

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Acquittal Appeal No.S-143 of 2019

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For Hearing of Case

1. For orders on office objection.
2. For Hearing of main case

Mr. Sundar Khan Chachar Advocate for appellant.
Mr. Khalil Ahmed Maitlo, DPG for the State.

Date of hearing: 14-09-2020
Date of Judgment: 14-09-2020

ORDER

Aftab Ahmed Gorar L. Appellant/complainant Muhammad Yousuf has preferred the instant Crl. Acquittal Appeal assailing the judgment dated 06.08.2019, passed by learned 2nd Judicial Magistrate, Ubauro, whereby the private respondent involved in case FIR No. 20 of 2019 of P.S, Ubauro under Section 489-F PPC, was acquitted of the charges levelled against him.

2. Charge against the appellant is that on 15.05.2018 at Al-Gosia Pump Ubauro, private respondent/accused received loan of Rs. 8,50,000/- from complainant in presence of witnesses and in lieu thereof accused dishonestly issued the cheque dated 05.11.2018 for the said amount to be drawn from Al-Habib, Ubauro Branch, but on its presentation before the bank, the said cheque was returned with the memo of 'due to insufficient funds'. Consequently, above FIR was lodged 01.02.2019.

3. After completion of investigation, complete Challan against

respondent submitted before the learned trial Court, where after framing of formal charge against him, the prosecution in order to prove its case against respondent, produced the PWs. After recording statement of accused under Section 342, Cr.P.C., hearing arguments of learned counsel for the parties and State counsel, the learned trial Court acquitted the accused/respondent from the charges levelled against him vide impugned judgment, hence the instant appeal has been preferred by the appellant/complainant.

4. Arguments of learned counsel for appellant and learned Deputy Prosecutor General for the State heard and record perused.

5. After perusal of material available on record, it transpires that the learned trial Court has rightly observed that the complainant has failed to produce any documentary proof or any independent witness of alleged transaction to show that he has friendship with the accused since last ten years and he gave such loan to accused on the basis of such friendship. Even otherwise, complainant has also admitted to have not obtained any receipt or prepared any document as proof. It has also come on record that I.O has failed to record the statements of Manager or employees of Al Gosia Pump though they were present at the time of alleged incident. It has also come on record that PW Bank Manager disclosed that account of accused had been blocked as dormant since March, 2018 and he also admitted that there is difference in signature of accused on cheque and specimen signatures. Besides, learned trial Court has also rightly held that under Section

489-F PPC, prosecution has to prove that accused had taken loan from complainant and he was under obligation to pay back, but the prosecution has failed to establish such aspect of the case. Apart from above, learned trial Court has discussed and considered the material contradictions in the evidence of prosecution witnesses. The above important aspects of the case were fatal to the prosecution case, as such the respondent No.1 has rightly been acquitted of the charge by the learned trial Court.

6. It is settled law that the prosecution is duty bound to prove its case beyond any shadow of reasonable doubt against an accused person and it is also settled that multiple doubts in the prosecution case are not required to record judgment of acquittal but a single reasonable doubt is sufficient to extend benefit of the same to the accused as a matter of right.

7. Apart from above, it is well-settled by now that there are certain limitations on the power of the Appellate Court to convert acquittal into a conviction and would not interfere with acquittal merely because on reappraisal of the evidence, it comes to the conclusion different from that of the court acquitting the accused, provided that the conclusions are reasonably possible. If, however, the conclusion reached by that court was such that no reasonable person would conceivably reach the same and was impossible then this court would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion; and that too with a view only to

avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the forgoing searching light, should be found wholly as artificial, shocking and ridiculous.

8. In view of what has been discussed above, I am of the firm opinion that the prosecution has miserably failed to prove its case against private respondent/accused beyond any shadow of doubt. Therefore, I find no illegality in the impugned judgment of acquittal, which is based on proper appreciation of the evidence on record. Consequently, the present CrI. Acquittal Appeal being devoid of merit is dismissed in limine.

JUDGE

Ahmed