

JUDGMENT SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.S-124 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of main case.

12.12.2022.

None present for appellant.

JUDGMENT

Through this Criminal Acquittal Appeal, the appellant / complainant has called in question the judgment dated 16.03.2018 passed by learned Special Judge, Anti-Corruption (Central) Hyderabad (Trial Court) in Case No.28 of 2011 (Re: The State v. Usman Ghani) emanated from Crime No.21 of 2011 registered at P.S FIA, Hyderabad for offence under Section 409 r/w Section 5(2) of Prevention of Corruption Act-II of 1947, whereby respondent/accused namely Usman Ghani has been acquitted of the charges.

2. None present from the office of D.A.G. Same was the position of last date of hearing viz. 20.01.2020. Perusal of record it reflects that this appeal against acquittal was presented in the office on 17.08.2018 and since then it has not been pursued diligently. Lastly, this appeal was fixed before the Court on 20.01.2020 and thereafter appellant has not been taking pain to get it listed before the Court for hearing. However, I myself have gone through the impugned judgment dated 16.03.2018 and find that there is no illegality and infirmity which may warrant interference by this Court. It will be conducive to reproduce concluding paragraphs No.18 to 20 of the impugned judgment which reads as under:-

“18. Having scanned above evidence I have found that Pw.1 and Pw.2 are star witnesses in this case. Pw.1 Imdad Ali sent the case to the Director FIA on the basis of investigation conducted by SIO who during investigation found that no any robbery was committed. In his cross, he deposed that he reached at the place of wardat and enquired from police officials sitting in the patrolling mobile as well as people of locality regarding the incident but they all disclosed that no such incident was taken place. Interestingly no any such statement was recorded by the complainant Imdad Ali or SIO in this regard to verify the contention of people of locality regarding the incident. Even he

has admitted that SIO did not record the statement of two army personnel shown in the FIR for which SIO explained that there was discrepancies in the amount therefore he did not record their statements. The reason given by SIO is absolutely unacceptable for prudent mind. It appears that SIO and complainant Imad Ali have made their mind on the basis of discrepancies in the amount found at Post office Cade College Petaro for which Pw.3 admitted in his cross that an amount of Rs.440.000/- taken by Pw.Jameel from accused adjusted on 8.2.2011. Even in the enquiry conducted by the department, the same amount of Rs.21,75000/- was found against accused as alleged by accused in his complaint registered at PS Jamshoro. The prosecution has examined Pw.2 Iftikhar Alam who is also very important witness in this case as he was accompanied with accused at the time of alleged robbery. Pw.2 Iftikhar Alam has categorically stated that on 8.2.2012 Post Master Petaro Cantt Office asked him to accompany with him as he possessed government money amounting to Rs.21,75000/- in hand bag for want of depositing the same at Post office LUMS Jamshoro then they proceeded on motorcycle while bag lying in between accused and himself, when they reached at in between village Bego Khan Mir Jat and village Chakkar Khan three persons came on a CD-70 black color motorcycle and interrupted their motorcycle therefore they stopped their motorcycle therefore accused overpowered them with their T.T Pistol and robbed cash of Rs.21,75000/- lying in the bag and his motorcycle, cash lying in his pocket of Rs.40 to 50 and as well cash of accused Usman Ghani. Pw.2 has supported the version of accused regarding the incident of robbery for which accused had already lodged FIR but SIO did not agree with the version of complainant and sent the case to the Director FIA through SP being case of misappropriation. In the present case, very poor investigation has been conducted by the IO. Even prosecution has examined Pw.2 Iftikhar Alam as a witness who has created serious dent in the prosecution case and supported the defence version. Apart from this, SIO/IO also did not bother to record the statements of people of locality gathered after the incident who allegedly did not support the version of accused but presumption would be that if they had been examined they would have not been supported the case of prosecution. The present IO Musheer Khan has also admitted the version of accused in his cross that in his opinion robbery was committed from the accused. Even the IO Musheer Khan did not take efforts for recovery of amount from the accused nor recorded the statement of any independent witness of locality therefore the real story has shrouded in the mystery.

19. *Accused has taken the plea in his 342 Cr.P.C. statement that he has been falsely implicated in this case and claimed that Rs.2175000 was robbed from him on 08.02.2012 as per FIR lodged by him at PS Jamshoro. However accused has neither examined himself on oath nor led any evidence to disprove the prosecution case.*

20. *Having examined the above evidence, I have come to the conclusion that the prosecution case is not free from doubt as discussed above therefore this point is answered as doubtful”.*

3. After having examination of the afore-referred evidence, I am of the considered view that the evidence as brought on record was not proved by the prosecution; therefore, does not inspire confidence; hence, no illegality and infirmity has been committed by the trial Court in the impugned judgment while acquitting the respondents, which may warrant interference by this Court. It is also settled principal of law that after getting acquittal, the accused always earns double presumption of his innocence and Superior Courts have avoided to interfere with such acquittal findings. There is no cavil with the legal proposition that an acquittal appeal stands on a different footings than an appeal against conviction. In acquittal appeal, the Superior Courts generally do not interfere with unless they find that miscarriage of justice has taken place. The factum that there can be a contrary view on re-appraisal of the evidence by the Court hearing acquittal appeal simpliciter would not be sufficient to interfere with acquittal judgment. Reliance can be placed upon case of **MUHAMMAD ASGHAR and another v. The STATE (PLD 1994 Supreme Court 301)**.

4. In view of above legal position, it appears that instant appeal has wrongly been filed, even the basic ingredients for initiating appeal against acquittal, as laid down by the Honourable Supreme Court of Pakistan in the case of **GHULAM SIKANDAR and another v. MUMARAZ KHAN and others (PLD 1985 Supreme Court 11)**, are also lacking in this case. Accordingly, instant appeal against acquittal is dismissed alongwith pending application, if any.

JUDGE

Shahid