

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

Cr. Appeal No. S-07 of 2020

Cr. Appeal No. S-11 of 2020

Date of hearing: 24.02.2020

Date of Judgment: 24.02.2020

M/S. Ayaz Hussain Tunio, Muhammad Sachal R. Awan and Ashique Hussain D. Solangi, Advocate for appellants in Cr. Appeal No.S-07 of 2020.

Mr. Muhammad Hashim Leghari, Advocate for appellant in Cr. Appeal No.S-11 of 2020.

Complainant Ghulam Shabbir and Detainee of the case Asif Ali, are present in person.

Mr. Shawak Rathore, Deputy Prosecutor General.

JUDGEMENT

ABDUL MAALIK GADDI, J- By this common judgment, I intend to dispose of both above captioned appeals together as the same arise out of one and common judgment dated 03.01.2020 passed by learned Additional Sessions Judge-III, Dadu in Sessions Case No.82 of 2019 arisen out of crime No.01 of 2019 registered u/s 343, 220 PPC at police station Rajo Dero, whereby the learned trial court after full dressed trial convicted and sentenced the appellants as stated in Point No.2 of the impugned judgment. For the sake of convenience, it would be proper to reproduce Point No.2 of the impugned judgment which reads as under:-

“In view of my findings on point No:1, I am of the view that the prosecution has successfully proved its case against the accused persons namely ASI Sajjad Ali son of Rakhial Khan Jamali, ASI Asif Ali son of Nabi Bux Meerani, PC Adil Ali son of Shah Nawaz Chandio, PC Kandro son of Ghulam Muhammad Chandio, PC Ayaz Hussain son of Gul Hassan Kolachi and ASI Qurban Ali son of Moula Bux Baladi, therefore, they are convicted under section 265-H(ii) Cr.P.C for offence punishable u/s 343 PPC and sentenced to suffer R.I. for three years the accused persons are also convicted for committing offence punishable u/s 220 PPC and sentenced to suffer RI for 7 years. Both the sentences shall run concurrently. The accused are given benefit of section 382(B) Cr.P.C. The accused are present on bail. They are taken into custody and remanded to Central Prison Hyderabad through authorities of District Jail Dadu

to serve out the sentence according to law. The copies of the Judgment be given to the accused free of costs.”.

2. Brief facts of the prosecution case as per F.I.R are that on 14.01.2019, one Ghulam Shabbir son of Ghulam Sarwar by caste Lashari submitted an application u/s 491 Cr.P.C before the Court of Sessions Judge, Dadu against S.S.P Dadu, SHO PS Rajo Dero and others police officials with the allegations of wrongful detention /arrest of detainee Asif Ali son of Muhammad Zaman Lashari. Due to such complaint Judicial Magistrate-I Dadu was appointed as raid commissioner, who has raided the PS Rajo Dero in presence of applicant Ghulam Shabbir where detainee Asif Ali was recovered from the room of PS Rajo Dero and was wrongfully detained maliciously in the exercise of the authority knowingly for more than three days and such statement of detainee Asif Ali was recorded, thereafter report was submitted by raid commissioner before Sessions Court Dadu and after hearing the parties the Sessions Judge, Dadu passed an order dated.15.01.2019 with the result complainant Asif Ali produced order No.608/2019 dated 15.01.2019 passed by Sessions Judge, Dadu and recorded his FIR at P.S. Rajo Dero alleging therein that he has been taken away by the police, his cousin Ghulam Shabir made an application before Sessions Judge Dadu regarding his wrongful confinement, the learned Judge conducted raid at PS Rajo Dero and released him from PS Rajo Dero in presence of his father and cousin Ghulam Shabbir, his statement was recorded by Judge wherein he stated that ASI Sajjad Ali Jamali, ASI Asif Ali Meerani, PC Adil, PC Kadero, PC Ayaz and ASI Qurban Ali Baladi had wrongfully confined him at PS Rajo Dero, hence the above FIR.

