

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Appeal No.S-15 of 2006

Date of Hearing: 24.08.2017

Date of Judgment: 24.08.2017

Appellants/accused: (1)Mumtaz Ali S/o Noor Muhammad
(2)Wazir Ali S/o Mir Muhammad
(3)Vikio S/o Muhammad Lootio
(4)Abdul Majeed S/o M.Hashim Leghari
(5)Muhammad Arif S/o Abdul Rahim.
(Appellants/accused No.4 & 5 died on
10.03.2014 & 03.11.2015 respectively
vide NADRA's reports on record).

*Through Mr. Shakir Ali Talpur,
Advocate.*

The State: *Through Shahid Ahmed Shaikh,
Deputy Prosecutor General, Sindh.*

J U D G M E N T

ABDUL MALIK GADDI, J:- The present appeal is directed against the judgment dated 25.01.2006, passed by the learned Special Judge, Anti-Corruption (P), Hyderabad, in Special Case No.88 of 1996, emanated from Crime No.03 of 1995, registered at P.S Anti-Corruption Establishment, Thatta, for offences under Sections 420, 465, 468, 471, 218 PPC r/w Section 5(2) of Act-II of 1947, whereby the appellants were convicted and sentenced to suffer R.I for 01 year and to pay fine of Rs.5000/- each and in default in payment of fine, they were ordered to suffer S.I for 04 months more with benefit of Section 382(B) Cr.P.C.

2. Brief facts of the prosecution case are that on 30.04.1994, accused Mumtaz Ali being Tapedar at Tapo Belo, Taluka Sujawal, by

misusing of his official position fraudulently in collusion with co-accused named above recorded bogus statement of sale of Ahmed S/o Muhammad Khan Leghari in the book of statement of Tapo Belo, Taluka Sujawal, showing sale of land S.No.144 and 150 of Deh Chhangani, Tapo Ladhako to his cousin co-accused Wazir Ali Jokhio before witnesses namely co-accused Vikio, Abdul Majeed and Muhammad Arif and the said property was Qabooli land of Ahmed Khan Leghari but fraudulently shown to have been sold to Wazir Ali. Further, that on the basis of said bogus statement, accused Mumtaz Ali falsely and fraudulently had changed the Khata in favour of his cousin co-accused Wazir Ali in Deh Form No.VII-B of Deh Chhangani, Tapo Ladhak vide Entry No.5405/376 dated 30.04.1994 with his own hand writing and signature and entry was also bearing cancellation note by the acquitted Mukhtiarkar Noor Nabi Unar, as Munshi Mumtaz Ali actually was not posted as Tapedar at Tapo Ladhako and was not competent to make such entry in VF-VII/B and record the statement in statement book of Deh Chhangani, Tapo Belo as Jan Muhammad Shah was already posted on Tapo Ladhako. Therefore, such report/complaint was made by D.C Thatta to ACE Thatta and thereafter case was registered against above named accused and after usual investigation and obtaining of necessary permission case was challaned against above named accused to face their trial for aforesaid offence.

3. During the investigation, 161 Cr.P.C statements of P.Ws were recorded. On finalization of the investigation, challan was submitted against the accused.

4. Learned Special Judge, Anti-Corruption (Provincial) Hyderabad, framed the charge against the accused under Section 420,

465, 468, 471, 218 & 34 PPC r/w Section 5(2) of Act-II of 1947 at Ex-04.

All the accused pleaded not guilty and claimed to be tried.

5. At the trial, the prosecution, in order to substantiate the charge, examined following witnesses:

P.W.No.1 Haji Mangi Ladho Jokhio, Supervising Tapedar was examined at Ex-10, who produced statement register as Article-A and entry from it as Ex-10-A, photocopy of Deh Form-VII/B as Ex.10/B.

P.W.No.2. Allahdino Mallah retired Tapedar was examined at Ex.11.

P.W.No.3. P.W Ahmed Khan Leghari (complainant) was examined at Ex.12.

P.W.No.4. Ahmed Khan Samoon, Assistant D.C Office, Thatta was examined at Ex.13, who produced order passed on the Misc. Application of applicant Ahmed duly signed by Kirshan Lal ADM Thatta as Ex.13/A.

P.W.No.5. Muhammad Anwar, Tapedar was examined at Ex.14

P.W.No.6. Dharamdas/I.O was examined at Ex.15, who produced permission letter of SP, ACE, Hyderabad as Ex.15/A.

