

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal ATA No.31/2014

Present: Ahmed Ali M. Shaikh, CJ, and Yousuf Ali Sayeed, J

Appellants : Mumtaz Ali & Others through Mr. M.A. Kazi & Mr. Irshad Jatoi, Advocates.

Respondent : The State through Mr. Abrar Ali Khichi, APG

Date of hearing : 06.05.2017

Date of Judgment :

JUDGMENT

YOUSUF ALI SAYEED, J. The Appellants have assailed the Judgment dated 30.04.2014 passed by the Anti-Terrorism Court, Mirpurkhas Division @ Mirpurkhas in Special Case No.8 of 2013 emanating from FIR No.27/2013 registered at P.S. Chachro on 15.05.2013, whereby they were each sentenced to suffer rigorous imprisonment for five (5) years under Sections 6(2)(m) / 7(h) of the Anti-Terrorism Act, 1997 (the “**ATA**”) and to pay a fine of Rs.100,000/- each and in default of payment to suffer further rigorous imprisonment for six (6) months.

2. The Charge framed against the Appellants by the trial Court on 05.12.2013 was that on 11.5.2013, at 6.30 P.M., they had all come to Polling Station No. GPS-262 (Female) situated in village Sahario Taluka Chachro District Tharparkar, armed with pistol, lathis and hatchets, and thus formed an unlawful assembly and in prosecution of their common object created terror and sense of insecurity by firing in the air and beating the Presiding Officer and other Polling Staff. As per the Charge, the Appellants also took the ballot boxes and bags containing ballot papers, destroyed the ballot papers by stamping them with their own stamps, forced the Presiding Officer to declare the result in favour of their Candidate who it was said “in fact had lost election”. Obliquely, it was also mentioned that the Appellants “did many other illegal acts in this connection”.

3. The Appellants were thus charged with offences punishable under Section 82-A, 86(3) (b), 87(1) (a) (b) of the Representation of the People Act, 1976 ("ROPA") and Section 506, 504, 114, 337-H(2), , 337-F(i), read with Section 148 and 149 PPC and Section 6(2), (i), (m), (n) punishable under Section 7 (h) of the ATA. They all entered pleas of not guilty and claimed trial.
4. The Prosecution examined six (6) witnesses namely PW-1 Abdul Hakeem, who was the Presiding Officer at the Polling Station and was also the complainant in the matter, PW-2 Mukesh, PW-3 Ghulam Muhammad and PW-4 Salah Muhammad, all of whom were Assistant Presiding Officers at the Polling Station, PW-5 Abdul Ghafoor, the first IO of the case, and PW-6 Ali Muhammad, the second IO thereof. On a reading of the oral evidence of these witnesses, the trial Court held that the prosecution had successfully established the presence of the Appellants at the place and time of occurrence and that they were responsible for commission of the offences with which they had been charged. Hence, they were convicted and sentenced as aforementioned
5. Learned counsel for the Appellants submitted that the Appellants are innocent and were falsely implicated. He contended that the Appellants were strangers to the prosecution witnesses, and their names had been provided by the complainant in his statement under S.154 Cr. PC as they had been mentioned to him by the local inhabitants of the area, but none of these persons had been examined to corroborate such statement. He submitted that there was absolutely no evidence against Appellants in support of the Charge, and in fact, it was evident that the eye-witnesses to the alleged occurrence had specifically stated that the Appellants were not the persons responsible. Be that as it may, the learned trial Court recorded a finding of guilt whilst completely misreading the evidence. In this regard, learned counsel has taken us through the depositions of the prosecution witnesses and pointed out the following relevant excerpts:

PW-1 Abdul Hakeem, whose deposition is Exhibit No.14, has stated with reference to the Appellants that "I say that since the incident took place at dark hours about 7 months back before as such I cannot say whether they were the same persons, who had committed the offence as deposed by me above." Furthermore, in cross Examination, PW-1 had stated that "It is correct to suggest that right after the incident till 15.05.2013 when I had lodged the report at Police station Chachro I had not given the names of the accused persons either to the Returning Officer or to Police

Station Chachro. It is correct to suggest that I do not know the names of each accused present in the Court. It is correct to suggest that I cannot say which of the accused had caused hatchets and lathis blows to me or who had destroyed the Ballot papers. It is correct to suggest that I cannot say to whom I had given the result of Arbab Togachi as successful candidate of Arbab group.”

PW-2 Mukesh, whose deposition is Exhibit No.18, has stated that “All the eight accused persons namely Mumtaz, Abdul Rauf, Ashraf, Muhammad, Asif, Muhammad Yousif, Akbar and Muqem present in the court. I say that they are not the same persons who had committed the offence on the day and time of the incident.”

PW-3 Ghulam Muhammad, whose deposition is Exhibit No.21, in examination-in-Chief has similarly stated that “All the eight accused persons, namely Mumtaz, Abdul Rauf, Ashraf, Muhammad, Asif, Mohammad Yousif, Akbar and Muqem present and shown to me in the court, I say that they were not the same persons who had committed the offence on the day and time of the incident.”

PW-4 Saleh Mohammad, whose deposition is Exhibit No.22, has also expressed doubt in stating that “All the eight accused persons namely Mumtaz, Abdul Rauf, Ashraf, Muhammad, Asif, Muhammad Yousif, Akbar and Muhammad Muqem present in the Court I cannot say definitely whether they were the same persons who had committed the offence.”

PW-5, Abdul Ghafoor, the first I.O., whose deposition is Exhibit No.23 has stated that “It is correct to suggest that while going to Chachro and Mithi first a person crossed from Police Post Chalhar. It is correct to suggest that on the day of the incident i.e. 11.5.2013 till 14.05.2013 no report was lodged at police post Chelhar about the incident. It is Correct to suggest that in the memo of place of occurrence Exh.19, it is mentioned that at the place of occurrence houses of different persons are situated. Is correct to suggest that inspite of that I had not enquired from the villagers of the said village about the incident nor recorded their statements.” He went on to say that “It is it correct to suggest that no injured person came at Police Station nor any one was referred to the hospital for medical treatment.”

PW-6 Inspector Ali Mohammad, the second I.O., whose deposition is Exhibit No.25, has admitted that although “specific direction was given to me to conduct fair and impartial investigation in this case. It is correct to suggest that in spite of that neither I had inspected the place of occurrence nor I had called the prosecution witnesses to enquire from them about the incident and also from the independent persons of the village where the incident took place.”

6. In view of the testimony of the prosecution witnesses, it is evident that there was no evidence against the Appellants in support of the Charge, and in fact, such testimony served to exonerate rather than incriminate them. The evidence of the two Investigating Officers also casts down on the very conduct and veracity of the investigation. Faced with such material, the learned APG was unable to put forward any argument whatsoever in support of the impugned Judgment and the finding of guilt recorded by the trial Court therein.
7. It is well settled in criminal jurisprudence that even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of an accused entitles him to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. Reference may be made in this regard to the judgment of the Honourable Supreme Court in the case reported as Tarique Parvez v. The State 1995 SCMR 1345. However, in the instant case, convictions were recorded despite the clear exculpatory evidence on record, which, in our view, constitutes a gross misreading of the evidence and a serious miscarriage of justice that obviously cannot be allowed to stand. Accordingly, this Appeal succeeds.
8. These are the reasons for of our short Order dated 06.05.2017 whereby the Appeal was allowed with the result that the Appellants were acquitted of the charges and the conviction and sentence awarded to them was set aside.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____