ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Criminal Appeal No. 14 of 2018
Muhammad Zareef Ahmed
Versus
Muhammad Rizwan Tahir Satti etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	Date of Hearing 25 June, 2025:	Mr. Sajid Mehmood Shad Advocate for appellant. Sardar Taimoor Aslam Advocate for respondent No. 1 Muhammad Rizwan Tahir Satti. Rana Rashid Javed Advocate for Respondent No.2 Qari Waqar Ahmed, Sardar Arshad Mehmood Advocate for respondent No.3 Raja Zahid Farooq. Mr. Kashif Hussain Shah, Special Public Prosecutor-SPP for the State, Muhammad Ishaq Inspector with record.

Arbab Muhammad Tahir, J: Through the listed appeal under Section 417 (2A) of the Code of Criminal Procedure, 1898, Appellant Muhammad Zareef Ahmed impugn Judgment dated 14.12.2017, passed by the learned Addl. Session Judge-III (West) Islamabad, whereby appeal against conviction, filed by respondents 1 to 3- Muhmmad Rizwan Tahir Satti, Qari Waqar Ahmed and Raja Zahid Farooq, against judgement dated 21.11.2017, passed by the learned Judicial Magistrate 1st Class, West Islamabad, was allowed, impugned judgment dated 21.11.2017, was set aside and pursuant thereto, said respondents were acquitted of the charge by extending them the benefit of doubt in case FIR No.408, dated 1.11.2016, under section 408, 411 and 34 PPC, Police Station Industrial Area, Islamabad.

2- Vide Judgment-in-original dated 21.11.2017, respondents 1 to 3 were held guilty for offence under section 408 and 411 PPC and sentenced as under:-

Muhammad Rizwan Satti (respondent No.1)

Under Section 408-PPC: sentenced to 3-Years Simple Imprisonment along with fine of Rs.20,000/-, in-default to further undergo Simple Imprisonment for 3-Months.

Qari Waqar Ahmed (respondent No. 2)
Under Section 408-PPC: sentenced to 3-Years Simple Imprisonment along with fine of Rs.20,000/-, in-default to further undergo Simple Imprisonment for 3-Months.

Raja Zahid Farooq (respondent No.3)
Under Section 411-PPC: sentenced to 1 ½--Years Simple Imprisonment along with fine of Rs.10,000/-, in-default to further undergo Simple Imprisonment for 1-Month.

3- Briefly, facts relevant for the disposal of listed appeal are to the effect that subject FIR (Ex. PK), stood registered on the complaint (Ex.PA), of appellant Muhmmad Zareef Ahmed against respondents 1 to 3 on the allegations of criminal breach of trust being employee and dishonestly receiving stolen property (offences Under Section 408 and 411 PPC). The allegations, set forth in complain (Ex.PA), were as under :-

" That the complainant (appellant) was doing the business of the distribution of the medicines; that their office had many departments including the department of store and sales; that respondents Qari Waqar Ahmed and Muhmmad Rizwan Tahir Satti were their employees as store man and sale man respectively; that respondent Qari Waqar had been assigned the reasonability to separate the medicines from the store and hand them over to sales man; that on 5.9.2016, Qari Waqar put trecadrine medicine in an empty carton and handed them over to respondent Rizwan Satti; that both of them apprehended by Nisar and Bilawal (PW-3 and PW-4) at the spot and they confessed their guilt; that the complainant then got conducted audit wherein the medicine worth Rs.22,46,9841.78/- were found to have misappropriated; that thereafter they inquired from both the respondents and also summoned their guarantors; that Hafiz Younas, guarantor of respondent Rizwan Satti visited to the office and promised to settle the matter and sought sometime; that the complainant also inquired from guarantor of Qari Waqar; that the latter admitted his guilt

before the witnesses and the fact that he had been handing over the medicine to respondent Rizwan Satti who used to give him share out of the sale proceeds of said misappropriated medicines by retaining his share; that Qari Waqar also returned Rs.500,000/- and sought sometime for the return of remaining amount; that on contact, the guarantor of respondent Rizwan Satti refused to settle the matter and extended threats and that both the respondents, being employee of complainant, committed criminal breach of trust and misappropriated medicines amounting of Rs.22,46,9841.78/-"

