

P L D 1984 Lahore 315

Before Riaz Ahmad, J

STATE-Appellant

Versus

TAUQIR HUSSAIN-Respondent

Criminal Appeal No 353 of 1972, decided on 26th March, 1984.

(a) Prevention of Corruption Act (11 of 1947)-

-- S. 5 (2)-Penal Code (XLV of 1860), S. 161-Appraisal of evidence-Inconsistent statement of complainant-Lack of corroboration and failure of prosecution to produce official who watched transaction-Police official accompanying raiding party also not produced by prosecution-Acquittal of accused, held, justified being based on cogent and sound reasons and in accordance with established principles governing appraisal of evidence in criminal cases.

(b) Criminal Procedure Code (V of 1898)-

---- S. 417 - Prevention of Corruption Act (II of 1947), S. 5 (2)-Penal (XLV of 1860), S. 161-Appeal against acquittal-Interference in acquittal not open unless view formed by trial Court in support of acquittal was perverse, causing failure or miscarriage of justice-Merely because another view could be formed on basis of evidence on record cannot be ground for interference-Principles governing interference in an acquittal, stated.

It is not open to interfere in an acquittal, merely because another view can be formed on the basis of the evidence on the record of a case, unless the view formed in support of acquittal is perverse, causing failure or miscarriage of justice.

In appeal against the acquittal, the entire evidence has to be re-assessed, with a view to find out whether the conclusion arrived at by the trial Court is in accord with the settled principles governing administration of criminal justice. It has to be further seen that the acquittal is not based upon the misreading of the evidence, or upon such error which would speak for itself.

Billu alias Inayatullah v. The State P L D 1979 S C 934 fol.

Abdul Majid v. Superintendent and Remembrancer of Legal Affairs, Government of East Pakistan P L D 1964 S C 422; Ghulam Muhammad v. Muhammad Sharif and another P L D 1969 S C 398 ; Ahmad v. The Crown P L D 1951 F C 107 ; Faizullah Khan v. The State 1972 S C M k 672 ; Qazi Rahman Gul v. The State 1970

S C M R 755 ; Gul Nawaz v. The State 1968 S C M R 1168 ; Khahd Saigol v. The State P L D 1962 S C 495 and Abdur Rashid v. The State 1971 S C M R 521 ref.

(c) Prevention of Corruption Act (II of 1947)-

-- Ss. 4 & 5 (2)-Penal Code (XLV of 1860), S. 161-Presumption Feeble and inconsistent evidence would not permit to raise presumption and to act thereon-Cogent, strong and adequate evidence on record required for raising such presumption.

Abdul Khaliq v. The State P L D 1964 S C 482 fol.

(d) Prevention of Corruption Act (II of 1947)-

-- Ss. 5(2) & 4-Penal Code (XLV of 1860), S. 161-Solitary statement of complainant on question of demand of illegal gratification by accused disbelieved by trial Court-Failure of prosecution to produce official who witnessed transaction of illegal gratification-Witnesses in whose presence accused alleged to have agreed to receive illegal gratification and in turn do undue favour to complainant also not produced-Held, solitary statement of complainant was rightly refused to be believed by trial Court-Failure to produce such witnesses was fatal to prosecution case and gives rise to justifiable presumption in circumstances, that such witnesses, if produced, would not have supported prosecution.-[Witness].

(e) Prevention of Corruption Act (II of 1947)-

Ss. 5 (2) & 4-Penal Code (XLV of 1860), S. 161-Criminal Procedure Code (V of 1898), S. 417-Appeal against acquittal Statement of complainant inconsistent as to passing of tainted money Accused not convicted by trial Court on solitary statement of complainant-Interference in order of acquittal by trial Court declined in circumstances.

Ch. Qamar-ud-Din Meo for the State.

Sh. Nisar Qutab for Respondent.,

Date of hearing : 12th March, 1984.

JUDGMENT

This appeal has been brought by the Provincial Government assailing the acquittal of the respondent on charges under section 161 of the Pakistan Penal Code and under section 5(2) of the Prevention of Corruption Act, 1947, as recorded, by the Special Judge, Anti-Corruption at Lahore vide his order dated 8-11-1971. The appeal was admitted for bearing by this Court on 24-5-1972. The appeal was admitted mainly on the ground that in -view of section 4 of the Prevention of Corruption Act, the presumption as to the motive as contained in section 161 of the Pakistan Penal Code did arise, which the learned trial Judge had failed to raise.

2. The facts giving rise to the registration of a case against the respondent and his consequent trial are as follows

On 13-12-1967, the complainant Abdul Hameed P. W. 3 contacted one Ali Ahmad S: I. Anti-Corruption Establishment at Lahore, and reported that the respondent a Taxation Clerk in the office of the Excise and taxation Department Lahore had contacted him, and intimated that the department is proposing to enhance the assessment of annual rental value of the houses owned by him, which would result in the enhancement of the tax to be levied. The complainant further stated at that time his tenants namely Muhammad Hanif and Hameed were also present. According to the complainant the respondent told him to visit his office with rupees eighty which the respondent demanded as illegal gratification, for not effecting the proposed enhancement in the tax. The complainant took the respondent aside and allegedly a settlement to pay Rs. 50 as illegal gratification was arrived at between the complainant and the respondent.

