

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-41 of 2024

Appellants : 1. Akhtar Khan s/o Akber Khan,
2. Zakar Khan s/o Akber Khan
3. Abdul Rehaman son of Bargaid Khan
through Mr. Wali Khan advocate

Respondent : The State through Mr. Khalid Hussain
Lakho D.P.G.

Dated of hearing : 06.08.2025

Date of judgment : 22.08.2025.

J U D G M E N T

TASNEEM SULTANA, J: Through this Criminal Appeal, the appellants namely Akhtar Khan, Zakar Khan and Abdul Rehaman have assailed the legality and propriety of the judgment dated 28.03.2024 passed by 2nd Additional Sessions Judge, Badin (**Trial Court**), in Sessions Case No.04 of 2023, arising out of Crime No.126 of 2023, under Section 14 of the Foreigners Act, 1946, registered at PS Pangrio, whereby the learned trial Court after full-dressed trial convicted and sentenced the appellants as stated in paragraph No.18, 19 & 20 of the impugned judgment. For the sake of convenience, it would be appropriate to reproduce the said points of the impugned judgment, which read as under:

18. *In view of my findings on point No.1, I have come to the conclusion that the prosecution has proved the charge against the accused beyond any shadow of doubt. Therefore, I convict accused all three accused persons namely (1) Akhtar Khan son of Akber Khan Kharoti (2) Zakar Khan son of Akber Khan Kharoti (3) Abdul Rehaman son of Bargaid Khan Kharoti under section 14(2) of the Foreigners Act, 1946 and sentence them to undergo R.I for one year each and to pay fine of Rs. 10,000/- each. In case of their failure to pay the fine, they will further undergo S.I for one month each. The accused are also given benefit of section 382 (b) of the code of Criminal Procedure. Accused have remained in custody from 7-10-2023 till today, this period of their detention be deducted from the above punishment.*

19. *More so, no one shall be made or to be remained in Pakistan or any prescribed area therein without legal justification of law and if the person is arrested due to his illegal entrance in the Pakistan or nay prohibited area then the person shall be arrested in the interest of the defence or the external affairs of the security of Pakistan the said person will be treated under the provisions of law and also the person will be deported with the consent of the Federal government, be permitted by the court trying him for any*

offence under this act, where section 14-B of Foreigners Act, 1946 is reproduced as under:

“14B. Deportation pending trial or undergoing sentence of imprisonment. Notwithstanding anything contained in this Act, the Code or any other law for the time being in force, a foreigner having no permission to stay in Pakistan or for whose deportation arraignments have been made by the Federal government, may, if his presence in Pakistan is not required in connection with any other case,

(i) with the consent of Federal government be permitted by the Court trying him for any offence under this Act to depart from Pakistan, or

(ii) under the order of the Federal Government, be permitted to depart from Pakistan while he is undergoing any sentence passed under this Act.

20. It has been observed that provisions of section 14 of Foreigners’ Act, 1946 is only relevant to the grant of punishment and supplied no other purpose including deportation. Federal Government could by orders make provisions either generally or with respect to all foreigners or with respect to any particular Foreigner or nay prescribed class or description of foreigners for prohibiting, regulating or restricting their entry with Pakistan or their deport there from in accordance with section 3 of Foreigners Act, 1946 whereby the Federal Government is competent to resolve at the appeal of jail authority under the ambit of law respecting deportation of accused after their completion of recorded sentence.”

2. Brief facts of the case are that on 07.10.2023 police party headed by ASI Meva Ram arrested the appellants Akhtar Khan, Zakar Khan and Abdul Rehaman from Musafirkhana Saman Sarkar Bus Stop Pangrio-Jhudo road who allegedly crossed the border and entered into Pakistan without a valid visa, passport, or necessary permissions, and FIR was lodged under the Foreigners Act, 1946.

3. The investigation was entrusted to ASI Imam Bux, who upon culmination of the investigation submitted charge sheet under Section 173 CrPC against appellants namely Akhtar Khan, Zakar Khan and Abdul Rehaman.

4. Having been supplied requisite documents as provided under Section 265-C Cr.P.C, the Trial Court framed a formal charge against the appellants, to which they pleaded not guilty and claimed to be tried.

5. To prove its case, prosecution examined P.W.1 complainant ASI Meva Ram at Exh.3, he produced the memo of arrest and recovery, FIR, departure and arrival entries at Exhs.3-A to 3-C. P.W.2 mashir P.C Ali Zaib at Exh.4 he produced the memo of vardat at Exh.4-A and P.W.3 IO

ASI Imam Bux at Exh.5, he produced departure and arrival entry at Exh.5-A. Thereafter, the learned ADPP for the State closed the side of prosecution evidence vide statement at Exh.6.

6. The statement of appellants under Section 342 Cr.P.C was recorded at Ex.07 to Ex.09 respectively, wherein they have denied the allegations leveled against them by the prosecution and professed their innocence. They placed on record their birth certificates and copies of the National Identity Cards (NICs) of their fathers. Although the appellants did not opt to testify on oath, they examined two defence witnesses, whose depositions were recorded at Ex.10 and Ex.11.

