

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Acquittal Appeal No.S- 30 of 2021

- 1.For orders on office objection.
- 2.For orders on MA 1428/21.
- 3.For hearing of Main Case

Mr. Alam Sher Bozdar Advocate for the Appellant/Complainant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

Date of Hearing: **23-04-2021**

Date of Judgment: **23-04-2021**

J U D G M E N T

AFTAB AHMED GORAR L. Respondents / accused were tried by learned Judge, Consumer Protection Court/CJJM, Khairpur in Criminal Case No.90 of 2019 re: State-Versus Sajjad Ali and others, arising out of Crime No. 205 of 2019, registered at P.S, B-section, Khairpur, under Sections 420, 406, 506/2 & 34 PPC.

2. The charge against the respondents / accused is that on 07.05.2019, they showed plot measuring 1500 sq.ft to the complainant at A-One City near New Luqman, Pull and executed an agreement at Nim Hotel near Luqman Phattak in presence of complainant's witnesses for a sum of Rs.18,75,000/-, out of which complainant paid Rs.5,50,000/- to the accused, but accused neither handed over possession of plot to complainant nor returned back the plot amount to him and in consequence thereof, accused Sajjad Ali threatened the complainant of dire consequences for demanding the plot amount from

accused persons on 11.10.2019. Consequently, above FIR was lodged on 11.10.2019.

3. Charge was framed against accused, to which they pleaded 'not guilty' and claimed to be tried. Thereafter, prosecution led the evidence of prosecution witnesses and statements of accused / respondents were recorded in terms of Section 342 Cr.P.C and then on the assessment of evidence available on record and hearing the learned counsel for the parties, learned trial Court acquitted the accused / respondents vide impugned judgment dated 01.02.2021.

4. The appellant/complainant being dissatisfied with the acquittal of the accused has filed this CrI. Acquittal Appeal.

5. Learned counsel for the appellant/complainant argued that there was sufficient evidence connecting the private respondents with the commission of offence, but the learned trial Court illegally acquitted them of the charge; that respondents failed to create any dent in the prosecution case but even then the trial Court illegally, unlawfully and without any justifiable reason acquitted them of the charge and while acquitting the respondents, the trial Court has failed to record any cogent reason.

6. On the other hand, learned Additional P.G supported the impugned judgment by arguing that sufficient material was available on record creating reasonable shadow of doubt and by giving them

such benefit, respondents / accused have been rightly acquitted by learned trial Court.

7. Heard learned counsel for the appellant and learned Additional P.G for the State so also with their assistance scanned the entire material available on record and I have reached to a conclusion that learned trial Court has rightly observed that the evidence of the PWs is not worthy of reliance being doubtful in nature for the reasons that it is a matter of record that complainant paid an amount of Rs.5,50,000/- to the accused persons, but perusal of agreement produced by the complainant executed between him and one Najaf Memon, revealed that said amount was paid to Najaf Memon being owner/seller of the plot in question and both the accused were witnesses to the said agreement. Furthermore, learned trial Court has highlighted material contradictions in the evidence of complainant and PWs on material points that according to contents of FIR, 07.05.2019 complainant along with Ghulam Qadir Abdul Rehman and accused persons were sitting at Nim Hotel near Luqman Phattak, where accused disclosed that they had a plot to sell located in front of A-1 City at new bridge Luqman, but in his evidence, complainant deposed that agreement was written at Sukkur and both the accused assured the complainant that they will be responsible for the agreement.

8. Furthermore, there are also glaring contradictions and inconsistency in the evidence of the PWs, which have rightly been discussed and considered by learned trial Court, which are fatal to the

prosecution case. As such, from a cumulative assessment of the evidence the learned trial Court determined that the prosecution had failed to prove the charge, hence benefit of doubt was extended to the accused, which resulted in their acquittal.

9. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. These powers must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

10. In the judgment in the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**), Hon'ble Supreme Court has held as under:

“2. According to the autopsy report, deceased was brought dead through a police constable and there is nothing on the record to even obliquely suggest witnesses’ presence in the hospital; there is no medico legal report to postulate hypothesis of arrival in the hospital in injured condition. The witnesses claimed to have come across the deceased and the assailants per chance while they were on way to Chak No.504/GB. There is a reference to M/s Zahoor Ahmed and Ali Sher, strangers to the accused as well as the witnesses, who had first seen the deceased lying critically injured at the canal bank and it is on the record that they escorted the deceased to the hospital. Ali Sher was cited as a witness, however, given up by the complainant. These aspects of the case conjointly lead the learned Judge-in-Chamber to view the occurrence as being un-witnessed so as to extend benefit of the doubt consequent thereupon. View taken by the learned Judge is a possible view,

structured in evidence available on the record and as such not open to any legitimate exception. It is by now well-settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, the impugned view is found on the fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled. Criminal Appeal fails. Appeal dismissed.”

11. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the appellant was found wanting and could not point out any such error or omission. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

12. For the aforesaid reasons, this CrI. Acquittal Appeal being meritless stands ***dismissed*** accordingly.

JUDGE