P.W.No.7. Baboo Khan, S.I was examined at Ex.17, who produced copy of order passed by D.D ACE, Hyderabad for registration of FIR as Ex-17/A, FIR No.03/1995 as Ex.17/B, permission letter for investigation obtained from Mukhtiarkar as Ex.17/C.

P.W.No.8. Syed Jan Muhammad Shah, Supervising Tapedar was examined at Ex.18.

Thereafter, the prosecution closed its side vide statement at Ex.19.

6. Statement of the accused under Section 342 Cr.P.C was recorded at Ex-20 to 24, in which all the accused claimed their innocence and further stated that they have been involved in this case falsely due to enmity. Accused did not lead any evidence on oath but examined only one defebce witness namely D.W.1 Muhammad Khan at Ex.25.

7. Learned Special Judge, Anti-Corruption (Provincial), Hyderabad, after hearing the learned Counsel for the parties and examining the entire evidence, passed the impugned judgment, hence this appeal.

8. Before going ahead, It is clarified that after filing of the instant appeal, the appellants/accused namely Abdul Majeed S/o Muhammad Hashim Leghari and Muhammad Arif S/o Abdul Rahim Leghari died vide orders dated 01.04.2015 and 24.04.2015 respectively, hence, the proceedings against them stands abated. Copies of death certificates are available on record.

9. Learned Counsel for the appellants/accused contended that the appellants/accused have been falsely implicated in the aforesaid crime by the complainant due to enmity. It is further contended by the learned Counsel that the impugned judgment has been passed by the Trial Court in a hot haste manner and the learned Presiding Officer of the Trial Court has not taken into consideration the material contradictions arose in between the statement of the prosecution witnesses. Learned Counsel during his arguments invited my attention towards various contradictions in between the statement of the prosecution witnesses and stated that in view of such contradictory statement of the prosecution witnesses, no conviction can be based upon the appellants.

10. Learned D.P.G has supported the impugned judgment by arguing that the prosecution witnesses in their evidence have implicated the appellants/accused in forgery of land record. He further argued that the impugned judgment has been passed after appropriate appreciation as well as documents on record, in which forgery has been committed

by the appellants/accused. He also argued that the appellants/accused were involved in forgery of land record, therefore, this appeal has no substance, which is liable to be dismissed.

11. I have given my anxious consideration to the arguments advanced at bar and have gone through the case papers so available before me.

12. It is settled principle of law that the prosecution has to succeed on the strength of its own case and not on the weakness of the defence. Burden to prove the allegations against the accused always lay on the prosecution. The prosecution has examined eight witnesses. I have perused the evidence of these witnesses with the assistance of learned Counsel for the parties and have come to the conclusion that the evidence adduced by the complainant party is contradictory to each other on material particulars of the case, therefore, their evidence cannot be safely relied upon to hold the appellants/accused guilty of the alleged offence. I have also gone through the impugned judgment and also come to the conclusion that the Trial Court while convicting the appellants/accused has also failed to consider the material fact on record that P.W Mangi Ladho, who has been examined at Ex-10 is not handwriting expert of the handwriting/signatures. Moreover, he has grievance with the appellant/accused Mumtaz Ali and he is not the eye-witness for making the statement of P.Ws and so also entries in Form-VII/B. P.W Haji Mangi Ladho has further stated in Examination-in-Chief that they also signed the document available on record as Ex-10/B. As such, the conviction recorded by the learned Trial Court under Section 468 & 471 PPC is totally based on presumptions, conjecture and surmises. It is also pointed out that the learned Trial

Court while convicting the appellants/accused has also ignored the statement of P.W Muhammad Anwar, Tapedar, who has stated in his evidence that he is not conversant with the signature of accused Mumtaz Ali. As such, he was declared as hostile and the learned Trial Court, inspite of the fact that this witness is declared hostile, believed upon his statement without assigning any cogent reason and convicted the appellants /accused. It is further pointed out that the learned Trial Court has also failed to consider the fact that P.W Ahmed Khan, who is complainant and is owner of land in question i.e. S.No.144 & 150 of Tapo Ladhako and that his son Muhammad Khan was serving as Tapedar at Taluka Jaati at the time of incident, who informed him that appellant/accused Mumtaz Ali has tempered with the record of his land by mutating his land in favour of appellant/accused Wazir Ali. Thereafter, he moved an application against the accused to the D.C Thatta, who ordered to cancel the entry kept by appellant/accused Mumtaz Ali. It is also pointed out that Muhammad Khan was also serving as Tapedar and if he was in the knowledge regarding mutation of the land, then he should have restrained the Mukhtiarkar from mutation of the land in favour of the appellant/accused Wazir Ali and why Tapedar Muhammad Khan remained silent, if any fraud was being played by any of the appellants/accused regarding mutation in land of complainant Ahmed Khan. The learned Trial Court without assigning any cogent reason has also relied upon the evidence of P.W Ahmed Khan and believed upon the statements of the witnesses without examining the expert in this case in order to verify the alleged signature on the alleged statements. On the contrary, the learned Trial Judge himself acted as Expert and compared the signature of Tapedar on Ex-10/A, Ex-17/D and Article-A with the signatures available on Court