3. After usual investigation, the police submitted the final report before the concerned Judicial Magistrate, who took cognizance of the offence and thereafter the case was entrusted to the learned trial Court, where the charge against the accused was framed at Exh.02, who pleaded not guilty and claimed trial vide their pleas at Ex.3 to 8.

4. At trial, the prosecution to prove its case has examined following witnesses:

- i. PW-1 Complainant Asif Ali examined at Ex.9, who produced certified copy of order dated.15.01.2019, his statement and FIR at Ex.9-A to 9-C.
- ii. PW-2 Ghulam Shabir examined at Ex.10.

- iii. Thereafter learned ADPP for the State vide statement at Ex.11, gave up PW Muhammad Zaman.
- iv. PW-3 Zahid Ali Lashari examined at Ex.13, who produced copy of application u/s 491 Cr.P.C, affidavit and report of raid commissioner, order dated.15.01.2019, report of SHO PS Rajo Dero dated.15.2.2019 at Ex.13-A to 13-E.
- v. PW-4.Mr.Irfanullah phull / raid commissioner examined at Ex.14, who produced entry No.8 of daily diary register of Ps Rajo Dero, statement of detainee Asif Ali and PR bond obtained from detainee Asif Ali and letter No.540 dated.14.2.2019 at EX.14-A to 14-D.
- vi. PW-5 Sayed Gambal Shah at Ex.15, who produced memo of wardhat a Ex.15-A.
- vii. PW-6 SHO Syed Tufail Shah at Ex.16.

It appears that all these witnesses have been cross-examined by the counsel for appellants.

5. Thereafter, learned DDPP closed prosecution side at Ex.17. Later on statement of accused was recorded U/S 342 Cr.P.C at Ex.18 to 23, in which they denied the prosecution allegation and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defence.

6. Learned counsel for the appellants contended that appellants are innocent and have falsely been implicated by the complainant due to personal grudge; that there are material contradictions and discrepancies in the evidence of prosecution witnesses; that the alleged detainee/complainant Asif Ali and PW Gulam Shabir in their evidence before the court have not implicated the present appellants / accused; that the complainant Asif Ali in his evidence has stated that 8/9 police officials with muffled faces armed with official weapons entered in their house and took him and confined him at unknown police station; that the complainant /alleged detainee has not deposed against the present appellants regarding his arrest and wrongful confinement; that prosecution has miserably failed to prove its case beyond any reasonable doubt against appellants, therefore appellants may be acquitted by extending them benefit of doubt.

7. Conversely, Learned D.P.G. for State has argued that the prosecution has proved its case against the appellants that they have illegally apprehended the complainant Asif Ali and wrongfully confined him at police station without any legal authority and acted to contrary to law; that the raid commissioner has conducted the raid at PS Rajo

Dero on the application moved by cousin of complainant Ghulam Shabbir and found the alleged detainee Asif Ali at PS Rajo Dero and there is sufficient oral as well as documentary evidence connecting the appellants in commission of offence; that the prosecution has proved its case against appellants beyond any reasonable doubt therefore, prays for dismissal of captioned appeals.

8. I have heard the learned counsel for appellants, learned D.P.G for State and perused documents & evidence so brought on record.

9. After hearing the learned counsel for the parties, I have come to the conclusion that the prosecution has failed to prove its case against the appellants for the reasons that as per F.I.R. PW Ghulam Shabbir (cousin of complainant) moved an application before Sessions Judge, Dadu stating therein that his cousin Asif Ali has been illegally confined at PS Rajo Dero and the police officials are not allowing him to meet and see his said cousin. On such application, learned Sessions Judge appointed Civil Judge / Judicial Magistrate-I, Dadu as raid commissioner and directed him to conduct raid at Police Station Rajo Dero and recover the alleged detainee Asif Ali, if found in illegal confinement. Pursuant to such direction, the Raid Commissioner conducted raid at the said PS and found the alleged detainee Asif Ali while confined in a room of police station and submitted his report before Sessions Judge Dadu who after scrutinize the same disposed of the application with direction to Incharge of Police Station Rajo Dero to record the statement of detainee Asif Ali and then lodge F.I.R against the police officials who have misused their official powers and wrongfully confined said Asif Ali in their custody and maltreated him. However, it is noted that in his evidence recorded by the trial Court, complainant / alleged detainee Asif Ali did not support the case of prosecution by stating that appellants, present before the trial Court, are not same. Though the complainant / alleged detainee has been declared hostile and consequently cross examined him by the ADPP appearing on behalf of the State, but his evidence has not been shaken as he categorically stated / deposed that the accused / appellants were with muffled faces. Not only this, PW Ghulam Shabbir, who moved application before the Sessions Judge Dadu with regard to illegal confinement of detainee Asif Ali by the concerned police officials, while recording his evidence before the trial Court has also not supported the prosecution case by stating that the appellants present in Court (trial Court) are not same. This witness was also declared

