

Judgment sheet.
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Appeal No.S-72 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of hearing:	13 .09.2017.
Date of decision:	13.09.2017
Appellant:	Through Syed Tarique Ahmed Shah, Advocate.
The State	Through Syed Meeral Shah DPG .

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J U D G M E N T :-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellant has challenged the judgment dated 20.05.2015 passed by learned Special Judge, Anti-Corruption (Provincial), Hyderabad in Special Case No.87 of 2007 of P.S. ACE Badin, Re: State vs. Haji Rasool Bukhsh Bhurgari, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant in point No.3 (Para-27) of the impugned judgment which reads as under:-

“27. In result of above facts and discussion, I have come to the conclusion that the prosecution has fully established its case against the accused beyond any doubt, therefore, I take lenient view in awarding the sentence to the accused and convict the accused Haji Rasool Bukhsh Bhurgari for the offence punishable U/S 161 PPC read with section 5(2) of Prevention of Corruption Act-II, 1947 and sentenced to undergo R.I for 01 year with fine of Rs.50,000/-. In default

of the payment of fine, he shall sentence to undergo further S.I for six months. The benefit of section 382-B Cr.P.C is also extended to the accused. Accused Haji Rasool Bukhsh who is present in court on bail, is taken into custody with direction to remand him to Central Prison, Hyderabad to serve out his above sentence therefore, his bail bond stands cancelled and surety is discharged.”

2. Related facts are that on 27.07.2007 at 1030 hours complainant Ali Nawaz registered present FIR alleging therein that his father Natho Khan Dasti has agricultural land area 03-00 acres in Deh Dasti Taluka Badin. After the death of his father, on 25.07.2007 he moved an application to the Mukhtiarkar (Revenue) Taluka Badin for true copy of the Khata of his father who forwarded the same to the Supervising Tapedar Abdul Jabbar Memon who also put his note and sent the same to Tapedar Haji Rasool Buksh through complainant. On 26.07.2007 complainant alongwith his son Ghulam Hyder Dasti met with Tapedar Haji Rasool Buksh at his Dera and produced the application duly forwarded by Mukhtiarkar (Revenue) Taluka Badin who after taking application, demanded bribe amount of Rs.3500/-for issuance of true copy of the record of rights of his father and on his request, accused agreed to accept bribe Rs.2300/- out of which he paid part payment of bribe Rs.300/-to the accused Haji Rasool Buksh in presence of Ghulam Hyder Dasti who then demanded remaining amount of Rs.2,000/- on 27.07.2007 at 1300 hours in his office.

3. After registration of the above FIR and conducting raid, the then Circle Officer Ghulam Akbar Chandio conducted investigation and after completing the same, his successor Saleem Raza Parhihiar submitted challan before this court on 29.11.2012 against the accused for facing trial.

4. At trial, prosecution examined PW-1/complainant Ali Nawaz Dasti at Exh-4, who produced his original application addressed to Mukhtiarkar (Revenue) Taluka Badin alongwith his NIC as Exh.4/A, FIR as Exh.4/B, mashirnama No.1 as Exh.4/C, mashirnama No.II as Exh.4/D, PW-2 Muhammad Anwar Dasti at Exh.5, PW-3 Abdul Jabbar Memon, the then Supervising Tapedar at Exh.6, who produced photo copies of Deh form-VII as Exh.6/A, PW-4 Syed Zaheer Ahmed Naqvi, the then Civil Judge & Judicial Magistrate Badin at Exh.-8, who produced his original trap report as Exh.8/A, PW-5 Ghulam Akber Chandio, the then Circle Officer at Exh.9, who produced his application for deputation of Magistrate as Exh.9/A. The Pw Muhammad Hassan was given up on the point of same evidence as of PW Muhammad Anwar while PW Ghulam Hyder Dasti could not be examined due to his none-traceability. Thereafter, the side of prosecution was closed vide statement as Exh.10.

5. Statement of accused was recorded under section 342, Cr.P.C at Ex.11, wherein he denied the allegations leveled against him and claimed himself innocent.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

7. The main contention of the learned counsel for the appellant is that the impugned judgment of conviction and sentence is perfunctory, opposed to law and facts on record; that the case against appellant is false and the learned trial court has failed to consider the point that PW-1 namely Ali Nawaz Dasti and PW-2 Mohammad Anwar Dasti are real brothers and interested, however, the other witnesses are official one despite of the fact that the incident took place in thickly populated area, but no independent witness has been cited in this case. He further argued that neither the conversation between the complainant and accused were heard nor transaction of tainted money was seen by the member of trapping party and that there are material contradiction in between the prosecution witnesses, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby innocent appellant/accused is suffering woe, therefore he prayed for his acquittal.

8. Conversely, learned D.P.G argued that the contradictions in the evidence of prosecution witnesses are minor in nature and the accused is specifically nominated in the commission of heinous offence which is against society, therefore he is not liable to any grace or relief in his favour.

9. I have carefully considered the arguments as advanced by the learned counsel for the parties and carefully scanned the material so available before me.

