

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No.S – 80 of 2020

Appellant/Complainant : Mst. Kousar Dasti through
Mr. Ubedullah Malano Advocate

Respondent : The State, through Mr.Aftab Ahmed Shar

Date of hearing : 23.04.2021

Date of decision : 23.04.2021

JUDGMENT

AFTAB AHMED GORAR J:- The appellant/victim by way of instant Criminal Acquittal Appeal has impugned judgment dated 24.09.2020, passed by learned IInd Additional Sessions Judge, Sukkur, whereby the private respondents have been acquitted of the offence, for which they were charged.

2. The facts in brief necessary for disposal of instant criminal acquittal appeal are that on 05.03.2014 at 2000 hours, one Kabeer Ahmed Dasti lodged his FIR at Police Station 'A' Section Sukkur, stating therein that on 15.12.2013, his daughter Mst. Kauser along with his son Asif Ali went for getting treatment, whereas, after some time his son returned back and narrated the facts that when at about 1000 hours, they reached near Anwar-Mustafa Madresah, they were intercepted by seven persons unknown persons having pistols on two Cars and forcibly abducted away his sister Mst. Kousar with intention to commit zina with her, he narrated such facts to his relatives and were in search of the abductee. It is

alleged that on 28.02.2014 his daughter, the alleged abductee called him through cellphone and stated the facts that she has been abducted by accused namely, Allah Bux Buriro, Abdul Hakeem alias Abdul Haleem Buriro, Shah Muhammad Buriro, Abdul Razak Buriro, Soomar Buriro, all residents of Mirpur Buriro, district Jacobabad and two unknown persons, her gold ornaments were robbed, whereas, her nikah has been forcibly recited with accused Allah Bux by Moulvi Rab Nawaz, whereas, the witnesses are Abdul Karim, Hafiz, Muhammad Ismail and Sibghatullah and further narrated that she has been kept under wrongful confinement, hence she requested for rescuing her from the illegal captivity. It is alleged that the complainant filed a petition for recovery of her daughter, hence under the orders of High Court, the Jacobabad police recovered and produced the alleged detainee before the High Court, hence after obtaining the orders of High Court, the complainant went to Police Station and lodged the FIR as stated above. After usual investigation, the police submitted challan sheet before Court of law for their trial in accordance with law.

3. At trial, the private respondents did not plead guilty to charge and the prosecution to prove it's case, examined PW-1 / complainant Kabeer at (Ex.7); PW-2 Mst. Kousar (victim) at Ex.08; PW-3 Asif Ali at (Ex.09); PW-4 Ghulam Hyder at (Ex.10); PW-5 Maqbool Ahmed at (Ex.11). Thereafter, learned ADPP closed the side of prosecution vide his statement at (Ex.15)

4. The private respondents during the course of their examination u/s 342 Cr.PC denied the prosecutions' allegation by

pleading their innocence by stating that they have been involved in this case falsely by the complainant party. They did not examine themselves nor led any evidence in their defence.

5. The learned trial Court, on evaluation of evidence adduced by the prosecution, acquitted the private respondents of the offence for which they were charged by way of impugned judgment, as stated above.

6. It is contended by learned counsel of the appellant/victim that the prosecution has been able to prove its case against the private respondents beyond shadow of doubt by producing cogent evidence which has not been considered by learned trial Court without lawful justification; that the ocular version furnished by the prosecution witnesses including complainant Kabeer Ahmed has been corroborated by eyewitness Asif Ali as well as by the victim Mst. Kousar in their evidence; that the evidence adduced by the prosecution was sufficient for awarding conviction to the private respondents. He lastly prayed for setting-aside of the impugned judgment and awarding adequate punishment to the private respondents.

7. Learned Additional PG prayed for dismissal of the instant Criminal Acquittal Appeal by contending that there is inconsistency in the evidence of the prosecution witnesses on material aspects of the incident.

8. I have heard the learned counsel for the appellant/complainant as well as learned Additional PG for the State and perused the entire material available on record. The FIR of the incident was lodged with delay of about 02 months and 20

days without any plausible explanation; as such delay could not be overruled, as it is reflecting consultation. There is inconsistency in the evidence of the prosecution witnesses on material aspects of the case, the complainant Kabeer Ahmed has admitted in his evidence about the identity of the private respondent Allah Bux prior to the incident and such facts has been admitted in his application u/s 22-A and 22-B Cr.P.C filed before the Ex-Officio Justice of Peace, wherein the place of occurrence was shown at Hira Medical Center, whereas, in the FIR the place of occurrence is shown at Anwar-e-Mustafa Madresa. He has denied the filing of harassment petition in the High Court of Sindh, Circuit Court, Larkana so also the fact of free will marriage of his daughter / victim Mst. Kousar with the private respondent Allah Bux on 24.12.2013. Further, the alleged victim lady Mst. Koursar in her cross-examination has admitted that at the time of incident, the accused were opened faces, whereas, in her evidence she has not disclosed either during captivity she was subjected to rape or not. In that situation, the involvement of the private respondents in this case by the complainant party could not be overruled. In these circumstances, learned trial Court was right to record the acquittal of the private respondents by extending them benefit of doubt.

9. As such, from a cumulative assessment of evidence on record, the learned trial Court determined that the prosecution had failed to prove the participation of the private respondents in the crime, hence while extending them the benefit of doubt which resulted in their acquittal.

10. When call upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned

judgment, learned counsel for the appellant 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. While saying so, I am fortified by the case of ***Zulfiqar Ali v. Imtiaz and others (2019 SCMR 1315)***.

11. In view of the facts and reasons discussed above, it could be concluded safely that the impugned judgment is not calling for any interference by this Court by way of instant criminal acquittal appeal, it is dismissed accordingly.

Judge