2017 Y L R 752

[Lahore]

Before Shahid Hameed Dar, J

MUHAMMAD QASIM---Appellant

Versus

MUHAMMAD IQBAL and another---Respondents

Criminal Appeal No.204 of 2007, heard on 13th May, 2015.

Immigration Ordinance (XVIII of 1979)---

----Ss. 17 & 22---Criminal Procedure Code (V of 1898), S. 417(2-A)---Human trafficking---Appeal against acquittal---Reappraisal of evidence---Complainant alleged that accused swindled amount in piecemeal from him on the pretext of sending him abroad but Trial Court acquitted the accused---Validity---Appraisement made by Trial Court for pronouncing judgment did not suffer from any legal defect and everything was dealt with lawfully by it---Accused won double presumption of innocence, one relating to basic principle of law that every accused was innocent till proved otherwise and the other through judicial verdict, passed by Trial Court---Judgment of acquittal could not be upset unless it could be shown that it was a product of non-reading, mis-reading or mis-appraisement of evidence or it had been passed arbitrarily or foolishly or it had resulted in miscarriage of justice---Judgment passed by Trial Court was not hit by any of such infirmities---High Court declined to interfere in the judgment of acquittal passed by Trial Court---Compromise between parties, as pressed into service by complainant was added factor not to undo the judgment in question---Appeal was dismissed in circumstances.

Ch. Nazir Ahmad Ranjha and Abdul Raheem for Appellant.

Ch. Majid Hussain for Respondent No.1.

Malik Faiz Rasool Rajwana, Standing Counsel for the Federation.

Date of hearing: 13th May, 2015.

JUDGMENT

SHAHID HAMEED DAR, J.---The appellant, Muhammad Qasim (PW-1) is the complainant of case-FIR No.77/2005 dated 09.06.2005 under section 17/22 of the Immigration Ordinance 1979, which he got registered at Police Station FIA-Faisalabad against Muhammad Iqbal (respondent No.1) and his absconding co-accused Naser Iqbal with the allegation that they had swindled an amount of Rs.2,82,000/- in piecemeals, from him, Muhammad Boota Tahir (PW-2) and Tanvir Abbas (PW-3) in year 2003 on the pretext of sending them to Masqat for employment besides, they also

got their passports for issuance of visas for them but they did not keep the word and digested the said amount, except for Rs.10,000/-, which they returned to the complainant-side on their consistent demand. The respondent, Muhammad Iqbal was tried for the said offences and acquitted of the charge vide judgment dated 25.01.2007, pronounced by learned Special Judge (Central), Faisalabad, hence, the instant appeal under section 417(2-A), Cr.P.C. against him by the appellant-complainant.

2. The prosecution, in order to prove its case against respondent No.1, Muhammad Iqbal produced seven (7) witnesses, including Muhammad Qasim (complainant-PW-1), Muhammad Boota Tahir (PW-2), Tanvir Abbas (PW-3), Muhammad Akram (PW-4), Shoaib Ahmad Haroon SI-FIA (PW-5), Rai Nasrullah Khan Inspector-FIA (PW-6) and Wali Muhammad SI/I.O-FIA (PW-7) during the trial but they failed in doing so, as is manifest from the impugned judgment.

3. It was Muhammad Amanullah Khan Inspector/SHO P.S FIA, Faisalabad who, in absence of a regular public prosecutor, pronounced the prosecution case closed on 09.01.2007. Thereafter, Muhammad Iqbal (respondent No.1) tendered statement under section 342, Cr.P.C., whereby he professed his complete innocence in the matter and refuted all the allegations against him being false. In reply to the question, why this case against him and why the PWs had deposed against him, he contended as under:--

> "Muhammad Akram-P.W.4 is a real brother of Muhammad Qasim-PW.1. Muhammad Akram was our teacher. I had a dispute and altercation with said Muhammad Akram. Muhammad Qasim-P.W.1 in fact got some amount from P.W.2 Muhammad Boota Tahir and P.W3 Tanveer Abbas for sending them abroad but Muhammad Akram Tahir due to said dispute and enmity with me got implicated myself in this case through Muhammad Qasim-his brother."

4. He did not produce any evidence in defence nor he opted to depose under section 340(2), Cr.P.C.

5. As mentioned in the opening paragraph of this judgment, the respondent's trial ended in his acquittal on 25.01.2007.

6. Learned counsel for the appellant-complainant did not look much enthusiastic about pressing this appeal and he came-up with the only submission that the parties had settled the dispute outside the court and complainant/appellant had dropped the idea of prosecuting respondent-Muhammad Iqbal any further. Learned counsel was flanked by the complainant (appellant), who endorsed the said submission and tendered his sworn affidavit (Mark-A) in endorsement thereof, the contents whereof he exclusively owned. A team of advocates, in fact represented the appellant who submitted in unison that the matter in hand might be disposed of in terms of compromise between the parties.

