

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Acquittal Appeal No. 406 of 2019

Saleem Ishtiaq.....V/s.....The State and others

For hearing of main case.

ORDER

Date of hearing	:	05-11-2020.
Date of Order	:	30-11-2020.
Appellant	:	Present in person.
Respondent No.1	:	Mr. Siraj Ahmed Chandio, Addl. P.G.
Respondent Nos.2&3.	:	M/s. Ubair-ur-Rehman & Munawar Ali Bhaagar, Advocates.

>>>>>>>>> <<<<<<<<<<<

Kausar Sultana Hussain, J:- Through captioned Criminal Acquittal Appeal appellant Saleem Ishtiaq has impugned judgment dated 27.06.2019, passed by the Court of learned VIIIth Judicial Magistrate, Central Karachi in Criminal Case No.736 of 2019, in FIR No.20 of 2019, under section 420, 506/34 PPC of Police Station Shahrah-e-Noor Jehan, Karachi, whereby accused persons were acquitted under Section 245(1) Cr.P.C. by intending benefit of doubt.

2. Relevant facts of the case are that complainant Saleem Ishtiaq registered instant FIR on 14.01.2019 at 1930 hours for the alleged incident occurred on 05.07.2005 till registration of FIR, alleging therein that he spent Rs.50,00,000/- (fifty lac) in construction work of progressive school running by his sister Mst. Afza Zaheer for last 25/30 years. In the year, 2005 she transferred the Society to accused Syed Ali Syedian and informed him regarding the said amount, due towards her. The accused Syed due to unavailability of funds had issued a Cheque bearing No. C3079159 of Rs.50,00,000/- dated 15.7.2005 under promise that on making payment Cheque would be returned to him. Thereafter, accused kept him on false hopes. In the year 2013 sister of the

complainant met with co-accused Danish Ahmed through accused Syed Ali Syedain, who again promised that he shall clear the amount. Accused asked that they are ready to pay Rs.25,00,000/- but after some time they denied to pay the same and issued threats of killing. In the year 2018 they issued threats, hence the instant FIR was registered.

3. After usual investigation the charge-sheet was submitted by the police before the Competent Court. Charge was framed on 08.03.2019, to which the accused pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined five witnesses and given up PW namely Afza Zaheer (sister of the complainant) and exhibited various documents. The statements of accused were recorded under section 342 Cr.P.C in which they have denied all the allegations levelled against them. They did not examine themselves on oath or call any DW's in support of their defense.

5. After full dress trial and hearing arguments of the learned Counsel for the parties, learned Judicial Magistrate found the case doubtful and acquitted the accused/respondents No.2 and 3 in the present case under Section 245(1) Cr.P.C as the prosecution had failed to prove its case against the accused persons beyond any shadow of doubt.

6. Appellant / complainant filed the instant Acquittal Appeal on the grounds that the impugned judgment is a result of non-reading and non-appreciating of the documentary evidence on record including C.D produced by the prosecution witness, on the contrary, the learned trial Court has accepted the oral statements of accused persons recorded under Section 342 Cr.P.C. The appellant stated that C.D produced by him in evidence was

containing admission of the accused regarding his claim but the learned trial Court did not consider it while passing judgment. He further stated that accused persons had admitted their guilt even in writing which was produced before the Court but such document was also not considered by the learned trial Court in its judgment. He prayed for setting aside the impugned judgment by allowing his appeal.

7. I have heard the appellant in person so also the learned Addl. P.G. Sindh and the learned counsel for the respondents No.2 and 3. I have also examined the entire evidence available on record and the impugned judgment with the able assistance of the appellant, learned Addl. P.G and learned counsel for the respondent and considered the relevant laws.

8. While going through the impugned judgment it reveals that the learned trial court had acquitted the accused persons / respondents No.2 and 3 for the following observations and reasons as set out in the impugned judgment below :-

“From the perusal of evidence of prosecution witnesses, it appears that there are major improvements in the evidence of the prosecution witnesses the one which they deposed before investigating officer and before this Court.”

9. The appellant was asked by this Court to pin point any infirmities and illegalities in the above findings he was unable to explain.

10. After my reappraisal of the evidence available on record it revealed that the complainant had lodged an FIR on 14.01.2019 against the respondents regarding alleged incident took place on 15.07.2005 after unexplained delay of more than 13 years, therefore, there is possibility of consultation which cannot be ignored; the complainant put much emphasize on C.D produced by him and available on record as Exh.03/J, but the complainant has

failed to prove contents of the said C.D (Exh.3/J) as the persons (wife and daughter of the complainant) whose conversation with the accused persons was allegedly recorded were admittedly did not join the investigation as no statement under Section 161 Cr.PC of any one of them has been recorded by the Investigating Officer even no memo of handing over said C.D to the Investigating Officer by the complainant was prepared, therefore, producing the said C.D during trial has no legal value in the eyes of law; most important aspect of this case which I have noticed that the complainant as per his version done construction work of "Progressive School" situated at plot No.SJ/2, Block "J", North Nazimabad had belong to his sister namely Mst. Afza Zaheer and he spent Rs.50,00,000/- over the construction work of her school building at different times during 25/30 years, but his sister Afza has not appeared before the trial court to corroborate the statement of the complainant, however in my view the matter of doing construction work of his sister's school building is/was between them and there must have been oral or written agreement in this regard, so if there is any claim of the complainant regarding spending such alleged amount of Rs.50,00,000/- he should had been approached to the civil court. Per complainant his sister transferred the school building to the respondent No.2, who agreed to pay this amount to the complainant, if this is true even then it was an agreement between the sister of the complainant and respondent No.2, the complainant has no direct concern /agreement with the respondent No.2. Besides this is unsupported and uncorroborated version of the complainant, which has also no legal authenticity and value. The other PWs who appeared before the trial court are formal witnesses of investigation which could not be treated as star witnesses. It is pertinent to mention here that the said remaining PWs have not supported the version of the

complainant regarding threats allegedly issued by the respondents to the complainant. The case of the complainant is hopelessly baseless, un-believable, uncorroborated and meritless. I do not find any misreading and non-reading of evidence by the trial court and the complainant himself also failed to point out any infirmity or illegality in the impugned judgment, hence I dismiss the criminal acquittal appeal of the appellant on merits.

11. I have also scanned the impugned judgment and found no illegality or irregularity as such same does not invite interference by this Court. Consequently, instant acquittal appeal being devoid of any legal substance stands dismissed.

JUDGE

Faheem/PA