4- After the registration of FIR (Ex.PK), the investigation was conducted by Muhammad Ishaq, SI (PW-8). During the course of investigation, respondents 1 to 3 found involved in the commission of the alleged offence and recommended for trial by the court of competent jurisdiction by submitting report under section 173 Cr. PC. Thereafter, respondents 1 to 3 were formally charge sheeted by the trial court on 29.04.2017. The prosecution in order substantiates the charge under section 408 and 411 PPC against respondents 1 to 3, produced and relied upon following evidence; -

Prosecution Evidence

PWs	Examination-in-Chief	Cross-examination		
		Waqar	Rizwan	Zahid
PW-1,Zareef Ahmed	06.05.2017	08.50.2017	11.05.2017	06.05.2017
PW-2,Aftab Kiani	08.05.2017	10.05.2017	17.05.2017	Not cross-examined
PW-3, Bilawal Ijaz	08.05.2017	24.05.2017	20.05.2017	Not cross-examined
PW-4, M.Nisar	08.05.2017	10.06.2017	07.06.2017	Not cross-examined
PW-5,M.Hanif Ahmed	09.05.2017	12.06.2017	29.05.2017 31.05.2017	Not cross-examined
PW-6, Ch. Qaiser Mehmood	09.05.2017	12.06.2017	07.06.2017	Not cross-examined
PW-7,M. Ramzan ASI	21.06.2017	Not cross-examined	20.07.2017	29.09.2017
PW-8, M. Ishaq	21.06.2017	12.07.2017	12.07.2017	Not cross-examined
PW-9, Ashiq Shah S.I/I.O	06.07.2017	11.07.2017	23.07.2017	22.09.2017

Documentary Evidence

Exhibits	Detail of Documents (Prosecution)
Exh.PA	Complaint
Exh.PB	Recovery memo dated 02.11.2016, photocopy of Audit Report, Affidavits & other documents, submitted by complainant.
Exh.PC	Recovery memo dated 02.04.2017, USB-call recording (Waqar Ahmed + Rizwan)
Exh.PD	Rs.150,000/- currency note-recovered at the instant of Waqar Ahmed.
Exh.PE	Recovery memo dated 16.12.2016 of Rs.150,000/- (Waqar Ahmed)
Exh.PF	Rs.200,000/-, currency note-recovered at the instant of Rizwan Satti.
Exh.PG	Recovery memo dated 03.04.2017 of Rs.200,000/- (Rizwan Satti)
Exh.PH(1 to 4)	Four cartons of medicines.
Exh.PI/PJ	Recovery memo dated 13.01.2017 four cartons, recovered at the pointation of Zahid
Exh.PK	FIR, site map of recovery memo dated 13.01.2017 (Zahid Farooq)
Exh.PL	Site map dated 01.11.2016. Recovery memo of vehicle dated 10.01.2017 recovered from Zahid Farooq
Exh.PM	USB.
Exh.P1	Statement of Rizwan Satti to manager Aftab Kiani (regarding cooperation in audit)
Exh.P2	Statement of Waqar Ahmed to manager Aftab Kiani (regarding cooperation in audit)
Exh.P3	Confessional statement of Rizwan Satti (regarding taking medicines from Pharmanet without permission)
Exh.P4	Confessional statement of Waqar Ahmed before Pharmanet (regarding embezzlement of Rs.5,000,000/- to 5,100,000/-)
Exh.P5	Confessional statement of Waqar Ahmed before Pharmanet (regarding total embezzlement of Rs.20,000,000/-)
Exh.P6	Affidavit dated 27.09.2016, issued by Waqar Ahmed to Pharmanet (regarding confession of guilt)
Exh.P7	Affidavit dated 27.09.2016, issued by Rizwan Tahir to Pharmanet (regarding confession of guilt)
Exh.P8	Final Inquiry Report prepared by Manager Aftab Kiani, wherein Qari Waqar Ahmed and Rizwan Satti were found to be involved in embezzlement.
Exh.P9	Audit Report (consisting of 26 pages)
Exh.P10	Application for issuance of receipt (Mark-A) by Waqar Ahmed addressed to Manager Pharmanet (regarding handing over of cash amount of Rs.500,000/-)
Exh.P11	Affidavit dated 03.08.2013 issued by Guarantor namely Hafiz Younis of Rizwan Tahir.
Exh.P12	Affidavit dated 28.09.2012 issued by Guarantor namely Rizwan Jamil of Waqar Ahmed.
Exh.P13	Application form or job employment (Qari Waqar Ahmed)
Exh.P14	Application form for job employment (Rizwan Tahir Satti)
Exh.P15	Job allocation letter

Details of Documents (Defense)

Exh.DA	Supplementary statement of complainant exhibited during cross-examination conducted by Zahid Farooq upon PW/complainant
Exh.DB	Signature of Waqar upon Exh. P10, exhibited during cross-examination by Rizwan Tahir Satti.

