

ACE Acquitted

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Mohammad Karim Khan Agha, J.

CRIMINAL APPEAL NO. 570 OF 2019

Appellants

1) Muhammad Ismail Mazari s/o
Jam Chena Khan
2) Manzoor Khan son of Dost
Muhammad Khan through Mr.
Nadeem Ahmed Farooqi, Advocate

For State

Mr. Muhammad Iqbal Awan,
Additional Prosecutor General
Sindh.

CRIMINAL APPEAL NO. 565 OF 2019

Appellants

Abdul Ghani Qureshi son of
Muhammad Sadiq through Mr.
Mukesh Kumar Khatri, Advocate.

For State

Mr. Muhammad Iqbal Awan,
Additional Prosecutor General
Sindh.

Date of Hearing

01.02.2024

Date of Announcement

13.02.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants Muhammad Ismail Mazari, Manzoor Khan and Abdul Ghani Qureshi were tried in the Court of Special Judge Anti-Corruption (Provincial) Karachi in respect of Crime No.21 of 2013 under section 409/34 PPC r/w Section 5(2) of Prevention of Corruption Act-II, 1947 registered at P.S. ACE, Karachi and vide judgment dated 30.08.2019 the appellants were convicted u/s.409/34 PPC and sentenced to suffer R.I. for 04-years each with fine of Rs.5,00,000/- each. In case of default in payment they shall suffer six (06) months more. Appellants were also convicted u/S.5 (2) of

Prevention of Corruption Act-II, 1947 and sentenced to suffer R.I. for 03-years each with fine of Rs.3, 00,000/- each. In case of default in payment they shall suffer six (06) months more. However, the benefit of Section 382-B was also extended to the appellants. All the sentences were to run concurrently.

2. the brief facts of the prosecution case as per FIR are that this matter was enquired on written complaint of District Food Controller, West Karachi with the following allegations:-

a) Storage of Government Wheat at the hired godowns Al-Hamd, RB-II, Usman, Zulfiqar existing at Maripur Road, in District West Karachi during the period from 17.07.2012 to 16.01.2013, a shortage of 7172 bags have been detected by the committee constituted to check the transaction into said godowns.

b) Following staff was deputed for transaction into Wheat i.e. for storage and releasing as per Government policy.

i) Abdul Ghani Qureshi, FGI (Incharge Godowns)

ii) Ismail Mazhar FGI

iii) Zaheer Babar FGI

iv) Manzoor Khan FGI

v) Muhammad Hashim Chowkidar.

c) the District Food Controller, West, Karachi requested to register a case against above alleged persons as they were found responsible for misappropriation.

During preliminary inquiry by Anti-Corruption Establishment, the record of above Godowns regarding transaction of Wheat was secured as well as statements of the Members of Enquiry Committee were recorded. In the light of evidence on record, the above accused persons were found involved in misappropriation of a huge quantity of wheat (890.520 tons) worth of Rs.2,50,15,200/- hence this FIR.

3. After usual investigation the case was challaned and the appellants were sent up for trial. The appellants pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 05 witnesses and exhibited various documents and other items. The statement of the appellants/accused persons were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed trial.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this

judgment; hence, the appellants have filed these appeals against their convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 18.05.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants have contended that they are innocent; that no evidence has been produced that they had anything to do with the misappropriation of the wheat bags from the concerned godowns; that they were convicted only on the basis of a departmental inquiry which was subject to audit; that no witness made any specific allegation against them and that there is no document to connect them to the missing wheat bags and in any event all documents are inadmissible being photocopies and as such for any or all of the above reasons the appellants be acquitted by being extended the benefit of the doubt. In support of their contentions, they placed reliance on the cases of Major (Retd) Mushtaq Hussain Shah v Lt. Col. (Rtd) Fazal Akbar (1995 P Cr.LJ 1772), Anwar Ali v The State (2022 YLR Note 103), Zakir Ali v The State (2022 YLR Note 147), Brig. (Retd) Kamal Rasool v James Rollins, Nigerian National & 3 others (2021 P Cr. L J 382), Abdul Karim Kumbhar v The State (2021 YLR Note 10), Bashir Ahmed v The State (2022 P Cr. L J Note 46), Mehar Ali Solangi v The State (2023 YLR 1500), Muhammad Samiullah v The State (2022 SCMR 998) and Abdul Zaheer v The State (2022 MLD 577).

8. Learned Additional Prosecutor General Sindh fully supported the impugned judgment and contended that since the prosecution had proved its case beyond a reasonable doubt the appeal be dismissed. He placed reliance on the record.

