

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl.Acq.AppealNo. S - 13 of 2023

Date	Order with signature of Judge
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Appellant/Complainant: Hakim Ali Umrani
Through Mr.Ubedullah Malano
Advocate.

Date of Order : 21st June, 2023.

J U D G M E N T

AMJAD ALI BOHIO, J:- The appellant has filed the present appeal under Section 417 of the Cr.P.C., challenging the impugned judgment dated 04.10.2023 rendered by the learned Sessions Judge, Naushahro Feroze. The judgment in question pertains to Sessions Case No. 488/2021, which arises from FIR No. 117/2021 lodged on 23.07.2021 at Police Station, Padidan. This case involves allegations of offenses under Section 15 and 17 of the Gas (Theft Control & Recovery) Act, 2016. The impugned judgment resulted in the acquittal of the respondent, Ghulam Shabeer, son of Muhammad Kamal Mubejo.

2. According to the FIR, the case involves the complainant, Hakim Ali, an Engineer in the SSGC Department posted at Nawabshah Region. He was accompanied by another staff member named Muhammad Ismail Hazoor Bux for the purpose of checking the gas connection. They arrived at the residence of the respondent/accused, Ghulam Shabeer Mubejo, located in Sada Wah Mori near Padidan City. During their inspection, they discovered that the gas connection had been illegally tampered with and a direct

connection had been installed for a generator at the rented house. Subsequently, the complainant and Hazoor Bux informed Mansoor Ahmed Shaikh, the in-charge of the SSGC Office in Naushahro Feroze. Upon receiving this information, Mansoor Ahmed Shaikh dispatched the SSGC Technical Team to the location. With their assistance, the illegal gas connection was disconnected, and the items used in the gas theft were confiscated. The Regional Office was also informed about the incident, and they instructed the team to return to their office. The team brought the generator and other relevant articles with them, and following these events, the complainant filed the aforementioned FIR on 23.07.2021.

3. After the submission of the documents, the charge was framed against the respondent/accused, Ghulam Shabeer. He pleaded not guilty and opted for trial.

4. Subsequently, the prosecution presented its evidence by examining the following witnesses:

Complainant Hakim Ali (P.W. 1) at Exh.5,

Deputy Manager Muhammad Ismail Joyo (P.W. 2) at Exh.6,

I.O./SIP Muhammad Qasim Baladi (P.W. 3) at Exh.8,

SIP/I.O. Muhib Ali Khoso at Exh.9.

Meanwhile, the learned ADPP decided not to present the evidence of P.W. Hazoor Bux and made a statement to that effect at Exh.7. The prosecution then concluded its case and closed its side of evidence at Exh.10.

5. The respondent/accused denied the allegations leveled against him when his statement was recorded under Section 342 of the Cr.P.C. He chose not to testify on oath himself and did not express a desire to call any witnesses in his defense.

6. After considering the arguments presented by both parties, the trial court acquitted the respondent/accused, Ghulam Shabeer Mubejo. The grounds for acquittal were that there was no

independent person from the public associated with the case to substantiate the prosecution's version. Dissatisfied with this judgment, the appellant has filed the present appeal against the acquittal.

7. During the initial stage of the appeal hearing, the counsel for the appellant argued that the prosecution had presented the complainant as a witness who confirmed the details mentioned in the FIR. According to the complainant's testimony, they discovered that the generator was being operated through a direct gas pipeline, indicating gas theft. The complainant also stated that they saw the accused present at the scene, who later left. The complainant and his team then brought the generator and a gas pipe, measuring approximately 60/70 feet in length, to the court as evidence. The complainant positively identified the accused, who was present in court, as the same person named by individuals at the scene.

8. The counsel further argued that the trial court failed to properly consider the evidence provided by the complainant, which was further corroborated by the testimony of P.W. Muhammad Ismail. As a result, the counsel contended that the impugned judgment was flawed and is liable to be set aside. Lastly he claimed that the judgment is not sustainable in its current form.

9. After considering the submissions made by the counsel for the appellant and carefully reviewing the evidence presented by the prosecution, it becomes apparent that the complainant implicated the respondent based on statements from individuals present at the scene. These individuals claimed that Ghulam Shabeer was the owner of the house where the illegal gas connection was allegedly being used. However, it is important to note that the Investigating Officer (I.O) did not gather any evidence regarding the ownership of the property in question.

10. Furthermore, during the trial, the I.O admitted that the complainant himself brought the articles, namely the generator, iron clamp, and pipe, which are considered case property. Therefore, there is no evidence regarding the recovery of these items from the place of the incident, as they were produced by the complainant before the I.O. Additionally, there is no recovery memo for these articles from the place of the incident, as it was prepared at the police station.

11. Moreover, the complainant failed to provide a satisfactory explanation for the 11-day delay in lodging the FIR. The complainant also admitted that prior to this incident, he had not seen the respondent/accused. It is evident that the complainant implicated the respondent/accused based on the information provided by individuals present at the scene, who claimed that the house where the gas theft occurred was owned by Ghulam Shabeer Mubejo.

12. Accordingly, it is clear that the I.O lacked evidence regarding the ownership of the premises used for committing the gas theft. Despite this, the I.O implicated the respondent/accused with the aforementioned allegations, which are unfounded and insufficient to connect the respondent/accused to the offense. Consequently, the very foundation of the allegations against the accused, upon which he was implicated, has not been proven. In a similar case, *Waseemullah v. The State* (2016 S C M R 1282), the issue of lack of evidence regarding ownership was raised, and the Honorable Supreme Court made the following observation:

“A specific question has been asked by us to learned DAG and Investigating Officer (present in court), who has stated that no evidence has so far been collected in connection with the premises from where alleged extraction of the Gas was being carried.”

13. Based on the aforementioned observations and the principles established in the case of Waseemullah (supra), it is evident that the prosecution has been unsuccessful in proving the ownership or connection of the accused with the premises where the alleged gas theft occurred. This failure to produce such a crucial piece of evidence undermines the entire case and weakens the prosecution's ability to establish the guilt of the accused beyond a reasonable doubt.

14. Based on the analysis of the prosecution evidence, including the testimonies of the complainant and the Investigation Officer, it is evident that the trial court has not misinterpreted or overlooked any substantial evidence that could establish the guilt of the accused. The Investigating Officer's failure to collect evidence regarding the ownership of the premises, along with the complainant's inability to establish the accused's connection to the premises, has resulted in a lack of credible evidence to prove the commission of the offense. This negligence not only causes a loss to the public exchequer but also highlights the need for vigilance on the part of the concerned authorities, including SSGC and the relevant police/investigating agency, to gather incriminating evidence to substantiate charges in cases of gas theft. Without concrete evidence linking the accused to the premises, it becomes challenging to establish their involvement in the alleged offense.

15. In light of the above discussion, it is evident that the accused, Ghulam Shabeer Mubjo, has been implicated based on hearsay evidence, and no direct or independent evidence has been presented to establish his connection with the commission of the offense.

16. The judgment passed by the trial court, which acquitted the accused, is supported by valid and well-founded reasons. Therefore, considering the lack of merits in the present appeal, it is dismissed *in limine*.

JUDGE

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