in chief that ***“accused namely Imtiaz and Ameer Bux jointly received Rs:16,25,000/- (Rupee sixteen lacs and twenty five thousands), by submitting three files of different vehicles as mortgage, and Bashir Sangrasi and Ameer Bux again mortgaged four different vehicles and lent Rs.24,00,000/- (Rupee twenty four lacs) from me as loan. Moreover, Zulfiqar Brohi and Shahzad Punjabi lent Rs.7,00,000/- (Rupee seven lacs), jointly by having mortgage a file of vehicle.”*** Further he stated in examination in chief that ***“I produce registration No. BDC-128 make Corolla, BHT-819 Make Corolla, KS-7322 Make Toyota Pickup by accused Ameer Bux and thereafter, BGP-707 Corolla, BEV-846 Make Corolla, BGT-381 Make Corolla, AXB-419 Make Corolla, by Bashir Sangrasi and Ameer Bux, and BDQ-887 Make Corolla by Shahzad Punjabi and Zulfiqar Brohi at Ex: 5/B/C/D/E/F/G/H/I respectively.”*** Whereas he in his cross examination admitted this fact and stated that ***“It is correct to suggest that I have not disclosed specific date in my deposition regarding transaction to have been made with accused persons in respect of amount.”***

8. Complainant even otherwise not produced any valid receipt before the trial court which suggest that accused persons obtained any loan from him and handed over documents of vehicles as mortgage. Even the complainant was unable to disclose names of real owners of vehicles whose documents were retained by him and handed over huge amount to accused persons. Complainant in his examination in chief has stated that ***“Accordingly, I along with my servants namely Jan Muhammad and Mukesh Kumar was present at my showroom on dated 17-06-2017 when above named all accused persons namely Imtiaz Unar, Bashir Sangrasi, Ameer Bux Bhatti, Shahzad Punjabi and Zulfiqar Brohi arrived and raised hue and cry along with harassment and all started to threat to death and warned me not to complain any one regarding the forged documents, whereby, suddenly, accused namely Bashir Sangrasi took out pistol and on the show issued threats to death also so that I may keep quiet and then all accused persons left the***

scene.” P.W Jan Muhammad in this regard stated in his examination in chief that “all the accused persons arrived at showroom at about 1430 hours dated 17-06-2017 and after exchange of hot words with the complainant, suddenly, the accused namely Bashir Sangrasi and on its show threatened to death to the complainant in presence of mine and Mukesh Kumar and then left the scene after refusing to refund the loan.”

9. The verification of files of vehicles was doubtful as different pleas were taken by prosecution which too makes the whole case of prosecution as doubtful. Complainant stated in examination in chief that *“I came to know from different sources that aforesaid files as mortgage before me were fabricated and accordingly when I through different Government Departments verified said documents, same were declared to be fabricated.”* Complainant in cross examination stated that *“It is correct to suggest that I unofficially went for verification of documents but have not disclosed the name of officials. Voluntarily says as such it was unofficially therefore could not disclose the names of officials.”* In this regard PW Imam Din SHO P.S Hala who was scribe of FIR and I.O of the case stated in his examination in chief that *“I sent ASI Shah Nawaz to Hyderabad and Karachi for verification of files. On 17-07-2017, I received verification report from Toyota Company Karachi wherein we were informed that all the files are fake one, I produce entry of departure of P.S Bin Qasim at Ex: 9/A & letter of Toyota Company at Ex: 9/B which are same and correct.”* The said important witness ASI Shah Nawaz was not produced before the trial court through which the files were verified but complainant even not supported this piece of evidence.

10. The piece of evidence about the verification of files was not confronted to accused persons during their statement under Section 342 Cr.P.C. It is well settled principles of law that a piece of evidence not put to an accused person at the time of recording statement under Section 342 Cr.P.C cannot be considered against him. Reliance can be place in case of *Qaddan and others v. The State (2017 SCMR 148)* and *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others (2017 SCMR 1710)*, and even on this point case cannot be remanded back to the trial court for recording statement under Section 342 Cr.P.C to fill the lacuna as it may prejudice the case of accused persons as was held by Honourable Supreme Court of Pakistan in the judgment dated 26-02-2019 passed in Criminal Appeals No: 24-K, 25-K and 26-K of 2018.

11. Record further reveals that all the witnesses cited by complainant were servants of complainant, which too admitted by him during cross examination hence they are interested and their evidence is to be seen very carefully and on close

scrutiny I find major contradictions in the evidence of complainant and his witnesses therefore their evidence is not free from doubts.

12. It is well settled principles of law that burden of proving the case is always upon the shoulders of prosecution and prosecution is bound to prove the case beyond shadow of reasonable doubt, and if a single circumstantial doubt come in the case of prosecution it goes in favour of accused not as a matter of grace but as a matter of right as laid down by Honourable Supreme Court of Pakistan in case of *Tariq Pervaiz v. The State* (1995 SCMR 1345), *Muhammad Akram v. The State* (2009 SCMR 230) and in case of *Muhammad Zafar and another v. Rustam and others* (2017 SCMR 1639).

13. In view of above, the impugned judgment seems to be an elaborate, speaking one hence does not suffer from misreading, non-reading or non-appraisal of evidence, and it does not warrant interference of this court. Further it is well settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on *Inayat Ullah Butt v. Muhammad Javed etc.* (PLD 2003 SC 563), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* (2017 SCMR 1710).

14. Whatever stated above, I reached at the conclusion that the acquittal of respondents do not suffer from any illegality so as to call for my interference with the impugned judgment. According to golden principle of benefit of doubt, one substantial doubt is enough to acquit the accused. The learned trial Judge has advanced valid and cogent reasons for passing a finding of acquittal in favour of respondents and I see no legal justification to disturb the same.

15. For the above reasons, the instant Cr. Acq. Appeal was dismissed in court by short order dated 20.9.2019.

JUDGE