

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

Cr. Acq. Appeal.No.S- 59 of 2013

Cr. Acq. Appeal.No.S- 78 of 2016

Cr. Acq. Appeal.No.S- 80 of 2016

Date of hearing: 13.01.2020.

Date of judgment: 13.01.2020.

Mr. Muhammad Jameel Ahmed, Advocate for appellant.

Mr. Shewak Rathore, D.P.G. for the State.

Respondents ASI Pathan Khan and Ali Bux are present in person.

Mr. Faqir Rehmatullah Hisbani, Advocate files Vakalatnama on behalf of respondents Pathan Khan and Ali Bux in Criminal Acquittal Appeal No.S-59/2013, taken on record.

J U D G M E N T

ABDUL MAALIK GADDI, J: By this common judgment, I intend to dispose of the above Criminal Acquittal Appeals as they arise out of almost same facts and law as the appellant is same and the respondents more or less in these appeals are also same whereas the judgment dated 23.05.2013, challenged in Criminal Acquittal Appeal No.59/2013 and the judgment dated 20.04.2016, challenged in Criminal Acquittal Appeals No.S-78 and 80 of 2016 have been passed by the same trial court viz. IIIrd Additional Sessions Judge, Shaheed Benazirabad. All these three appeals arise out of three crime numbers viz. Crime No.57/2009, 58/2009 and 59/2009 and the sections under which these crimes were registered are also almost same and based on same transaction.

2. Through captioned appeals, the appellant Mir Muhammad has challenged the said judgments by stating that the said judgments are against

the law and facts as such are liable to be set aside and the accused involved in the said cases may be awarded exemplary punishment.

3. Facts of crime No.57/2009 of P.S Daulatpur lodged by complainant Mir Muhammad are that on 27.08.2008 at 5-00 p.m. at bus stop Daulatpur above named accused alongwith absconding accused SHO Asadullah Shah, Amir Hamzo and abated accused Nabi Bux in furtherance of their common object had misused the official powers and had confined the complainant Mir Muhammad in police lock up for about 6-7 days and demanded illegal gratification for his release and abused him and after payment of illegal gratification of Rs.80,000/- from his brother released him. Thereafter, on 31.04.2008 had cut three trees of Talhi and two trees of Babul tree from the land of complainant being Survey No.40-B and stolen the same and got damage the crop of complainant and issued threats of dire consequences.

4. Facts of Crime No.58/2009 lodged by complainant Mir Muhammad at P.S Daulatpur on 18.05.2009 at 1805 are that he owned an agricultural land admeasuring 1-24 acres out of survey No.44/B in Deh Daulatpur which he purchased from Dr. Riaz Ahmed Arain about one year back and the documents of which were also with him. After some time, Ali Bux and Ameer Hamzo asked him as to why he had purchased land from Dr. Riaz Ahmed and that if he would not return the land he would be killed. On 16.03.2009 his brother Muhammad Yakoob came to Daulatpur from village and after getting Rs.20000 from grain merchant Haji Noor Muhammad Khanzada and was returning to village alongwith PWs each namely Wakeel and Mihrab on motorcycle and when they reached Police Station Daulatpur at 11-00 hours one police mobile of Daulatpur in which accused Ali Bux, Ameer Hamzo, ASI Pathan Khan, PC Siddique, PC Jamaluddin, PC Iqbal and driver PC Ali Murad were boarded. They abducted the brother of complainant Yakoob

alongwith motorcycle and robbed cash amount of Rs.20,000/- from him. Complainant informed such matter to SHO Ghulam Shabir Jamali who demanded Rs.50,000/- and issued threats to him for their false implication in false cases if did not fulfill his demand. Complainant moved such application before DIG, on whose order Muhammad Yakoob was recovered from P.S A-Section, Nawabshah. The police officers did not appear on second day before DIG. The complainant approached the Honourable High Court for lodging the FIR whereupon order was passed to DPO Nawabshah for registration of FIR but even then his FIR has not been registered. Then he moved application before Honourable High Court of Sindh whereupon DPO Shaheed Benazirabad was called in person on 18.05.2009 whereupon his FIR was registered.

