JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No. 216 of 2020

Qasim Siddique Zia

Versus

M. Sabir Bhatti etc.

Date of Hearing	:	16.05.2022.
Appellant by	:	Ms Farah Hussan Advocate
State by	:	Mr. Shahbaz Shah, State Counsel with M. Akber ASI.
Respondent No.1	:	Ch. M. Bashir Sappal Advocate

ARBAB MUHAMMAD TAHIR, J. The instant criminal Appeal under Section 417 (2-A) Cr.P.C is arising out of Judgment dated 04.11.2020, passed by the learned Judicial Magistrate Section-30 Islamabad-West whereby respondent No. 1 (*Muhammad Sabir Bhatti*) was acquitted in case FIR No. 175, dated 06.06.2010 under Section 420. 468, 471, 109, 381-A, 337-J, 413, 411 & 34 PPC registered at Police Station Aabpara Islamabad.

2. Precisely, the subject FIR, *Ex. PF*, stood registered on the written application, *Ex. PB*, of the appellant/complainant (*Qasim Zia*) who himself entered the witness box as PW-1. As per the allegations set in *Ex. PF*, appellant used to ply Toyota Corolla XLI, Model 2009, Registration No.9241-LEA, as taxi/on rent through Muhammad Asif, Driver; that on 03.06.2010 when his driver Muhammad Asif was present at Allah Abad Taxi Stand at about 08:00-09:00 pm, an unknown person with whom his driver Asif had acquaintance, asked for immediate booking for General Hospital Lahore in order to attend a patient admitted over there; the fare was fixed as Rs.2800/-; that after a while said person made a call to his driver through Cell No. 0312-4152181 and summoned him at Habib Bank Street Allah Abad from where said person with a lady boarded the Car and left for Lahore and reached over there at about 11:00 pm; both the passengers after alighting from the Car, went inside the hospital; that after short while, said person along with another person with the name of Tahir came to the Driver and asked him for going to Islamabad as they had to get some medical tests of the patient; that they booked the Car for Islamabad against rent of Rs.8200/- and his driver along with the said persons reached Islamabad

on 04.06.2010 at about 06:00 am; that the person with the name of Tahir then summoned one of their accomplices at Al-Markaz Hotel Sitara Market Islamabad where they stayed and served with breakfast and during that, some intoxicant had been administered to his driver through drink '*lassi*' due to which he became unconscious; the fourth person who met in Islamabad stayed over there while other accused persons had thrown his driver across the road at an abandoned place: that driver gained his senses about 02:00-03:00 pm and then informed the complainant who then reached Islamabad; that in the meanwhile, the appellant and his driver had been trying to trace out the culprits and the Car; that servant of the hotel namely Jameel, who had been on duty on the night of 04.06.2010 had acquaintance with the third person who booked a room for them in the hotel. The complainant alleged that the assailants in collusion with Manager of the hotel namely Dilnawaz and owner Muhammad Hanif, administered intoxicant to his driver and taken away his Car.

3. After due investigation, challan was submitted in the court for trial. Charge against the respondent No.2 was framed on 21.05.2013 for offence under section 381-A, 337-A read with Section 34 PPC and Section 420, 468, 471 PPC. The prosecution produced appellant as PW-1, the star witness i.e. Driver Asif Javed as PW-2, one Muhammad Saeed Siddiq PW-3, Manzoor Elahi ASI PW-4, Shakeel Ahmad ASI PW-5, Rafaqat Mehmood Constable PW-6, Muhammad Shafiq Inspector PW-7 and Zehray Khan SI PW-8. The documentary evidence comprised of complaint Ex. PB, recovery memo of Car Ex. PC, recovery memo of title documents of the Car Ex. PD, identification memo of the Car Ex. PE, recovery memo of various documents Ex. PF, recovery memo of two number plates of the Car Ex. PG, recovery memo of ID Card and Driving License of co accused Aslam Bhatti. IqrarNama, allegedly sworn by the respondent No.1 is Ex. PH.

4. After the recording of prosecution evidence, statement of respondent No.1 was recorded under section 342 Cr PC wherein he denied the prosecution evidence and had taken the plea that *most of the witnesses are closely related with the complainant/appellant and that he has been involved in the case with malafide intention and ulterior motives.* The learned Trial Court, after hearing learned defense counsel and learned Prosecutor acquitted the respondent No.1 vide judgment dated 04.11.2020, impugned herein.

5. Learned counsel for the appellant argued that prosecution through overwhelming evidence has successfully proved the charge against the respondent No.1through the testimony of star witness i.e. taxi Driver PW-2 and 'IqrarNama' Ex. PH whereby respondent No.1 had committed to ensure return of the Car to the complainant/appellant within one month, therefore, impugned judgment is liable to be set aside.

6. Conversely, learned counsel for respondent No.1 repelled the above submissions and prays for dismissal of the instant appeal.

7. At the inception, it is noticed that the respondent No.1 was indicated to trial for "*theft of Car*", "*causing hurt by means of poison*", "*dishonestly inducing to deliver the property-Car to other person*", "*forgery for the purpose of cheating",* "*using forged document as genuine*" and "*dishonestly receiving stolen property*".

8. The star witness in the case is taxi Driver Asif/PW-1, who in cross examination stated that at the time when a drink 'lassi' with some type of intoxicant was administered to him at Islamabad, Aslam Bhatti, Tahir Zaman, Shaharyar David alias Moon were present at that time. The charge of administering intoxicant against the respondent No.1 had thus become groundless as the alleged victim himself did not name the said respondent as the person who was present over there at the time of administering intoxicant. The said witness attributed snatching of vehicle after throwing him out of the Car at an abandoned place was attributed to co accused Aslam Bhatti and Sheheryar while the Car was allegedly got recovered by co accused Jehangir Khan as revealed through recovery memo Ex. PC.

9. The statement of the appellant/complainant while appearing as PW-1 named the respondent No.1 in terms that said respondent agreed to return the Car within two days while Ex. PH, *'Iqrar-Nama'* allegedly sworn by respondent No.1 indicates that the said respondent undertook to ensure return of the Car within one month and if he failed to abide by his commitment, appellant would be at liberty to get en-cashed the cheque worth Rs.10-lac-, issued pursuant to commitment contained in Ex.PH. The prosecution in order to show involvement of the respondent No.1 has not produced any cheque in evidence or to show as to whether the appellant got registered any case against the respondent No.1 for the breach of commitment. This contradiction which is glaring in nature

further supported from the fact that the Car was allegedly got recovered by co accused Jehangir Khan and not by the respondent No.1 so the prosecution has failed to bring home the charge against the respondent No.1 beyond any shadow of doubt.

10. It is significant to note that the subject FIR stood registered in the year 2010 while respondent No.1 was acquitted in November, 2020 and thus have faced the rigors of protracted trial for ten years. It is settled principle that an accused who earns acquittal after full length trial carries double presumption of innocence and strong and cogent reasons are required to dislodge such presumption. Guidance is taken from the law laid down in the case laws reported as ***2019 SCMR 1045, 2017 SCMR 1710, 2010 SCMR 491 and 2009 SCMR 1232.***

11 In the case of *Zulfiqar Ali v. Imtiaz and others* (**2019 SCMR 1315**) the Hon'ble Apex Court observed that:-

> *"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".*

12. In view of above, impugned judgment does not suffer from any illegality or material irregularity. Consequently instant appeal fails and accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____05.2022.

JUDGE

A.R.Ansari