

2001 P Cr. L J 1595

[Peshawar]

Before Abdur Rauf Khan Lughmani, J

MUHAMMAD QASIM---Appellant

versus

MUHAMMAD ASIF and 3 others---Respondents

Criminal Appeal No.53 of 1998, decided on 13th April, 2001.

Penal Code (XLV of 1860)---

---Ss. 419/420---Criminal Procedure Code (V of 1898), S.417(2-A)--Appeal against acquittal
---F.I.R. was delayed by thirteen days and the same did not contain any reference to the Jirga having been convened in the case or any undertaking of the accused to pay the amount---Matter between the parties appeared to be of civil nature and certain documents admittedly were not available on the file of the Trial Court---Finding of acquittal was based on correct appreciation of evidence by lower Court---Appeal against acquittal of accused was dismissed in circumstances.

Tahir Jalil Usmani for Appellant.

Khalid-ur-Rehman Qureshi~for Respondents.

Date of hearing: 13th April, 2001.

JUDGMENT

The appellant is aggrieved from the order of the Judicial Magistrate, Haripur, dated 27-10-1998, whereby respondents were acquitted in case F. I. R. No. 10, dated 21-12-1993 under sections 419/420, P. P. C.

2. I need not repeat facts of the prosecution case for those are sufficient reflected in the judgment of the lower Court.

3. Learned counsel for the appellant contended that the evidence on record fully establishes, fraud committed by the respondents and they were the persons who deprived the appellant of Rs.4,00,000. In this connection reference was made to the statement of P.W.4, who according to the learned counsel convened Jirga on 14-12-1993 during course of which the respondents paid Rs.30,000 to him and agreed to pay the remaining amount of Rs.1,20,000. He also submitted that

the respondents signed certain. deeds/pronotes accepting or indicating their liabilities for the payment of the amount.

4. The occurrence took place on 8-12-1993 while the report was lodged on 21-12-1993. As stated earlier the Jirga is alleged to have been convened on 14-12-1993. The F.I.R. does not contain any reference to such Jirga or undertaking of the respondents to pay the amount. Admittedly P.W.4 was not an eye-witness and the role attributed to him does not find any mention in the initial report. The circumstances indicate that it is a case of civil nature and even learned counsel for the petitioner conceded that there were certain deeds which are not available on the file of the trial Court. This being the position I do not find that the lower Court has not applied its mind. In fact the finding is based on correct appreciation of the evidence.

Finding no substance the appeal is dismissed.

N.H.Q./268/P

Appeal dismissed.