9. I have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh and have gone through the entire evidence which has been read out by the learned counsel for the appellants and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. After my reassessment of the evidence on record, I find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

- (a) Admittedly, Appellant Abdul Ghani was assigned the task of supervising the godowns from where allegedly 7172 wheat bags were misappropriated along with the other appellants and to keep the godowns in an orderly condition. However none of the appellants were based full time at any of the godowns. Rather they came and went for roving inspections so it cannot be said that they were present at all times. Indeed, workers could load and unload the wheat which was transported to and from the godowns in their absence.
- (b) No evidence has come on record as to how the figure of 7172 bags was reached and its weight being 890.520 tons. So it has not even been proven by evidence the quantity which had gone missing.
- (c) No witness in his evidence has directly implicated the appellants in the misappropriation of the wheat bags. Rather two witnesses only gave evidence that out of the 4 godowns in which the wheat bags were kept two were in a shabby condition and since the wheat bags were scattered they could not count the stock. Significantly they have not stated that any wheat bag was missing or misappropriated. Keeping the godown in a shabby condition with the wheat bags being scattered around at most might have called for disciplinary action against the appellants rather than legal action.
- (d) The Inquiry report which was relied on by the trial court, and was not put to the appellants whilst recording their S.342 Cr.PC statements and as such is of no evidentiary value, even otherwise found as under in its conclusion;

"As per general policy the Incharge is responsible for proper storage / supervision / custody etc. Here shortage seems to be caused due to improper supervision negligence in handling of Government stocks and liable for action under rules. However, before initiating any action Regional Audit Officer be asked to check the record of godowns in details to finalize the matter so that further legal action be taken under relevant rules in Government interest."(bold added)

Hence even the inquiry report found it to be a case of negligence at the best and even this report this was subject to an audit report to finalize the matter. No audit report was exhibited at trial which could have definitively shown the number of allegedly misappropriated bags.

- (e) It would seem that the prosecution case is anchored on the misappropriated bags being sent to a godown in Chotki where they were not unloaded and disappeared. In this respect it is relevant to reproduce some of the material parts of the IO's evidence being PW 5 Ayaz Ali which is set out below for ease of reference.

"Note; The PW is author of FIR as well as IO of the case but unable to disclose the material aspects of the case, even he shown ignorance of the facts of case mentioned in the FIR, which shows he wanted to give favour to the accused. Let matter be reported to his high ups as well as Chairman ACE for taking necessary action against him."

After above note, he shows his willingness to record his statement /evidence as under:-

This matter pertaining to the shortage of 7172 wheat jute-bags from godown Al-Hamd & RB-II Hawks-Bay. I recorded 161 Cr.P.C. statements of DFC-Sarfraz Kamanger, DFC-Qazi M. Rafiq, DFC-Muhammad Ali Channar, FCI-Abid Hussain, FCI-Peer Ghulam Jeelani etc, they supported the prosecution version. With permission of high ups I visited the office of DFC-Ghotki and recorded the statement of DFC-Asghar Shah, according to his statement 7172 jute bags were dispatched to said godown but same were not de-loaded, due to which Govt, sustained the loss of Rs.25015200/-. During days of incident accused-Anees ur Rehman was posted as DFC."(bold added)

- (f) The star witness seems to be DFC-Asghar Shah however he was not called to give evidence and as such the inference under A.129 (g) Qanoon-e-Shahadat Ordinance 1984 can be drawn that if called to give evidence he would not have supported the prosecution case. Of the other 6 witnesses whose S.161 Cr.PC statement he recorded only two gave evidence which as discussed above was only to state that two of the godowns were in a shabby condition and he could not count the bags. Neither witness directly implicated the appellants in the misappropriation of any wheat bags. Five other PW's on the calendar of witnesses were also given up by the prosecution without explanation so the same inference under Article 129 (g) Qanon-e-shahadat Ordinance 1984 can also be drawn against them. The trial in respect of any illegality in Ghotki also lead to an acquittal and it is not even clear from the IO's evidence from which godowns the 7172 wheat bags had come to Ghotki from i.e Karachi or else where in Sindh

During cross examination the IO also makes the following admissions in respect of appellants Abdul Ghani and Manzoor Khan which are set out below for ease of reference;

"Cross Examination to Mr. Mukesh Kumar Khatri learned advocate for accused-Abdul Ghani Qureshi.

It is fact I have not produced any proof to show how shortage of wheat was caused. It is fact Govt. policy in subject matter has not been produced. It is incorrect to suggest that I have not conducted impartial investigation and submitted charge sheets on flimsy grounds.(bold added)

"Cross Examination to accused-Manzoor Khan in person.

It is fact he has been nominated on the statement of co-accused Abdul Ghani. It is incorrect to suggest that he was not remained posted at the godown during the days of incident."(bold added)

Hence, there is no evidence to determine the shortage of wheat, if any, from the concerned godowns and one of the accused appears to have been convicted mainly on the statement given against him by another co-accused which is of no evidentiary value.

- (g) That all the documents produced at trial are photo copies and are inadmissible in evidence.
- (h) I find that there is no solid evidence to prove that the appellants misappropriated the wheat bags and instead because they were in charge of the godowns it has been assumed/presumed that they are guilty of the offence so charged. It is well settled by now that convictions cannot be handed down based on assumptions and presumptions and that convictions can only be based on reliable, confidence inspiring cogent evidence which is completely lacking in this case.

11. Thus, based on the above discussion, I find that the prosecution has NOT proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and as such all the appellants are acquitted of the charge and the appeals are allowed. The bail bonds of the appellants on bail are discharged and they are free to go.

12. The appeal is disposed of in the above terms.