

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Jail Appeal No. S-61 of 2021

Appellant : Farman Ali Dahar, through Mr. Rafique
Ahmed K. Abro, advocate.

Complainant : Through Mr. Ahmed Raza Sundrani,
advocate.

Date of hearing : 12.08.2022

Date of decision : 19.08.2022

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- Through captioned appeal, appellant Farman Ali has challenged the Judgment dated 23.11.2021, passed by the learned Sessions Judge, Kashmore at Kandhkot in Sessions Case No. 222 of 2021 culminated from F.I.R. No. 22 of 2021, registered with Police Station B-Section Kandhkot for the offence punishable u/s 462-B, 427 and 511 PPC whereby the appellant was convicted u/s 462-B read with Section 511 PPC and was ordered to undergo rigorous imprisonment for seven (07) years along with fine of Rs.500,000/- (*Rupees Five Lacs only*), and in case of default in payment of fine he was to undergo further imprisonment for six months. The appellant was also convicted for offence punishable under section 427 P.P.C. to undergo S.I months. Both sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C. was also extended to the appellant-accused.

2. The allegations against appellant are that on 10.06.2021 the complainant who was a Security Officer of PARCO stationed at Station No. 3 Shikarpur was on duty when he was informed by Line Worker Sadaruddin over his cell phone that Police Constables from P.S. B-Section Kandhkot had apprehended the present appellant Farman Ali while he was caught tampering with the PARCO pipeline in Deh Son Wah by affixing an iron clip on the pipe line and attempting to commit theft of oil and as a result he had also damaged the pipeline. Complainant arrived at

the place for incident and found a ditch that had been dug out and also found the clip on the pipe and then the appellant disclosed that he was present there along with three culprits and was committing theft of oil. He was brought back to the police station where the complainant got the FIR registered.

3. On conclusion of investigation, a challan was submitted against the appellant whereafter a formal charge was framed against him by the trial Court, to which he pleaded not guilty and claimed trial. In order to prove its case, prosecution examined five witnesses; complainant/PW-1 Major (R) Nadeem Ahmed Qureshi at Ex. 6, PW-2 Sadaruddin at Ex. 7, PW-3 HC Sanaullah at Ex. 8, PW-4 PC Ghulam Rabbani at Ex. 9 and IO/ASI Tarique Hussain at Ex. 10. Prosecution witnesses produced a number of items in evidence, which were duly exhibited. Thereafter the prosecution side was closed.

4. Statement of accused was recorded u/s 342 Cr.P.C. wherein he denied the allegations levelled against him and pleaded his innocence. However, he neither examined himself on oath, nor produced any evidence in his defence.

5. Trial Court, after considering the material available before it and hearing the counsel for respective parties, passed the impugned judgment and sentenced the appellant as stated supra.

6. Learned counsel for the appellant contended that there are no grounds to believe that the appellant has committed the said offence; that the judgment passed by trial Court is perverse and shocking and against the criminal administration of justice; that the trial Judge while awarding the conviction has not considered the material contradictions made in the evidence of the P.Ws; that nothing has been stolen by the accused and the allegations of committing theft of oil from PARCO are baseless; that there is a delay in the lodging of FIR; that the prosecution has failed to prove its case against the appellant, as such he has prayed for the grant of bail to the appellant.

7. Learned counsel for the complainant has contended that the prosecution has proved its case against the appellant; that the PWs have been cross-examined at length and their depositions remained unshattered; that no material contradictions have been pointed out by the counsel for the appellant; that no malafide has been alleged or proved against the police or PARCO authorities for the false implication of the appellant.

8. I have heard the learned counsel for the respective parties and perused the record with their able assistance.

9. It is a matter of record that the appellant was arrested from the place of incident by the police officials and when PARCO officials arrived at the place, they dug down five feet to the pipeline and found a clamp attached to it for siphoning of oil. **PW-1 complainant Major (R) Nadeem Ahmed Qureshi** who was the Security Officer of PARCO deposed that after he received information regarding the apprehension of the appellant he *“alongwith his Supervisor Ramz Ali, Security Guard Mumtaz Ali reached at the place of incident within half an hour where I found that HC Sanaullah, PC Rashid Ali and PC Ghulam Rabbani, line walker Sadaruddin and accused Farman Ali were available there. On the pointation of accused Farman Ali, I arranged for ditch of said place and found that one clip was installed in order to commit theft of PARCO Oil. Police prepared such mashirnama thereon.”* **PW-2 Line Walker Sadaruddin** deposed in his cross-examination that he *“was on patrolling duty and when when reached at 40+ kilometer in the lands of Nasrullah Pathan situated in Deh Son Wah, I saw that Police Officials had caught hold of one suspected person. I informed from Police Officials that said person namely Farman Ali was arrested when he was affixing the clip on PARCO pipe line in order to commit theft of oil. Then I informed such facts to Major retired Nadeem Ahmed through cell phone who reached there within half an hour.”* To the extent of this incident, **PW-3 Head Constable Sanaullah** deposed that he *“was posted as HC at PS B-Section Kandhkot. On the same day, he left PS vide entry No: 17/1930 hours for patrolling along with PC Ghulam Rabani, PC Rashid Ali and DPC Allah Dad. When we reached near the lands of NasrullahPathan, we saw and identified on the light of vehicle that four*