hostile by the ADPP. But in his cross examination to ADPP, this witnesses has also not been shaken as he reiterated that the appellants are not the guilty of the offence.

10. It appears from the record that whole prosecution story revolves around the evidence of complainant Asif Ali and PW Ghulam Shabbir, but as observed above, they have not supported the prosecution case and consequently declared as hostile.

11. It is also noted that in all, six police officials have been arraigned in this case, but surprisingly the SHO police station Rajo Dero has not been made accused. No explanation in this regard has been furnished. It is a matter of fact that an SHO is always responsible what has been or is being done within the premises of police station because the entire police station always remained under his control / administration and to my mind, if the prosecution has any case, the concerned SHO should be arraigned to give him exemplary punishment. It is further noted that 161 Cr.P.C statements of Ghulam Shabbir as well as that of Reader of the Sessions Court have also not been recorded. Merely saying that Asif Ali was confined in police room adjacent to police station does not *ipso facto* impose liability upon the appellants in view of the evidence of complainant / alleged detainee Asif Ali and PW Ghulam Shabbir wherein they have not supported the prosecution case at all.

12. I have perused the complaint made by PW GHulam Shabbir before the Sessions Judge, Dadu and found that the names of present appellants are not mentioned in it, but subsequently in F.I.R their names have been added. However, as observed above, the complainant Asif Ali and PW Ghulam Shabbir in their evidence before the trial Court have not supported the prosecution case. It is also pertinent to mention here that complainant Asif Ali, who is present in Court along with PW Ghulam Shabbir, once again reiterates their contention that present appellants are not the same who had illegally confined him at PS Rajo Dero.

13. Keeping in view of the evidence, conduct of the complainant / detainee appears to be dubious, as such, contents of F.I.R cannot be safely relied upon. When these lacunas / infirmities were confronted with learned D.P.G, he has no satisfactory answer with him. During the course of arguments, I have specifically asked the question from learned D.P.G as to why complainant / alleged detainee was / is not

supporting the version of F.I.R, once again he has no satisfactory reply with him. It is noted that whole prosecution case is based upon the evidence of Raid Commissioner and Reader of the Court Zahid Ali Lashari however, no statement u/s 161 Cr.P.C of the said reader has been recorded, which also create doubt in the prosecution story.

14. It is well settled principles of criminal administration of justice that no conviction can be awarded to an accused until and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy casting some cloud over the veracity of prosecution story, is adduced by the prosecution. After going through the entire evidence available on record I am of the considered view that prosecution has not been able to bring home charge against the appellants. It is also a settled principle of law that where a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused appears in prosecution case, then accused will be entitled to the benefit of such doubt not as a matter of grace and concession but as a 'matter of right', hence, single doubt is sufficient to acquit the accused. In this regard reliance can be placed upon the case of 'TARIQ PERVAIZ v. The STATE' [1995 SCMR 1345], wherein it has been held by the Honourable Supreme Court of Pakistan that:

“For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a 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 matter of right”

15. In the light of what has been discussed above I am of the considered view that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt, therefore, both captioned appeals are hereby allowed, impugned judgment dated 03.01.2020 is set-aside and the appellants are acquitted of the charge. They are in custody, they shall be released forthwith if not required in any other custody case.

JUDGE

****Fahad Memon****

24.02.2020