5. Facts of crime No.59/2009 lodged by complainant Mir Muhammad are that on 23.03.2009 at about 2100 hours at wheat dera situated at the land of complainant above named accused persons alongwith absconding accused Amir Hamzo and SIP Ghulam Shabir in furtherance of their common object misused their official powers and accused Ali Bux and Amir Hamzo brought tractor trolley and taken away 57 bags of wheat crop and also forcibly taken one tractor number 8757 alongwith thrasher and one motorcycle bearing No.8069 NHD.

6. It appears from the record that after due investigation I.O. of the case submitted report for disposal of case in `B` class but the concerned Magistrate did not agree with the report of police and passed order for submitting challan against the respondents hence I.O. of the case has submitted challan arraying the respondents as accused in the said cases / crimes. It also appears from the record that trial court after full dressed trial, acquitted the accused by giving them benefit of doubt.

7. Mr. Muhammad Jameel Ahmed, learned counsel for appellant contended that the judgments passed by the learned trial court are perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that these appeals may be allowed and the accused involved in these cases may be given exemplary punishment.

8. On the other hand, Mr. Shewak Rathore, learned D.P.G. has supported the impugned judgments on the ground that learned trial court has discussed each and every aspect of the case in its judgment whereby he has rightly acquitted the accused persons due to deficient evidence which was even not corroborated by documentary evidence.

9. Mr. Faqeer Rehmatullah Hisbani, learned counsel by filing his Vakalatnama on behalf of respondents has supported the impugned judgments by arguing that both the impugned judgments passed by trial court are perfect in all respect and the learned trial court after considering the evidence and documents on record has rightly acquitted the accused, therefore, he submits that these appeals may be dismissed and the judgments passed by trial court may be maintained.

10. I have heard the learned counsel for parties at considerable length and have gone through the evidence and documents on record with their able assistance.

11. After going through the record, I have come to the conclusion that prosecution has failed to prove its case against the accused for the reasons that there is core dispute between complainant and accused Ali Bux Mallah over Survey No.40-B as according to complainant he purchased such land from Dr. Riaz Arain and accused Ali Bux and Amir Hamzo had objection on such transaction. It is noted that brother of complainant namely Uris had also filed Direct Complaint in respect of incident occurred on 23.03.2009 which was dismissed but according to him it was dismissed for non-prosecution on 07.10.2009 but he admitted in his cross that he has not filed any restoration application. It is also noted that during investigation police disposed off all the cases in `B` class but concerned Magistrate joined the accused. It is noted that names of private accused persons were not mentioned in petition filed by appellant before this court but in FIR their names have been included which shows malafide on the part of appellant/complainant. Since the brother of complainant namely Uris had already filed Direct Complaint in respect of crime No.59/2009 inspite of that complainant lodged FIR in respect of same incident for which Direct Complaint was already pending and such fact was not disclosed in Petition. Moreover, it is also noted that there was enmity between complainant and accused Ali Bux on the issue of land and accused Ali Bux had already registered case against the complainant and almost all PWs for the offence of theft. No any independent witness was produced before the trial court. I have also noted number of contradictions in the evidence of prosecution witnesses on material particulars of the case. When these contradictions were confronted to learned counsel for appellant for

explanation, he has no satisfactory answer with him. These appeals are pending since 2013 and 2016 respectively and the accused are appearing in this case since then. No convincing evidence is available on record to show that accused have committed the offence as stated in the FIRs. No independent witness cited in the case to corroborate the version of appellant / complainant, therefore, false implication of accused / respondents in this case cannot be ruled out.

12. Considering all these above aspects of the case, I have come to the conclusion that the trial court has rightly extended benefit of doubt in favour of accused and the impugned judgments contain valid reasons for extending benefit of doubt to the accused. Hence the said judgments do not require any interference by this court. I may further observe that there is clear distinction in between appeal against conviction and appeal against acquittal. It is settled law that accused who have been acquitted in a crime can claim double innocence, one at the pre-trial stage and the other they may earn on the basis of judgment of acquittal in their favour from the court of competent jurisdiction. The competent court in the instant matters has extended benefit of doubt to the accused after examining the entire evidence. Therefore, I see no reason to interfere with impugned judgments. Consequently, all these three Criminal Acquittal Appeals being devoid of merit are hereby dismissed alongwith pending application(s), if any.

JUDGE