

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Mohammad Karim Khan Agha, J.

CRIMINAL APPEAL NO. 143 OF 2020

Appellants: Qasim Ali son of Muhammad
Ishaque Ali through Syed Shazeel
Hassan, Advocate

For State: Malik Sadaqat Khan, Advocate for
SSGC.

Date of Hearing: 12.02.2024

Date of Announcement: 19.02.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Qasim Ali was tried in the Court of District & Sessions Judge (South) Karachi in respect of Crime No.121 of 2016 under section 15/17 Gas Theft Control & Recovery Act, 2016 r/w Section 34 PPC registered at P.S. SSGC Karachi and vide judgment dated 16.01.2020 the appellant was convicted u/s. 265-H(ii) Cr.P.C. and sentenced him to suffer R.I. for five years with fine of Rs.4,17,100/- for the offence u/s 15 Gas (Theft Control & Recovery) Act, 2016. In case of default in payment he shall suffer six (06) months more imprisonment. Appellant was also convicted u/s. 17 Gas (Theft Control & Recovery) Act, 2016 and sentenced him to suffer R.I. for five years. However, the benefit of Section 382-B was also extended to the appellant. All the sentences were to run concurrently.

2. The brief facts of the prosecution case are that on 26th day of November 2016 at about 1130 hours, complainant Mobeen Ahmed Ansari, Assistant Engineer, SSGC, Karachi conducted raid alongwith Team Operation Incharge Abdul Wahid, Muneer Ahmed his technical team and police party at Shop/Plot No:K,SE 275, 1046, M.T. Khan Road, Sultanabad Phool Chowk, Karachi where business of Samoosa was running in the name and style "Aijaz ka Shahi Samoosa" wherein, they found a burner of 32 nozzles, one 2.5 KV Generator, two burners of 24 nozzles were operated through direct sui gas connection through

rubber pipe from service line of Sui Southern Company for preparation of Samoosa & Nimco etc. The complainant party found the said illegal Sui Gas connection got it disconnected with the assistance of technical staff and recovered one 2.5 KV Generator of black color apparently old one, a burner of 24 nozzles and a rubber pipe about 15 feet in length and on enquiry the person available at the shop disclosed his name as Qasim Ali son of Muhammad Ishaq Ali & disclosed that he used to run business of Samoosa etc. and he had obtained the said shop on rent at the rate of Rs:22,000/= per month from One Zubair, but he was not found at the place of incident. The burners of the 32 nozzles and 24 nozzles were not recovered being fixed. The Sui Gas Team obtained photographs of the occurrence and the complainant has lodged such FIR against both accused Qasim Ali and Zubair. The accused Qasim Ali was arrested on spot and the statement of complainant u/s. 154 Cr.P.C. was also recorded by ASI Sikandar Azam. Later on such FIR was registered on 26.11.2016 at 15:40 hours.

3. After usual investigation the case was challaned and the appellant was sent up for trial. The appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 04 witnesses and exhibited various documents and other items. The statement of the appellant/accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed trial.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 16.01.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that he was present at the shop when the SSGC team raided the shop as he was looking for work; that the star witness Sikander Ali who recorded the S.154 statement of the complainant was not examined; that the recoveries in connection with stealing of gas for the shop were foisted and that no such recovery was made from the shop; that there are material contradictions in the evidence of the witnesses which rendered it

unreliable; that the co-accused had been acquitted on the same set of evidence and as such he was also entitled to the same treatment and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. He placed reliance on the record.

8. Learned counsel for SSGC after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, he contended that the appellant had been caught red handed on the spot using the stolen gas; that the apparatus which he was using to steal the gas was recovered and the form stating the amount of gas stolen by him was duly exhibited and that the case of the acquitted co accused was on a completely different footing and as such the prosecution had prove its case beyond a reasonable doubt and the appeal be dismissed. He placed reliance on the record.

9. I have heard the arguments of the learned counsel for the appellant and learned counsel for the SSGC and have gone through the entire evidence which has been read out by the learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law.

10. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged within 3 to 4 hours of the incident which slight delay has been explained by the fact that the SSGC team had to raid the premises, collect the apparatus used for the illegal gas theft, arrest the appellant and then return to the PS when the FIR was lodged by the complainant as such any slight delay in lodging the FIR has been fully explained. In fact the S.154 Cr.PC statement of the complainant was recorded one hour after the incident and then converted into an FIR when the SSGC team returned to the PS. In this respect reliance is placed on the case of Muhammad Nadeem alias Deemi v. The State (2011 SCMR 872).
- (b) The appellant is named in the promptly lodged FIR with the specific role of being present in the samosa cooking shop at the time when the illegal theft of gas was taking place and the illegal connection was uncovered. Thus there was no time for the complainant to cook up a false case against the appellant. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW which would motivate them to lodge a false case against the appellant.

