ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 162 of 2021

Aurangzeb Khan
v.
Shaheen Bibi

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05.12.2022	Mr. Attaullah H. Kundi, Advocate.

ARBAB MUHAMMAD TAHIR J. Through the instant appeal in terms of Section 417(2-A) of the Code of Criminal Procedure 1898, '**appellant**' namely Aurangzeb *(complainant in main case)* impugns Judgment dated 01.09.2021, passed by the learned Judicial Magistrate Section-30 Islamabad (West) whereby *Shaheen Bibi* ('**respondent**') was acquitted in case FIR No. 68, dated 03.04.2010, under Section 506 (ii), 452, 148, 149, 511,337-H(ii) and 447 PPC, registered at Police Station, Bhara Kahu, Islamabad.

2. Tersely, the subject FIR *(Ex. PF)* stood registered on the complaint *(Ex .PA)* of the appellant. It was alleged therein that on 03.04.2010 at about 4:00 pm, he alongwith Col. Asghar Malik (Director Operations) and Muhammad Akif Manager had been present in Banigala Office near Phoenix House in connection with a meeting when their servant namely Muhammad Younas emerged and informed that Mst. Nafeesa Mehmood-ul-Hassan, Asad, Amir and Mst. Shaheen Bibi (**respondent-**since acquitted) along with thirty persons, with whom civil litigation is pending in Islamabad, came along with Girdawar, Patwari and the SHO namely Qaiser; that he i.e. complainant inquired from Waseem Patwari and Naseer Ahmed Girdawar about the purpose of their arrival upon which they replied that they had to conduct demarcation of the land, however, they had no lawful order in their possession; that the complaint served them with Court order; that earlier about 10 days ago, Mst. Nafeesa Mehmood ul Hassan visited the site along with her counsel,

Patwari and about 20 persons and at that time too they were provided copy of Court order; that on receipt of the Court order, the police, Girdawar and Patwari went away while Mst. Nafeesa Mehmood-ul-Hassan along with her sister Mst. Shaheen Bibi (respondent) Amir, Asad and about 30 persons having hoes, pickaxes and sticks remained at the spot and had been extending threats to take possession of the land forcibly; that at about 5:50 pm Asad took out Kalashnikov from white colour corolla bearing Resignation No. LB-681 while Amir and unknown person pulled out pistols; that Asad immediately entered the main gate of phoenix house and raised "lalkara" that he will kill the owners and also warned not to confront him otherwise he would also be done to death; that thereafter he went close to Mst. Nafeesa and her sister Mst. Shaheen Bibi (respondent) and at that time Mst. Nafeesa shouted that they will demolish the wall; that upon her shouting, Asad, Amir and one unknown person started firing on them; that on the direction of Asad and Mst. Nafeesa, the labour demolished the wall; that at about 6:00 pm they informed rescue 15 and police station Bara Kahu through cell phone about the alleged occurrence and summoned the police; that they restrained Mst. Nafeesa Bibi, Mehmood ul Hassan and their companions by informing them about arrival of the police upon which they fled away on their vehicle along with the labour and other articles by extending them life threats.

3. It is evident from the complaint ibid, the dominant role, had allegedly been assigned to Mst. Nafeesa Bibi and Asad, who at the relevant time, had allegedly been commanding the mob of labour while the role of the respondent Mst. Shaheen Bibi (since acquitted) had been to the extent that she was allegedly accompanying his sister Mst. Nafeeesa while no active role like raising an alarm or issuing any direction to the labour to demolish the wall was assigned to her.

4. After due investigation, report in terms of Section 173 Cr PC was submitted against the respondent and co-accused namely Mst. Nafeesa Bibi, Raja Asad, Raja Kaleem and Umar Pervaiz Kayani. The latter was acquitted in terms of section 249-A Cr.P.C on the basis of compromise vide order dated 30.11.2013 while the remaining accused except the

respondent had been declared proclaimed offender, as reveals through paragraph 4 of the impugned judgment.

