

THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No. 259 of 2015

[Saleem Ishtiaq versus Qadir Saeed & others]

Appellant : Saleem Ishtiaq son of Ishtiaq Ahmed
in person.

Respondents 1-2 : Qadir Saeed son of Saeed Ahmed and
Muhammad Hanif Baloch son of
Ghulam Hussain through Mr.
Jamshed Iqbal, Advocate.

Respondent 3 : The State through Mr. Zahoor Shah,
Deputy Prosecutor General, Sindh.

Dates of hearing : 05-09-2023 & 20-09-2023.

Date of Decision : 08-12-2023.

JUDGMENT

Adnan Iqbal Chaudhry J. - This Criminal Acquittal Appeal is from judgment dated 21.09.2015 whereby the Respondents 1 and 2 were acquitted by the trial court in Criminal Case No. 4169/2011 in respect of the following charge:

“That on or about 25.11.2004 you accused Qadir Saeed committed theft of yellow cab Hundai Excel bearing registration No. PG-5090 Model 1993 from show room of complainant and thereby you have committed offence punishable under section 448/506-B/34 PPC and within the cognizance of this Court.

That you are further charged that both of you with your common intention and in collusion with each other fraudulently forged the documents NOC and on the basis of forged documents got the above mentioned vehicle transferred in the name of you co-accused Muhammad Hanif and thereby you have committed offence punishable under Section 468/471/34 PPC and within the cognizance of this Court.”

2. The Appellant and the Respondent No.1 were car dealers with nearby showrooms and known to each other. The vehicle which was alleged by the Appellant to have been stolen by the Respondent No.1 on 25-11-2004, was a Hyundai yellow cab, model 1993, purchased by the Appellant at an auction held by UBL. The FIR was lodged by the Appellant/Complainant on 09-09-2011 alleging that though he had

permitted the Respondent No.1 to show the cab to a prospective buyer, he had eventually turned down the offer; that while the Appellant was out of station he got a call from his employee Ayaz, informing him that the Respondent No.1 had stolen the cab parked outside the showroom after breaking open the showroom and taking away the fittings of the cab; that upon return to Karachi the Appellant confronted the Respondent No.1 who said that he had sold the cab to the Respondent No.2; that the Appellant then discovered that the Respondents 1 and 2 had forged his signatures on documents to transfer the cab to the Respondent No.2; that thereafter the Appellant made complaints to the Excise & Taxation Department and the Provincial Transport Authority, as a result to which, the registration of the cab was restored to the Appellant's name in the record of the Excise & Taxation, but since he was still out of possession he lodged the FIR.

3. After a full dressed trial, the trial court found that the case of the prosecution to be doubtful as the FIR was lodged after 7 years, there was no eye-witness of the alleged theft, and to the contrary there was evidence to suggest that the Appellant had sold the cab to the Respondents 1 and 2. Therefore, the Respondents were acquitted of the charge.

4. The Appellant submitted that it was established that the cab had been transferred to the Respondent No.2 by way of a 'double transfer', which signified forgery; and that the trial court ignored the fact that subsequently on 20-07-2011 the Excise & Taxation had cancelled the transfer of the cab to the Respondent No.2 and had restored its registration in favor of the Appellant. On the other hand, learned counsel for the Respondents 1 and 2 relied on Exhibit 3-A viz. the order dated 27-04-2005 passed by the Excise & Taxation Officer which found that the cab had been duly sold by the Appellant to the Respondent No.2. He also cited the case of *Muhammad Fazil v. Bashir Ahmed* (2009 SCMR 1382) for the limited scope of interference in a

criminal acquittal appeal. The learned DPG too supported the impugned acquittal judgment.

5. Heard the Appellant, counsel for the Respondents 1 and 2, the learned DPG, and perused the record with their assistance.

6. The Appellant's allegation that the cab had been stolen from his show-room by the Respondent No.1 was based on a telephone call received from his employee Ayaz while the Appellant was out of station. On cross-examination Ayaz stated that he too did not see the Respondent No.1 stealing the vehicle but was informed of the same by two boys who worked with him as helpers. Those boys were not examined as witnesses. Therefore, the finding that there was no direct evidence of the alleged theft or of the breaking-open of the showroom, appears to be correct. The reporting of the incident after 7 years also does not inspire confidence.

7. The other charge was that the cab was transferred to the Respondent No.2 by forging signatures of the Appellant. But then, the documents allegedly forged were never produced in evidence. Rather, Exhibit 3/A produced by the Appellant went to belie that allegation. That was an order dated 27.04.2005 passed by the Excise & Taxation Officer in proceedings initiated under section 34 of the Provincial Motor Vehicles Ordinance, 1965 for suspending registration of the cab on the complaint of the Appellant. Per that order, the record with the Excise & Taxation Department showed that the cab had been transferred to Respondent No.2 on the basis of a sale agreement and transfer deed executed by the Appellant in favor of the Respondent No.2, supported with a copy of the Appellant's NIC and an NoC from the Regional Transport Authority. The said order dated 27.04.2005 was also verified by the witness Syed Umar Farooq, Inspector Excise & Taxation, who was summoned by the prosecution. Still, no attempt was made by the prosecution to summon the record of the Excise & Taxation Department to prove that the sale agreement and transfer deed executed by the Appellant were forged documents.

8. The Appellant then argued that the term 'double transfer' used in Exhibit 3-A denotes forgery by the Respondent No.2. The argument appears to be misconceived. The term 'double transfer' seems to be used only to levy an additional transfer fee on the Respondent No.2 in circumstances where the previous owner of the cab, the Appellant, had not applied to the Excise & Taxation Department for transfer of the registration to his name before selling the vehicle to the Respondent No.2.

9. The documents on which the Appellant relied to submit that the Excise & Taxation Department had subsequently transferred the cab back to his ownership, are all photocopies which were not exhibited in evidence. In any case, those documents were obtained by the Appellant from the original owner, UBL, in the year 2011, which were then used to apply for transfer of the cab to his name. None of those documents go to the act of forgery alleged to have been committed by the Respondents 1 and 2 in the year 2004. It is manifest from the deposition of Syed Umar Farooq, Inspector Excise and Taxation, that the transfer of the cab to the Appellant in the year 2011 was due to the FIR lodged by the Appellant.

10. The Appellant had then urged this Court to look into a report submitted by the Excise & Taxation Department in this acquittal appeal. However, since that report is not part of the evidence, I am not inclined to do so. It is settled law that the scope of interfering with a finding of acquittal is restricted. Those principles are reiterated by the Supreme Court in *Muhammad Fazil v. Bashir Ahmed* (2009 SCMR 1382) and require no elaboration.

11. In view of the foregoing, this appeal does not bring forth any ground for interfering with the acquittal of the Respondents 1 and 2 recorded by the trial court. The appeal is therefore dismissed.

JUDGE

Karachi:
Dated 08-12-2023