5- After the closure of prosecution evidence, statements of respondents 1 to 3, under section 342 Cr. PC were recorded wherein they denied the prosecution evidence and pleaded innocence. The learned trial court, after hearing learned defense council and the learned Prosecutor, convicted and sentenced the respondents 1 to 3 vide judgment dated 21.11.2017, in terms noted in Paragraph 02 above. The respondents 1 to 3 assailed the said judgment in appeal which was allowed vide judgement dated 14.12.2017 and they were acquitted from the case by extending the benefit of doubt. The complainant of the case assailed the judgment through the listed appeal, being decided through this judgment.

6- Heard the learned counsel for the appellant, counsel for respondents 1 to 3 and the learned Prosecutor and gone through the evidence with great care and caution.

7- In the present case, the judgments of the two learned courts are at variance. The trial court, after the evaluation of prosecution evidence, held the respondents 1 to 3 guilty for the offence charged whereas the learned appellate court, disagreed with the conclusion arrived at by the trial court and over-turned its verdict of conviction.

8- The prosecution in order to prove its case produced 09 witnesses and tendered 27 documents i.e. Ex. PA to Ex. P15, detailed in Paragraph No. 04 above. The findings of the learned appellate court are contained in Paragraph 09, 10 and 11. The careful perusal of the said findings reveals that the appellate

court based its findings by referring only statement of PW-5 Muhammad Hanif Ahmed and the documents Ex. P9 audit report, Ex. P6 and P7 affidavits of respondents 1 and 2 besides application mark-A and omitted to take into consideration the rest of the prosecution evidence comprising statements of 8-PWs and the documents Ex. PA 2 and Ex. P15 except Ex. P9, Ex. P6, Ex. P7 and mark A. On the contrary, the trial court exhaustively discussed the entire prosecution evidence by determining points for determination and reasons thereupon. Not only this, but the trial court also appreciated the submissions of the defense and turned down the same with explanations.

9- It has also been noticed that the entire prosecution evidence was repelled by appellate Court by rendering observations in omnibus fashion without reference to the said peace of evidence in-part or as a whole. The judgement-in-appeal even did not contain the details of the prosecution evidence. In such state of affairs, it can safely be held that the impugned judgment is result of misreading and non-reading of the evidence and, therefore, not legally sustainable.

10- In order to cope-up with the situation ibid, relevant case law has been consulted. Guidance on the subject can be taken from the case of "The Government of East Pakistan v. Hatem Molla and others (1968 P Cr. LJ 622- Supreme Court-3MB)." The judgment holds that the proper line of approach should have been not merely to stress the defect in the judgment of the trial judge but to survey the whole case in its factual and evidentiary aspect and then to estimate the probabilities in relation to the allegations of facts. The appeal was remitted for disposal in accordance with law.

11- In the case of "Abdul Rashid Munshi and 3 others v. The State (PLD 1967 Supreme Court 498-3MB)", it was held that under section 367 which by virtue of section 424 is applicable to

judgments delivered by an appellate court, it is necessary that every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decisions. In the case of "Sona Mian and another v. The State (PLD 1958 Dacca 572-2MB)", it was held that setting down conclusion without reasoning in support of the said conclusion is not a proper way of disposing of an appeal.

12- For what has been discuss above, listed criminal appeal is allowed, impugned judgment dated 14.12.2017 is set aside and the matter is remanded to the appellate court for re-writing of the judgment in accordance with law without being influenced by any observation recorded hereinabove. Since the learned Presiding Officers, seized with the appeal had already expressed his mind through the impugned judgment, it would be appropriate if the learned Sessions Judge Islamabad-West himself hear the appeal or to entrust the same to any other learned appellate court.

(ARBAB MUHAMAMD TAHIR)
JUDGE

Announced in open court on _____.07.2025.

JUDGE

Approved for reporting

Shafqat