persons were standing there, who seeing us tried to run, but PC Ghulam Rabani arrested one culprit at a distance of 10/15 paces. On enquiry, he disclosed his name as Farman Ali son of Abdul Rehman Dahar r/o Chowk Chadar, Taluka Sadiq Abad and he further disclosed that they were committing theft of Oil from the line while affixing clip. Line Walker Sadar Din Bahalkani also came there and thereafter Major (R) Nadeem Ahmed Qureshi, Ramz Ali and Mumtaz Ali appeared on the spot. Engineers of PARCO Company found one iron clip was affixed along with iron valve, plastic pump were lying there. I prepared such mashirnama of arrest and recovery in presence of mashirs PC Ghulam Rabani and PC Rashid Ali, read over contents to them who signed on it." **Mashir of recovery/PW-4 PC Ghulam Rabani** deposed in his examination in chief regarding the incident that he "saw that four suspect persons were standing, who on seeing us tried to run and arrested one accused at distance of 10/15 paces. On enquiry by HC Sanaullah, accused disclosed his name as Farman Ali s/o Abdul Rehman Dahar r/o Chowk Chadar, Sadiq Abad and he further disclosed that they were standing with intention to commit theft of oil while affixing clip. Line Walker Sadar Din came there and informed his high officers and thereafter Major Retired Nadeem, Ramz Ali and others also came there. PARCO Employees dug the ditch with size of 05 feet in width and 03 feet depth and found that there was iron clip affixed in PARCO pipeline so also one valve, plastic pipe of 15 feet were also there."

10. A plain reading of the above quoted depositions clearly indicate that prosecution has undeniably proven its case against the appellant for the offence alleged against him by examining numerous witnesses whose evidence remained un-shattered on material aspects of the case even after lengthy cross-examinations. The cross-examination remained inconsequential inasmuch as nothing adverse could be solicited from the witnesses except for a volley of suggestions, vehemently denied. The case of the prosecution is firmly structured on ocular account, furnished by the witnesses, viewed from any angle, natural and trustworthy. The appellant has failed to allege and prove any enmity against the officials of PARCO i.e. PW-1 Nadeem Ahmed Qureshi and PW-2 Sadaruddin who have both categorically implicated the present appellant, showed his presence at the place of incident and have deposed to have

even found and recovered the clamp on the pointation of the present appellant. They have no reason to falsely implicate the present appellant as the record suggests that they were not even known to each other. The depositions of PW-3 HC Sanaullah and PC Ghulam Rabbani are also in line with that of the PARCO Officials. Both of them have remained consistent on major aspects of the case. Learned counsel for the appellant contended that evidence of the police officials is not trustworthy and that no independent or private person had been cited as a witness/mashir, as such the prosecution case and recovery is doubtful. This contention however has very little merit to it. There is no universal rule that evidence of a police official per se must be invariably corroborated by independent evidence. Police officials are as good witnesses as any other private witness and their evidence is subject to same standard of proof and principles of scrutiny as applicable to any other category of witnesses; in absence of any animus, infirmity or flaw in their evidence, their testimony can be relied upon without demur. Reliance is placed on the case of *Liaquat Ali and another vs. The State* (2022 SCMR 1097). Delay in the lodging of FIR was also explained by PW-1/complainant Major (R) Nadeem Ahmed Qureshi while deposing that since he was the Security Officer of PARCO, he was ordered to ensure maintenance of the pipeline before he could lodge the FIR and following said orders, he ensured that the pipeline was repaired and then lodged the FIR on the next day. Even otherwise, no suggestion was made to the complainant during his cross-examination that he had lodged the FIR after due deliberation, which impliedly reflects that such a delay was rather natural and did not serve any ulterior motives. Even otherwise, delay alone in the lodging of FIR is never a sufficient ground for acquittal and cannot be used as ammunition to completely disregard the prosecution case as observed in the case of *Muhammad Zubair vs. The State* (2007 SCMR 437).

11. As far as the defence plea raised by the appellant is concerned regarding his false implication and arrest due to he refused to pay bribe is concerned, the same finds little support in the wake of the evidence available on the record. The appellant claimed that he was not

arrested from the place of incident, but failed to disclose the place he was arrested from instead. He raised no such suggestions at the stage of cross-examination of the witnesses nor did he explain what he was doing at the place of incident if he was a resident of Punjab. No application for his disappearance has come on record either regarding his illegal arrest. Mere assertion of the appellant that he had been involved falsely in the case, in absence of any tangible evidence, was of no consequence nor did it create any doubt about his culpability. The appellant was bound to establish the defence plea agitated by him after adducing tangible evidence and such allegation in absence of sound evidence, could not be considered in view of Article 121 of Qanun-e- Shahadat Order, 1984. It was observed by the Hon'ble Apex Court in the case of *Anwar Shamim and another vs. The State (2010 SCMR 1791)* that it is duty and obligation of an accused person to prove the plea taken by him in his defence in terms of Article 121 of Qanun-e-Shahadat Order, 1984. After proper assessment and evaluation of evidence, this Court concurs in the conclusion regarding the guilt of the appellant having been proven to the hilt.

12. For what has been discussed above, I find that the prosecution has proven its case against the appellant beyond a reasonable shadow of doubt and that the view taken by the learned trial Court is just, appropriate and within the four corners of proper administration of justice. Resultantly, the impugned judgment is maintained, the conviction and sentence awarded to the appellant are upheld and as such the captioned criminal jail appeal is dismissed.

JUDGE