

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

Cr.Acquittal.Appeal.No.S- 156 of 2016

Date of hearing: 25.05.2018.
Date of judgment: 25.05.2018.

None present for appellant.
Syed Meeral Shah, A.P.G. for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent Muhammad Bachal was charged, prosecuted and acquitted by learned Civil Judge & Judicial Magistrate-III, Mirpurkhas in Criminal Case No.61/2015. On the conclusion of trial, vide judgment dated 13.08.2016 respondent was acquitted. Feeling aggrieved by the aforesaid judgment of acquittal, complainant Allah Warrayo filed this Criminal Acquittal Appeal.

2. The prosecution case as emerged from the recitals contained in First Information Report and the evidence adduced during the trial is as under:-

3. Complainant Allah Warrayo s/o Khamiso Khaskheli lodged FIR at P.S Mirpurkhas on 15.05.2015, alleging therein that respondent/accused Muhammad Bachal had got Rs.700,000/- from him for the purpose of business and promised to return the same amount. It is further stated that respondent had promised the appellant/complainant that after

retirement he would pay him the amount and gave cheque No.3092273 dated 16.03.2015 of Rs.700,000/- of National Bank of Pakistan Mirpurkhas in presence of witnesses namely Bashir Ahmed and Anwar. It is alleged that said cheque was dishonoured by Bank on 30.03.2015. Appellant/complainant lodged FIR on the direction of Sessions Court. FIR was recorded vide crime No. 50/2015 at P.S. Town Mirpurkhas for offences u/s 489-F, 420 PPC.

4. After usual investigation challan was submitted against the respondent/accused under the above referred sections.

5. Trial court framed charge against the accused at Ex.2. Accused pleaded not guilty and claimed to be tried.

6. In order to prove it's case, prosecution examined 06 witnesses. Thereafter the prosecution side was closed.

7. Statement of respondent/accused u/s 342 Cr.P.C. was recorded at Ex.12 in which they claimed false implication in this case and denied the prosecution allegations. Accused neither examined himself on Oath nor led any evidence in his defence to disprove the prosecution allegations. However, he produced the photocopies of FIR No.60/2015 registered at P.S Town Mirpurkhas u/s 147, 149, 504, 337-A(i), F(i), 506 PPC lodged by the respondent Muhammad Bachal against the appellant/complainant and copy of Direct Complaint.

8. Trial court after hearing the learned counsel for the parties and on assessment of evidence, vide judgment dated 13.08.2016 acquitted the accused/respondent as stated above. Appellant/complainant filed this Criminal Acquittal Appeal before this court on 08.09.2016 but never appeared to pursue the same. Acquittal Appeal was fixed before this

court on 18.05.2018 but none appeared for the appellant. Intimation notice was issued to the counsel for appellant. Notice was also issued to the appellant through concerned SHO. It was made clear that in case none appeared for today viz. 25.05.2018, the Criminal Acquittal Appeal shall be heard and decided without waiting further. Today none appeared.

9. I have heard Syed Meeral Shah, learned A.P.G. and with his assistance read out the entire prosecution evidence minutely.

10. Syed Meeral Shah, learned A.P.G. appearing for the State argued that there was litigation between the parties. Respondent/accused in his statement recorded u/s 342 Cr.P.C has produced copy of FIR in Crime No.60/2015 registered at P.S. Town against the appellant/complainant. He has further argued that dishonest intention of the respondent/accused Muhammad Bachal has not been proved at trial. He further submits that scope of acquittal appeal is very narrow and limited. After acquittal presumption of double innocence is attached in favour of the respondent.

11. I have examined the judgment of trial court. The relevant portion of the judgment is reproduced hereunder:-

***“The perusal of the evidence adduced by the complainant shows that he has also not been able to prove the transaction beyond reasonable shadow of doubt. It is observed that during his entire evidence adduced before the court he has not mentioned that date time and place when he gave loan to the accused. The dishonest intention has also not been proved by the prosecution beyond the shadow of reasonable doubt. The prosecution story seems to be doubtful as the ingredients of both the sections to which the accused are charged are not made out. There is no evidence to connect the accused with the commission of offence because there are major contradictions in the prosecution evidence. It needs no reiteration that for the purpose of giving benefit of doubt to an accused*”**

person, more than one infirmity is not required, a single infirmity creating reasonable doubt in prudent mind regarding truth of the charge makes the whole case doubtful.

It is further observed that sufficient contradiction and ambiguity is apparent in the evidence as given by prosecution witnesses which are more than enough to create doubt in the prosecution. Even otherwise, in the case titled as TARIQ PERVEZ V. THE STATE reported in 1995 SCMR 1345, the honourable Supreme Court of Pakistan has held as follows:- The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind that about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

I also rely upon other case law of Honourable Sindh High Court reported as 2015 YLR 1911 [Sindh] NOORAL alias NOORO V. THE STATE and 2015 P.Cr.L.J 1096 [Sindh] JALALUDDIN V. THE STATE, in which it has been held that “for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there was single circumstance which created reasonable doubt in the prudent mind about the guilt of the accused, then accused would be entitled to the benefit, not as a matter of grace and concession, but as a matter of right. Hence, I answer this point as not proved.

POINT NO.2

For what has been discussed above, I am of the view that prosecution has not been able to prove its case against the accused persons as discussed in point No.1 consequently, the accused Muhammad Bachal is acquitted of the charge u/s 245(1) Cr.P.C. Accused is present in court on bail, his bail bond stands cancelled and surety discharged.”

12. From the perusal of evidence, I have come to the conclusion that dishonest intention of the respondent/accused has not been proved. There was litigation between the parties. I am unable to understand in such circumstances as to how Rs.700,000/- were given by the appellant/complainant to the accused to run the business. Trial court while recoding acquittal in favour of the respondent/accused has

assigned the sound reasons. Trial court has rightly observed that prosecution case was doubtful. Trial court had also noticed material contradictions in the prosecution evidence. After perusal of evidence, I have no hesitation to hold that the trial court rightly acquitted the respondent/accused. At the very outset, I would like to mention that I am dealing in appeal against acquittal. It is well settled that that High Court can only interfere in an appeal against acquittal if the view of the learned trial judge is either manifestly perverse on facts or vitiated in law. If the view taken by the trial judge can reasonable be said to be arrived at, this court does not substitute it with its own view as held in the case of *The State v. Abdul Khalique and others* (PLD 2011 Supreme Court 554). Moreover, principles for appreciation of evidence in appeal against acquittal are different from the appeal against conviction. No case for interference is made out. Aforesaid appeal against the judgment of acquittal is without merit, same is dismissed.

JUDGE

Tufail