

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Revisions Applications No.S- 23 & 27 of 2022

Date of hearing	Order With Signature Of Judge.
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Mr. Abdul Raheem Jamro, Advocate along with applicants.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State a/w complainant.

Date of Hearing & Judgment: **29-04-2024**

J U D G M E N T

MUHAMMAD IQBAL KALHORO J.,- Applicants Ali Asghar alias Hafeez, Ashraf and Naveed faced a trial in CrI. Case No.33 of 2021, arising out of Crime No.30 of 2021, registered at P.S, Agra-Khairpur under sections 457, 380 & 34 PPC and vide judgment dated 06.12.2021, they were convicted and sentenced to suffer R.I for three years with fine of Rs.5000/- each for each offence. Against their conviction and sentence, they preferred CrI. Appeals No.35 & 36 of 2021, which were dismissed by learned appellate Court i.e. Additional Sessions Judge, Gambat vide judgment dated 28.01.2022. Hence, these CrI. Revisions Applications for acquittal of the applicants.

2. The facts of the prosecution, in nutshell, are that on 26.05.2021 at about 01:30 a.m, present applicants/accused committed theft of one he-goat from the house of complainant and were seen and identified by the complainant doing so. In the morning, when footprints of accused were tracked, the same led to the house of applicant Ashraf Jamro. Complainant tried to get stolen he-goat recovered through Nekmard Ali Bux, but could not succeed. Hence, FIR was lodged on 27.05.2021.

3. Learned counsel for applicants has argued that applicants are innocent have been involved in this case falsely by the complainant party over the matrimonial dispute; that there is unexplained delay of one day in registration of FIR; that when complainant had identified the accused at the spot on solar bulbs and when both the parties were previously known to each other, why on the next date of incident, footprints of the accused were

tracked, for which no plausible reason has been furnished by the complainant in FIR as well as in evidence; that the evidence which the prosecution has produced is inconsistent and unreliable has been wrongly believed by learned trial Magistrate and appellate Court.

4. Learned Deputy P.G for the State, in view of the facts and circumstances, has not opposed the acquittal of the applicants.

5. I have heard both parties and perused material available on record. Admittedly, there is inordinate delay of one day in lodging of the FIR, for which explanation offered by the complainant is not plausible. Such delay cannot be over looked as possibility of involvement of accused after due deliberation and consultation cannot be ruled out. More so, when in FIR all the applicants are named, why footprints of the accused were tracked on the next date of incident. In FIR, it is alleged that on cries of complainant, his nephew Rahib Ali and other villagers came at the spot, but none of them has been cited as a witness and only on the basis of evidence of complainant and his nephew Imtiaz Ali, whose evidence in absence of independent corroboratory evidence cannot be safely believed, the applicants were convicted and sentence. Furthermore, it was night time incident, therefore the identity of the applicants on the solar bulbs at the time of incident by the complainant is not without a doubt.

6. Moreover, so far recovery of an unlicensed pistol and a stolen he-goat on the pointation of applicant Ali Asghar alias Hafeez Jamro is concerned, record reveals that in FIR, neither features nor description or any mark of stolen he-goat is disclosed by the complainant. Even otherwise, the recovery was effected in presence of official witnesses and no private person was associated to witness the recovery proceedings. Alleged stolen he-goat was identified by the complainant before the police and not in the identification parade in the Court. Hence, recovery of stolen he-goat is highly doubtful as the same, as required under the law for identification of stolen articles, has not been followed properly. More so, the recovered unlicensed pistol was never used in the commission of alleged offence and a separate FIR was registered in this regard, therefore,

the same has no nexus with the alleged offence. Its recovery made only in presence of police is not without a doubt either.

7. Further, today complainant has appeared and is fair enough to admit that applicants are his near relatives and were previously known to him. Two of the applicants are his nephews, but in FIR, he has not disclosed these facts. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the present applicants beyond a shadow of doubt.

8. The infirmities and discrepancies in the prosecution case, highlighted above, have rendered the case doubtful. The prosecution under the law is bound to establish the case beyond a reasonable doubt through confidence inspiring evidence to persuade the Court to reach a conclusion leading to guilt of the accused and his sentence. In absence thereof, accused cannot be convicted and sentenced. It is settled that once a doubt seeps in the prosecution case, its benefit has to go to the accused not as a matter of grace but as a matter of right.

9. Accordingly, in view of the foregoing discussions, the impugned judgments of learned trial Court as well as appellate Court are set-aside and the applicants are acquitted of the charge. They are present on bail, their bail bonds are cancelled and sureties discharged.

10. These Crl. Revision Applications are accordingly **disposed of** in above terms. *Office to place a signed copy of this order in captioned connected matter.*

JUDGE