

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD**

Cr. Acquittal Appeal No.S-100 of 2021

For orders on office objection  
For orders on M.A. No.3339/2021  
For orders on M.A. No.3340/2021  
For hearing of main case  
For orders on M.A. No.3341/2021

Date of Hearing: 31.05.2021  
Date of Judgment: 31.05.2021

Appellant / complainant: Riaz Ali through Mr. Imamuddin Otho, advocate.

The State: through Mr. Nazar Muhammad Memon, A.P.G Sindh

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J.**— Respondent Tara Chand was tried by learned Additional Sessions Judge Hala for offences under sections 395, 420, 506(2), 406, 147, 148, 149 P.P.C. After regular trial respondent Tara Chand was acquitted by the trial court mainly for the following reasons :

*“11. The possession of the vehicle has not been denied by the accused as he himself claimed to have sold out his vehicle to PW-8 Umed Ali. The question is that how accused came into possession of the vehicle. One story is narrated by the complainant in the shape of FIR (Exb-03/A) which appears to be doubtful, the other story is narrated by the accused which also appears to be doubtful. It appears from the record that both parties have not disclosed real facts about the dispute. It further appears that PW-1/complainant in-fact tried to convert the civil nature dispute*

*into criminal liability by associating his friends and close relatives as witnesses. Motive of the incident was shown to be cash transaction out of which PW-1 had paid Rs.50,000/- back to the accused while remaining amount was to be paid on 31.12.2018. There was no reason to take action of snatching the tractor as agreement between the parties was being specifically complied with. Accused has denied said agreement. No positive attempt was made to follow the provisions of Article 76 of Qanun-e-Shahadat Order by issuing notice U/A 77 Qanun-e-Shahadat Order to accused for production of original document hence in given circumstances Photostat copy of the agreement (Exb-03/D) cannot be relied upon. PW-4 Rasool Bux was only produced to establish the execution of said agreement (Exb-03/D) who is admittedly real brother of the complainant. The other attesting witness Thoohar Khan was not produced nor any explanation was given regarding inability in his production in witness box. PW Thoohar being an independent witness was withheld without any reason hence his non-production leads to inference U/A 129 illustration (g) of Qanun-e-Shahadat Order 1984, that if he had been produced he would have not supported the said document. In given circumstances the evidence of prosecution to the extent of said document (Exb.03-D) is doubtful. In criminal cases onus of prove does not lie upon accused but it squarely lies upon prosecution hence if any plea of accused in defense is not proved, it would be of no avail to prosecution when it fails to discharge onus of proving the facts in issue for the reason that it is settled principle of criminal administration of justice that prosecution has to stand upon to its own legs not on the weakness of the defense. Complainant/PW-01 in his evidence could not succeeded to establish the delivery of possession of tractor through PW-09 beyond the shadow of reasonable doubt. It appears that there may be interest based transaction between complainant/PW-01 and the accused may have resulted in delivery of possession of title*

*of tractor in favour of the accused, thereafter criminal litigation appears to have managed for getting back the possession. The dispute was actually of civil nature hence later on civil litigation was also started.*

**12.** *The evidence of eye witness is not confidence inspiring, and it is lacking probative value, and it also creates doubt regarding truthfulness of prosecution story, hence it is not reliable therefore, I answer the aforesaid points in negative.*

**13.** *Upshot above discussed reasons is that prosecution has failed to prove the charge against the accused beyond the shadow of reasonable doubt. In the case of Tariq Pervaiz versus State (1995 SCMR 1345) (full bench of Honourable Supreme Court has held that "The concept of benefit of doubt to an accused persons is deep-rooted in our country". For giving 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 prudent mind 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". It was further held in the case of Muhammad Ilyas Vs. The State (1997 SCMR 25) that "where evidence creates doubt about truthfulness of prosecution story, the benefit of such a doubt had to be given to accused without any reservation".*

**14.** *In the light of above discussed reasons and principles, I acquit the present accused Tara Chand S/o Dariyano Mal U/S 265-H (1) Cr. P.C. of the charge by extending benefit of doubt to him. Accused is present on bail, his bail bond stands cancelled, and surety stands discharged."*

Hence, this appeal against acquittal is filed.

2. Learned advocate for the appellant / complainant mainly contended that trial court did not appreciate the evidence according to the settled principle of law and this is the case of misreading and non-reading of evidence. Learned advocate for the appellant / complainant, however, admitted that civil Suit regarding Tractor which is the subject matter of this case is pending before the competent court of law.

3. Mr. Nazar Muhammad Memon learned A.P.G. present in the court in other cases waived the notice and argued that judgment of the trial court is based upon sound reasons; that civil suit with regard to the Tractor is pending before the concerned court; that appellant / complainant has tried to convert the civil litigation to the criminal case. He prayed for dismissal of this acquittal appeal at this stage.

4. In order to appreciate the contentions raised by the learned advocate for the parties, I have gone through the impugned judgment and evidence of the complainant Riaz Ali recorded by the trial court at Ex.03. Complainant had stated that on 18.08.2015, he had purchased one tractor from Deen Muhammad in the sum of Rs.1400,000/- (fourteen lacs). It was unregistered. Appellant needed some money and obtained loan of Rs.100,000/- from the respondent which was paid by the respondent and such agreement regarding sale of tractor was executed between the parties. He had further deposed that he had paid Rs.50,000/- to the respondent on 31.12.2017 according to the terms of agreement. On 14.06.2018 he was ploughing in the lands where respondent Tara Chand along with

four unidentified persons appeared in a car. He was armed with pistol and remaining culprits were armed with rifles. By show of force robbed / snatched tractor from the complainant and he did not resist and kept mum due to fear of the respondent. He went to the police station where SHO refused to register the F.I.R. Then on the orders of the Ex-officio Justice of Peace, F.I.R. was lodged. In the cross-examination, complainant had admitted that he had filed complaint against respondent before the Anti-Corruption Establishment which was dismissed due to non-prosecution. Complainant has admitted that he had filed civil suit which is pending before the competent court of law.

5. Trial Court after regular trial and deep scrutiny of the evidence has come to the conclusion that in fact complainant has tried to convert dispute of civil nature to the criminal case, prosecution failed to prove it's case against respondent. Findings of the trial court recorded in Para No. 11 are based upon sound reasons. Even otherwise, scope of acquittal appeal is quite narrow and limited. After acquittal, there is double presumption of the innocence of the respondent / accused. Impugned judgment is neither perverse nor speculative. Judgment of the trial court requires no interference as such acquittal appeal is dismissed along with listed application.

JUDGE

A.H.