10. Read-through the contents of FIR as well anticipation the whole situation of the case from cranium to tail it aromas that the learned trial court while passing the impugned judgment did not consider the same. Whereas, the Supervising officer of raiding party Syed Zaheer Ahmed Naqvi Civil Judge & Judicial Magistrate, Badin in his examination-in-chief has deposed that on 27.07.2007 he received direction from learned District & Sessions Judge, Badin to supervise raid with Circle Officer Akbar Chandio. Thereafter, he proceeded to ACE Office where complainant of the FIR No.12 of 2007 met and the FIR was shown to him. Then two currency note of Rs.1,000/- were handed over to complainant and mashirnama No.I was prepared in his presence wherein complainant, mashir Ali Nawaz, PC Hassan Circle Officer and he himself put signature on it. Thereafter, they proceeded to the

revenue office Badin and complainant met with accused and his brother gave signal to ACE official. Then they proceeded to accused Rasool Bukhsh. He introduced himself and recovered Rs.2,000/-from pocket of the shirt of accused and then mashirnama No.11 was prepared and complainant, mashirs and Circle Officer put signature on it. He himself put his signature on it. Then he came to his office and prepared trap report for sending the same to learned Sessions Judge, Badin. And Inspector Ghulam Akbar, Circle Officer, ACE Badin who is the star witness of the case he in his evidence has also supported the version of complainant Ali Nawaz as well as Civil Judge & Judicial Magistrate, Badin and narrated the same facts in his evidence. Though, the same members of the raiding party had neither heard the conversation between the complainant and the accused by the complainant. Prosecution evidence was materially discrepant. Despite independent witnesses being available at the time of incident, no effort was made to join them to see the alleged recovery of bribe money from the accused and the interested testimony of police officials was not enough to record conviction. Complainant being biased against accused, his evidence needed corroboration which was not available, the reliance is placed in a case of Muhammad Ashraf vs. the State reported in 1996 SCMR 181.

11. Besides this, I have perused the evidence so brought on record and found that the evidence of the prosecution witnesses is contradictory on material particulars to which the learned counsel for appellant has drawn attention towards such lacunas while submitting written synopsis, surprisingly disregarded / left by the trial court while passing the impugned judgment, which for the sake of accessibility are produced hereunder.

1. That Pw-1/complainant says circle officer give Rs.2000/-in presence of Judge Sahib (Judicial Magistrate). PW-2 says Judge Sahib give Rs.2000/-to complainant in shape of 2 currency notes of Rs.1000/=
2. PW-1 says raid was conducted at 12:00 noon. PW-4/Judicial Magistrate says we reached the place of Trap at about 11:20 hours. PW-1 says at the time of my personal search before preparation of first Mashirnama some amount less than Rs.100 have been recovered by my pocket. But mashirnama No.1 page 41 reflects that nothing was recovered from complainant Ali Nawaz while conducting body search.
3. PW-5/C.O says I alongwith Magistrate and other staff reached in the office of Mukhtiarkar in the room of Tapedar whereas complainant indicated towards the person wearing white shalwar Kameez he told that he is Rasool Bux. PW-2 Muhammad Anwar admitted in cross examination

that at the time of handing over money Tapedar took out us out of his office.

4. Prosecution failed to produce PW Ghulam Hyder Dasti, who is cousin of complainant and witness of first episode of prosecution case regarding the payment of Rs.300/-on 26.7.2007.
5. PW-4/ Judicial Magistrate has not contended in his examination in chief about availability / presence of Mashir Anwar, on the other hand co-mashir Muhammad Hassan has not got been examined by the prosecution. Mashirnama No.2 i.e, Memo of recovery of tainted money Rs.2000/- at the spot i.e room of Tapedar/Appellant tainted amount has not sealed at spot, nor produced in seal condition in the trial.
6. All PWs admitted that raiding party neither heard nor seen the conversation between complainant and accused/appellant at the time of raid.
7. Charge is defective, nowhere mention in the charge about the incident 26.7.2017. Statement of accused U/S 342 CrPC also not recorded according to law.
8. The conversation between the accused and complainant regarding bribe is missing in whole episode of the alleged raid by raiding party.

12. Looking to the above, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and

the learned trial court did not appreciate the evidence properly. It is settled position of law that if there is slight apprehension regarding prosecution case being untrue, its benefit extends to the accused. Reliance is placed in the case of **Tariq Perves v. The State** reported as **1995 SCMR 1345**, wherein it has been held that if a single circumstance creates reasonable doubt in the prudent mind about the guilt of the accused then he will be entitled to such benefit not as a matter of grace, but as a matter of right. Similar view has also been taken in the case of **Muhammad Akram v. The State** reported as **2009 SCMR 230**.

13. In addition to the above position, I have also quest the defective Charge so framed by the learned trial court as well as the statement of accused under section 342 Cr.P.C which shows that this charge is missing in respect of *date, specific time of raid and place of incident*, however it is strange to note that the date viz. 25.07.2007 is mentioned in the said charge regarding showing the incident, but on the said date nothing was happened, hence the manner of conducting raid etc. In this respect I relied upon the case law reported in SBLR 2017 Sindh 1379 which for the sake of convenience is reproduced hereunder:-

C) Criminal Procedure Code (V of 1898)---Section 221 to 240---Chapter XIX---Charge---Charge being foundation of trial is precise-formulation of specific accusation made against a person who is entitled to

know its nature at the earlier stage, which he is required to defend---Chapter XIX of the Cr.P.C, contains provisions with regard to the charge in criminal cases---Section 221 to 240 specify different provisions regarding charge. The subject of charge in criminal cases is of utmost importance as the entire edifice of a criminal case is built upon the framing of a correct charge.

14. Similarly, it is settled principal of law that at the time of recording statement under section 342 Cr.P.C of accused the specific question be put forth him regarding the whole episode of the commission of offence, but the same was not exercised by the trial court and also the date on 26.7.2007 and place when allegedly complainant given bribe of Rs.300/- in presence of witness has not been disclosed to the accused, hence the major lacuna has also been left in it which cuts the root of whole proceedings before the trial court and creates dent into it.

15. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellants and the learned trial court did not appreciate the evidence properly, resultantly appeal is allowed. The impugned judgment is set-aside and the appellant is acquitted from the charge. He is present on bail, his bail bond stands cancelled and surety discharged.

JUDGE.