7. Learned trial Court framed following points for determination in the case.

“Point No. 1. Whether above named accused being foreigners/ Afghan National, crossed the border, entered into Pakistan without any valid authority and permission, and were arrested by a police party headed by ASI Meva Ram of P.S. Pangrio on 7-10-2023 at 1400 hours from Musafarkhana Bus Stop Saman Sarkar on Pangrio-Jhudo road?”

Point No.2 What should the Judgment be?”

8. The Trial Court after hearing the learned counsel for the appellants as well as ADPP convicted the appellants and sentenced them vide impugned judgment.

9. Learned counsel for the appellants, contended that the appellants are bona fide citizens of Pakistan, permanently residing in the country since the time of their forefathers; that during trial, the appellants had produced sufficient and cogent documentary proof of their Pakistani citizenship, including their birth registration certificates and the National Identity Cards of their parents; that these documents, were neither challenged, questioned, nor cancelled by any competent authority, nor did the prosecution lead any evidence to rebut their authenticity; that the complainant himself, during cross-examination, candidly admitted that he did not possess any documentary proof to establish the foreign nationality of the appellants; that the FIR itself contains the complete names and paternal details of the appellants, which, according to him, demonstrates that they were known to the complainant and were not strangers or foreigners; that it was elicited from the mashir during cross-examination that the fathers of appellants Akhtar Khan and Zakir Khan had been operating a shop in Pangrio town for a considerable period of time, thereby further establishing their local roots; that the Investigating Officer

conceded in his testimony that the relatives of the appellants had produced documentary evidence of their ancestry, including death certificates and CNICs of their forefathers, before the challan was filed; that despite this, the Investigating Officer admitted that he did not make any effort to verify these documents from NADRA or the concerned Union Council, nor did he record statements from any independent local witnesses regarding the nationality of the appellants; that the prosecution case is riddled with serious infirmities and that the trial Court had gravely misread and misappreciated the available evidence; that the oral assertions of the prosecution witnesses could not lawfully override documentary evidence of citizenship, which stands in favour of the appellants; that the impugned judgment may be set aside and the appellants be acquitted of the charge. In support of his submissions, he placed reliance on case law of *Bilal V. The State (2021 P Cr.L.J Note 72)* and *Muhammad Nasir versus The State (2022 P Cr.L.J Note 19)*.

10. Conversely, the learned Deputy Prosecutor General endorsed the findings of the learned Trial Court and opposed the appeal.

11. Heard. Record perused.

12. According to the prosecution, on 07.10.2023 PW-1 SIP Meva Ram (Exh.03), acting on spy information, proceeded with a police party to Saman Sarkar Musafirkhana, situated on Pangrio-Jhudo road, where the appellants were apprehended. On inquiry, they allegedly disclosed themselves to be residents of Seeroza, District Pikta, Afghanistan. When asked to produce National Identity Cards, visas, or passports, they failed to produce any such documents. On this basis, a memo of arrest was prepared (Exh.3-A), an FIR was lodged (Exh.3-C), and the appellants were shown to be Afghan nationals. The version of PW-1 was corroborated by PW-2 PC Ali Zaib (Exh.04). PW.3 Imam Bux (Exh.05) visited place of incident and submitted charge-sheet.

13. While this constitutes the core of the prosecution case, it is pertinent to note that the entire edifice rests upon the oral assertions of official witnesses and the non-production of documents at the time of arrest. The alleged disclosure by the appellants of their Afghan origin was not independently verified, nor was any effort made to associate neutral witnesses from the locality, despite the fact that the place of arrest was a public bus stand where independent witnesses could easily have been joined. Moreover, the Investigating Officer did not undertake any verification from NADRA or the concerned Union Council to ascertain the

nationality of the appellants, a step which was not only possible but necessary to convert suspicion into proof.

14. In criminal jurisprudence, particularly where penal consequences attach under special laws such as the Foreigners Act, the prosecution is required to present evidence that is credible, corroborative, and free from doubt. Mere assertions, unsupported by independent corroboration or documentary verification, fall short of the standard required to establish guilt beyond reasonable doubt.

15. In their statements recorded under Section 342, Cr.P.C., the appellants categorically denied the allegation of being Afghan nationals. With one voice, they asserted that Pangrio Town is their place of birth, where their families have been residing and conducting business for many years. They further claimed that their implication in the present case is false and motivated, being a device by the police to demonstrate efficiency before their superior officers. In support of their stance, the appellants produced documentary evidence, including old and new CNICs of their parents as well as their own birth registration certificates issued by the Town Officer, Pangrio, Taluka Tando Bago, District Badin. Additionally, they examined two defence witnesses, namely Shah Jehan and Sikander Ali, who deposed that they have known the appellants since childhood and further testified that the father of appellants No.1 and 2, upon his demise, was buried in a graveyard situated near Pangrio Town.