3. Ali Ahmad S: I. produced the complainant before the A. D. M. Lahore who deputed Ch. Muhammad Saleem Magistrate P. W. 1 to conduct and supervise a raid. Accordingly a raid party consisting of the aforesaid Magistrate, the complainant and Ali Ahmad S -I. and two foot constables was formed, and the raiding party proceeded to the office of the Excise and Taxation Department at Lawrence Road, Lahore. The complainant after entering the office of the respondent came back and informed the magistrate that the respondent was not available, and there was no likelihood of his return. On 14-12-1967 of about 12-00 Noon the raiding party reached the office of the Excise and Taxation Department. The respondent was again found absent, but his peon Muhammad Shafi asked the complainant to get an application prepared, which the complainant got written from a petition writer sitting in the office. According to the complainant the peon enquired from the complainant if he had brought the money, and the complainant told the peon that he had been able to arrange rupees fifty only, that the rest will be paid by him when the peon would come to his house, and thus the complainant kept waiting for the return of the respondent.

4. At 1-45 p.m. the respondent entered the office on a scooter, and after parking the same he proceeded to the office followed by the complainant. According to the prosecution version the Magistrate and the S.-I. also followed the complainant in the office. They observed that after passing through the room, the complainant entered in another room which was his office. The magistrate deputed Sharif Ahmad Foot-Constable a member of the raiding party to enter the office of the respondent to watch the transaction. It was alleged that the Magistrate and the S.-I. were watching through chik hung on the door that the complainant was present near the respondent. In the meanwhile Sharif Ahmad Foot-Constable came out and informed the Magistrate that the money had passed. Immediately the Magistrate and the S.-I. entered the office and they saw that the application of the complainant was lying on the table of the respondent, and the complainant was signing the same, while tainted currency notes were still in the hand of the respondent and thus the tainted currency notes were recovered.

5. The learned trial Judge proceeded to acquit the respondent on account, of the inconsistent statement of the complainant, lack of corroboration and the failure on the part of the prosecution to produce Sharif Ahmad Foot-Constable in the witness-box who had watched the transaction. Ali Ahmad S.I. was also not produced by the prosecution, and thus the learned trial Judge declined to record conviction on the basis of the statement of solitary witness i.e. the complainant.

6. I have very carefully gone through the impugned judgment and the evidence on the record, and having considered the same, I am of the view, that the acquittal was based on cogent and sound reasons, in accordance with the established principles governing the appraisal of evidence in criminal cases. The law governing the interference in acquittal is clear and need not be reiterated in detail. It is not open to interfere in an acquittal, merely because another view can be formed on the basis of the evidence on the record of a case, unless the view formed in support of acquittal is perverse causing failure or miscarriage of justice. It is further important to note that in appeal against the acquittal, the entire evidence has to be re-assessed, with a view to find out whether the conclusion arrived at by the trial Court is in accord with the settled principles governing administration of criminal justice. It has to be further seen that the acquittal is not based upon the misreading of the evidence, or upon such error which would speak for itself. The law on the subject was discussed at length by the Supreme Court of Pakistan in a case reported *Billu alias Inayatullah v. The State* (PLD 1979 SC 934). The same was also followed by the Supreme Court of Pakistan in the case reported as *Abdul Majid v. Superintendent and Remembrance of Legal Affairs, Government of East Pakistan* (PLD 1969 SC 422), *Ghulam Muhammad v. Muhammad Sharif and another* (P L D 1969 S C 398), *Ahmad v. The Crown* (P L D 1951 F C 107), *Fai:ullah Khan v. The State* (1972 S C M R 672), *Qazi Rahman Gul v. The State* (1970 S C M R 755), *Gul Nawaz v. The State* (P L D 1962 S C 495), *Khalid Saigol v. The State* (P L D 1962 S C 495) and *Abdur Rashid v. The State* (1971 S C M R 521). I respectfully follow the law laid down in the aforesaid judgment.

7. In the peculiar circumstances of this case it is extremely difficult for me to draw a presumption as envisaged by section 4 of the Prevention of Corruption Act, 1947. To draw such presumption there must be cogent and strong and adequate evidence on the record of the case. Feeble and inconsistent evidence would not permit to raise such presumption and to act thereon. I find support in my view by the judgment of the Supreme Court of Pakistan *Abdul Khaliq v. The State* (P L D 1964 S C 482).

8. In the circumstances of this case the learned trial Judge was justified, in refusing to believe solitary statement of the complainant, on the question of demand of illegal gratification by the respondent. Besides failure on the part of the prosecution to produce Sharif Ahmad Foot-Constable despite the fact that opportunities were provided to the prosecution to produce him, I have noticed that the failure of the prosecution to produce Muhammad Hanif and Hameed tenants of the complainant in whose presence the question of the reduction of the tax was discussed, and the illegal gratification was demanded is also fatal to the prosecution. The failure to produce these witnesses would give rise to raise justifiable presumption, that had they been produced, they would not have supported the prosecution case.

9. The statement of the complainant is inconsistent as to the passing of the tainted currency notes. In the first instance soon after raid he deposed that he had himself passed on the tainted currency notes to the respondent, but while appearing in the Court he stated that he gave the tainted currency notes along with the application to Muhammad Shafi Peon who then passed it to the respondent.

10. For the foregoing reasons, I am not inclined to interfere with the acquittal of the respondent, because it is based upon cogent and sound reasons, and was in accord with the established principle of law governing the appraisal of evidence in criminal cases. Hence this appeal is rejected.

M. Z. M. Appeal dismissed.