5. At the trial the appellant (complainant) appeared as PW-1, Haider Ali S.I as PW-2 and Arif Hussain ASI as PW-3. Complaint is Ex. PA, recovery memo of three empty cartridges is Ex. PB, FIR is Ex. PC, site plan Ex. PD, Ex. PE is the application submitted by accused upon which rapat No. 46 was entered while the inquiry report of SP City is Ex. PF whereby offence under section 452 PPC was recommended to be deleted (the documents with together with the report under section 173 Cr.P.C made part of file by the appellant through CMA 160/2022). After completion of the prosecution evidence the respondent was remained in term of section 342 Cr.P.C. wherein he had taken the plea that:-

> "Civil litigation is pending between owner of Phonix House (Complainant's company) and accused. Partition suit tilted as "Mst. Fafeesa Mehmood ul Hassan et v. Syed Hassan Iqtidar etc" and was also decreed in favour of accused persons Nafeesa and Shahee Hashmi from the court of Learned Tehsildar Islamabad due to this personal grudge and vendetta this FIR was lodged to frustrate the partition proceedings because the complainant party is in possession of our legitimate property. It is also important to note that same case was also challenged by the complainant party in civil court titled as "Sohail Latif v. Nafeesa Mehmood ul Hassan etc", "Sumbal Nazir v. Nafeesa Mehmood ul Hassan et" is pending in the court of Ehtisham Alam larned Civil Judge, Islamabad and next date of hearing is 28.06.2021. PWs are employees of Phonix House and they deposed on behest of their owner Sohail Latif. "

6. The learned trial Court after hearing the parties acquitted the respondent vide judgment dated 01.09.2021 being impugned through the instant appeal for which the learned counsel has argued the case at-length. According to the learned counsel, the evidence on record, the admission of the accused persons and the inquiry report Ex. PF explicitly establish the charge against the respondent, therefore impugned judgment is liable to be set aside. Reliance is placed upon case law report as ***2018 SCMR 149, PLD 2007 SC 429 and PLD 2019 SC 64.***

7. Heard, record examined.

8. In order to appreciate the submissions advanced by learned counsel for the appellant, the evidence that includes the deposition of the appellant- PW-1 the investigating officer PW-3 and the inquiry report Ex. PF has been gone through.

9. As mentioned in the preceding para No. 2 that no overt act had allegedly been attributed to the respondent except that at the relevant time, she had been in the company of her sister Mst, Nafeesa. Neither she allegedly raised any alarm nor the allegation of commanding the labour and issuing any direction to the latter had been attributed to her. The complainant while appearing as PW-1 reiterated the stance set forth in the complaint however, his statement did not contain any significant facts through which active involvement and participation of the respondent in the alleged occurrence is established.

10. Another important aspect of the matter is that, it is an admitted position that the parties had been in civil litigation while the attack had allegedly been launched at the complainant party by a mob led by Mst. Nafeesa and co-accused Asad but despite that no other witness except the complainant/appellant came forward to substantiate the allegations set forth in complaint. The allegation of extension of threats was also not allegedly attributed to the respondent while offence under section 452 PPC was deleted pursuant to inquiry conducted by the SP city Ex. PF.

11. As far as application of Section 337-H(ii) and 447 PPC, in the backdrop of evidence on record against the respondent is concerned, suffice it to observe that no rash/negligent act had even been alleged against her while there was also no allegation of criminal trespass against the said respondent. it was also not the case of the appellant that the respondent, in any manner, did any act or an attempt towards the commission of the alleged offence. In such state of affairs, there was no justification to hold the respondent guilty for the offence since charged.

12. It is a settled law that an accused who is acquitted by any Court of competent jurisdiction carries double presumption of innocence, strong and cogent reasons are required to dislodge such presumption. Reliance is placed upon case laws reported as *Jehangir v. Aminullah* **(2010 SCMR**

491), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka* **(2017 SCMR 1710)**, *Zaheer sadiq v. Muhammad Ijaz* **(2017 SCMR 2007)**, *Muhammad Azam v. The State* **(2009 SCMR 1232)** and *Muhammad Shafi alias Kuddoo v. State* **(2019 SCMR 1045).**

13. Moreover, in the cases of *Sajawal Khan and 4 others v. Amir Sultan and 11 others* **(2016 PCr.L.J 929)** and *Muhammad Shaft v. The State and others* **(1992 PCr. L.J 1391)**, petition for special leave to appeal assailing order of acquittal was dismissed by observing that "when an accused is acquitted of the charge, he would enjoy double presumption of innocence in acquittal appeal under section 417 Cr.P.C. which could not be dislodged."

14. In view of above, the impugned judgment dated 01.09.2021 in the backdrop of evidence besides the law on the subject is well reasoned and does not call for any interference. Consequently, instant appeal fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

//*Kamran*//