16. In order to properly appreciate the controversy between the parties, it is necessary to advert to Section 9 of the Foreigners Act, 1946, which explicitly places the burden upon a person, in such cases, to prove that he is not a foreigner. The said provision reads as follows:

“9. Burden of proof.— If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given there under, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Evidence Act, 1872, lie upon such person.”

17. In view of the above provisions of law, burden to prove that the appellants are not foreigner or Afghan national is lay on the appellants. By virtue of Section 4 of the Pakistan Citizenship Act, 1951 a person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth. Provided that a person shall not be such a citizen by virtue of this Section if at the time of his birth:-

“(a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan ; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

18. The appellants, in further support of their claim, produced Birth Registration Certificates duly issued by the Town Officer, Town Committee Pangrio, which show the date of birth of appellant Akhtar Khan as 03.04.1999, that of appellant Zakar Khan as 03.05.2001, and that of appellant Abdul Rehman as 01.05.2000. Alongside these certificates, appellant Akhtar Khan also produced the NIC of his father bearing No.458-93-2206080 and the CNIC of his mother bearing No.41104-0190234-8, while appellant Abdul Rehman produced the NIC of his father bearing No.458-38-155903 and CNIC bearing No.41101-0196075-3. These documents, when examined together, clearly establish a chain of circumstances demonstrating the appellants' birth, family linkages, and long-standing habitation in Pakistan.

19. It is of material importance that the parents of the appellants are not accused of having entered Pakistan illegally, nor has any action been taken against them by the competent authorities. This fact lends considerable weight to the plea of the appellants, and the documents produced in their favour have not been effectively controverted by the learned ADPP for the State. Prima facie, therefore, the appellants have discharged the burden placed upon them under Section 9 of the Foreigners Act, 1946, and the onus had consequently shifted to the prosecution to establish that the appellants are in fact Afghan nationals. However, the prosecution failed to discharge this burden. PW-2 PC Ali Zaib, during cross-examination, admitted that the father of appellants Akhtar Khan and Zakar Khan was engaged in running a *naswar* shop in Pangrio Town for a long period of time. Similarly, PW-3 ASI Imam Bux, the Investigating Officer, conceded that the relatives of the appellants had produced CNICs and death certificates of their forefathers, but he neither undertook verification of these documents from NADRA or the Union Council nor made any effort to record statements of independent local witnesses to establish the nationality of the appellants. He further admitted that the relatives of the appellants had been living and conducting business in Pangrio Town for many years. Such admissions by the prosecution witnesses themselves significantly undermine the case of the prosecution and reinforce the appellants' plea of Pakistani citizenship.

20. The documentary evidence produced by the appellants, on its face, appears to support their claim of Pakistani citizenship. However, the learned trial Court discarded these documents without assigning any valid or plausible reasoning for such rejection. During the course of hearing before this Court, a pointed query was put to the learned Deputy Prosecutor General as to whether the documents relied upon by the appellants, including their birth certificates and the CNICs of their parents, had been declared forged or cancelled by any competent authority. The learned DPG was unable to furnish any satisfactory response. When further questioned as to whether any proceedings had been initiated against the officials who had issued these documents in favour of the appellants or their parents, the learned DPG again conceded that no such action had ever been taken.

21. The record thus reflects that while the appellants' case is supported by documentary evidence, the prosecution's case rests merely on oral assertions. It is a settled principle of law that documentary evidence prevails over oral testimony, particularly where such documents remain valid, subsisting, and uncanceled by the issuing authorities. In the present case, the documents produced by the appellants continue to hold the field and carry a presumption of truth. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Syed Akhtar Hussain Zaidi v. Muhammad Yaqinuddin* (1988 SCMR 753), wherein it was categorically held that mere oral assertions are insufficient to rebut valid documentary evidence.

"Art.72 --Documentary evidence --Rebuttal --Mere oral assertion is not sufficient to rebut documentary evidence."

22. In light of the above-cited case law, it is manifest that a presumption of truth attaches to documentary evidence duly issued by competent authorities, and such evidence cannot be displaced by mere oral assertions. The prosecution's bare claim that the appellants are Afghan nationals by origin, unsupported by any cogent or corroborative material, is insufficient to dislodge the evidentiary weight of the documents produced by the appellants. In the absence of cancellation or rebuttal of these documents by the concerned authorities, the appellants cannot, merely on the basis of oral allegations, be branded as foreigners.

23. In view of the above facts and circumstances the appellants have discharged the burden of proof that they were not foreigners, they have proved habitation and existence of their parents in Pakistan and discharged the burden rested upon them in terms of Section 9 of the

Foreigners Act, 1946, therefore impugned judgment is not sustainable under the law and set-aside, the appellants are present on bail, their bail bonds stand cancelled and sureties discharged. Consequently, appeal is allowed. The order of deportation of the appellants stands set-aside.

J U D G E