7. Although, learned counsel appearing on behalf of respondent No.1 also subscribed to the factum of compromise, as agitated by the other side, yet he forcefully submitted that respondent No.1 had been acquitted of the charge on sound reasons and that the prosecution had badly failed to establish his guilt during the course of the trial.

8. Learned Standing Counsel showed little interest in supporting the instant appeal and submitted that the impugned judgment was sustainable by all means.

9. The factum of compromise, as arrived at by the warring-parties is a significant circumstance but it wouldn't conclusively affect the merits of this case, as offences involved herein are not compoundable. Learned trial court found countless infirmities in the prosecution evidence and considering it a disappointedly flopped affair, acquitted the respondent with convincing reasons.

10. It all started when appellant (complainant) moved a written application (Exh.PC), on 05.08.2004 before the Director General FIA Islamabad with the allegation that Muhammad Iqbal (respondent No.1), his real brother and absconding co-accused Muhammad Naser and father Hakeem Ghulam Hussain had conned many a persons of the area and fleeced heavy amounts of money from them on the excuse of sending them abroad and fetching them jobs there; they befooled him to extract money from him about 2-1/2 years before and did the same to a couple of other persons, Muhammad Boota Tahir (PW-2) and Tanvir Abbas (PW-3) two years thereafter in presence of Muhammad Akram (PW-4), who is real brother of the appellant. According to the contents of the above said application, the transaction-in-issue was made at Rawalpindi, where the parties lived then. If period of 2-1/2 years, as mentioned in application Exh.PC, is arithmetically calculated, it would turn out to be a deal of year 2001, whereby respondent No.1 and his runaway accused allegedly squeezed aforesaid amount of money from the victims. The prosecution witnesses PW-1 to PW-4, however, mentioned in their testimonies that the incident took place in June 2003.

11. The victims (PW-1 to PW-3) did not produce any independent witness/ evidence to corroborate their testimonies. Muhammad Akram, who appeared as PW-4 happened to be the real brother of Muhammad Qasim, the appellant. The depositions made by the said witnesses, as to payment of certain amounts of money to the acquitted respondent and his absconding co-accused are contradictory inter se, both in terms of time and amount of money. The appellant could not recollect the date, day and the month qua payment of Rs.1,50,000/- by him to the accused. He contended in his statement that all three victims paid Rs.50,000/- each to Muhammad Iqbal (respondent No.1) simultaneously which sharply goes against contents of the application Exh.PC. He stated about settlement of the dispute with the acquitted respondent by all the victims but it could not be so learnt from the said application. Muhammad Boota Tahir (PW-2) and Tanvir Abbas (PW-3) also showed some sort of forgetfulness in their testimonies like the complainant did and they too could not mention any specific date, time and place, when they paid certain amounts of money to the respondent and his co-accused. Tanvir Abbas (PW-3) frankly admitted that he never had direct conversation with the respondent and his matter was dealt with by Muhammad Qasim (appellant/complainant) and his brother Muhammad Akram (PW-4). He also admitted that none of the victims made any payment to the accused within his view. All of the victims (PW-1 to PW-3) are interested witnesses and they failed to produce any independent evidence during trial in corroboration to their respective stances. Their testimonies had been found contradictory and discrepant inter se by the learned trial court and so found by this court. The investigating officer Wali Muhammad SI (PW.7)

also admitted in his statement that no independent witness had been produced by the complainant-side before him during investigation.

12. Learned trial court categorically observed in paragraph 17 of the impugned judgment that evidence led by the prosecution was loaded with many a major and fatal contradictions. The evidence adduced was found untrustworthy and unreliable from all angles by it. The fallacies and inconsistencies as noted down in the impugned judgment were bound to cause collapse of the prosecution-case. The observations recorded and results drawn by the learned trial court are unexceptionable which exclude all the probabilities of interfering with the impugned judgment by this court. No other conclusion, as to one drawn by the learned trial court was possible off the evidence available on the record.

13. The appraisement of evidence, as made by the learned trial court for pronouncing the impugned judgment does not suffer from any legal defect and everything appears to have been dealt with lawfully by it. The respondent-Muhammad Iqbal has certainly won double presumption of innocence, one relating to basic principle of the law that every accused is innocent till proved otherwise and the other, through the judicial verdict, impugned herein. A judgment of acquittal cannot be upset sparingly unless it could be shown that it was a product of non-reading, mis-reading or misappraisement of evidence or it had been passed arbitrarily or foolishly or it had resulted in miscarriage of justice. The impugned judgment is certainly not hit by any of such infirmities. Not a fit case, worth-interfering with by this court. The compromise between the parties, as pressed into service by the complainant would be an added factor not to undo the impugned judgment. Dismissed.

MH/M-286/L Appeal dismissed.

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