record i.e. plea, statement under Section 342 Cr.P.C, Vakalatnama of appellant/accused Mumtaz Ali, which is against the principles of natural justice and no conviction can be recorded under Section 468 & 471 PPC only on assumptions, conjectures and surmises. In such circumstances, I am unable to rely upon the evidence of the prosecution witnesses. It is settled principle of law that a single circumstance, which creates doubt in the prosecution case, is sufficient to extend benefit of doubt to the accused but in this case there are several circumstances, which have created doubt in the prosecution case but unfortunately the prosecution evidence has not been appreciated by the Trial Court according to the settled principle of law. Reliance is placed upon the case of **TARIQ PERVEZ V/S THE STATE (1995 SCMR 1345)**, wherein the Honourable Supreme Court has observed as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right”

13. Reliance is also placed upon the case of **KHALIL AHMED V/S. THE STATE (PLD 2008 Karachi 8)**, wherein this Court has held as under:-

“18. In the circumstances, the case of the prosecution is highly doubtful. The conviction cannot be based on such type of trials which are marred by glaring infirmities. However, the trial Court resolved all the doubts in favour of prosecution and convicted the appellant, while losing sight of well-entrenched principle of law, that the burden was always on the prosecution to prove the charge beyond all reasonable doubts. The rule adopted by the trial Court, to say the least was not conducive for the safe administration of justice.

14. As observed above, in this matter the prosecution has examined as many as eight witnesses but out of these witnesses, one material witness namely P.W. Muhammad Anwar and was declared hostile and he has not supported the prosecution case. It also appears from the record that the alleged incident took place on 30.04.1994 while the same was reported on 18.01.1995 after prolong delay of 08 months, for which no satisfactory explanation has been furnished by the prosecution, therefore, in these circumstances false implication of the appellants/accused in this case after due deliberation and consultation cannot be ruled out. It has also been pointed out that this appeal is pending since 2006 but record shows that the case against the appellants/accused was registered in the year 1996 and the appellants/accused have been appearing before the Trial Court as well as this Court continuously for the last 21 years without their fault, therefore, this aspect of the case cannot be ignored.

15. I, while relying upon the above cited authorities and looking to the peculiar circumstances of the case, hold that the prosecution case was highly doubtful and the learned Trial Court did not appreciate the evidence according to the settled principles of law. Thus, while extending benefit of doubt, the present appeal is allowed and the impugned judgment dated 25.01.2006 is *set-aside* and the appellants are acquitted of the charge. Appellants are present on bail, their bail bonds stand cancelled and surety discharged. These are the reasons of my short order dated 24.08.2017 announced in open Court.

JUDGE

as disclosed in the FIR are that on 30.04.1994, accused Mumtaz Ali being Tapedar at Tapo Belo, Taluka Sujawal by misusing of his official position and in collusion with co-accused fraudulently recorded bogus statement in the book by showing sale of land at S.No.144 and 150, Deh Chhangani, Tapo Ladhako in favour of his cousin appellant Wazir Ali Jokhio before the witnesses namely Vikio, Abdul Majeed and Muhammad Arif (appellants) as the actual owner of said land was Ahmed Khan Leghari. It is further stated in the FIR that appellant Mumtaz Ali falsely and fraudulently changed the *Khata* in Deh Form VII-B of Deh Chhangani, Tapo Ladhako in favour of his cousin Wazir Ali (appellant) with his own handwriting as well as with the signature/cancellation entry note of *Mukhtiarkar* Noor Nabi Unar (since acquitted) and such complaint/report was made to Anti-Corruption Establishment, Thatta, hence the aforesaid FIR.