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- (c) The prosecution's case primarily rests on the eye witnesses to the gas theft whose evidence I shall consider in detail below;

(i) Eye witness PW 1 Mubeen Ahmed. He is the complainant and is assistant engineer SSGC. According to his evidence on 26.11.2016 he along with Engineer Abdul Wahid Lakhair, Munir Ahmed Hajero and other technical and security staff left their office based on spy information that gas theft was being committed at Plot No.E/275, KS No.1046 MT Khan Road Sultanabad Phool Chowk Karachi. We arrived on above place at 1130 hours where we saw a shop with name and style 'Ijaz ka Shahi Samosa' running the business of selling Samosa & Pakora/Nimco. We found our service line where from the direct connection of sui gas through Rubber Pipe was provided for the said shop being utilized for running a burner of 32 nozel whereas, two burners each of 24 nozel and so also a generator of black color of 2.5. KVA also utilizing the service line without gas meter. We have disconnected the said illegal gas connection and recovered generator of 2.5. KVA, one burner of 24 nozel and a rubber pipe 15 feet in length. The burner of 32 nozel and a burner of 24 nozel could not be collected being fixed. ASI Sikandar prepared such mashirnama of recovery in presence of me and co-mashir Munir Ahmed Hajano which I produce at Ex.3/A it is same, correct and bears my signature. My statement u/s.154 Cr.P.C. was also recorded by ASI Sikandar Azam on spot which I produce at Ex.3/B it is same, correct and bears my signature. We have inquired the person running the said business in the shop who disclosed the name as Muhammad Qasim s/o Muhammad Ishaque and stated that he being tenant is running his business in the said shop owned by Zubair at the rate of Rs.22,000/- (Rupees Twenty Two Thousand Only) per month. We have also obtained the photographs of the site which I produce at Ex.3/C to 3/O. thereafter inspection form was filled and prepared by Engineer Abdul Wahid Lakhair. Accused Qasim was also arrested along with property at PS SSGC where my statement u/s.154 Cr.P.C was incorporated in book u/s.154 of the PS which I produce at Ex.3/P and such FIR was registered at 1540 hours.

This witness has no ill will or enmity with the appellant and had no reason to implicate him in a false case. The appellant was arrested on the spot and as such there is no case of mistaken identity. It was a day light incident and the apparatus stealing the gas was also recovered. He was not a chance witness as he worked for SSGC and as such it was natural for him to be a part of the raiding party. There are no material improvements in his promptly lodged FIR from his evidence. He was not dented during a lengthy cross examination and he gave his evidence in a natural manner and thus I believe his evidence to be trust worthy, reliable and confidence inspiring and I believe the same and place reliance on it.

(ii) His evidence is corroborated in all material respects by PW 2 Abdul Wahid who was also an eye witness and part of the SSGC raiding party where he witnessed the illegal disconnection of the gas pipe which was recovered at the scene, took photo's of the same and prepared the inspection form all of which were exhibited. He was also witness to the arrest of the appellant on the spot along with the recovery of the apparatus used to steal the gas. There are no material improvements in his evidence from his S.161 Cr.PC statement which was taken with promptitude. The same considerations apply to his evidence as to PW 1 Mubeen Ahmed and I also find his evidence to be reliable, trust worthy and confidence inspiring and believe the same.

(iii) PW 4 Munir Ahmed was also a member of the SSGC raiding party and is an eye witness whose evidence corroborates eye witnesses PW 1 Mubeen Ahmed and PW 2 Abdul Wahid in all material respects. Initially he names the accused as Muhammed Ishaque but later corrects himself and names the accused as Muhammed Qasim which he explains by the fact that the accused's fathers name was Ishaque which mistake is understandable. The same considerations apply to his evidence as to PW Mubeen Ahmed and PW 2 Abdul Wahid and I again believe his evidence and place reliance on it.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shazad V State** (2023 SCMR 117). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of these eye witnesses to be of good quality and believe the same.

Having believed the evidence of the three eye witnesses which is discussed above I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

Thus, based on my believing the evidence of the 3 eye witnesses as mentioned above what other supportive/corroborative material is their against the appellant?

(d) That the apparatus used to steal the gas were recovered on the spot from the shop where the accused was arrested on the spot and the amount of gas theft was drawn up on the spot.

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- (e) All the various memo's and mashirnama's support the ocular evidence.
 - (f) That there was no ill will or enmity between the police and the appellant and as such the police had no reason to falsely implicate the appellant in this case, for instance, by foisting the apparatus to steal the gas at the shop where the appellant was found. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of *Mustaq Ahmed V The State* (2020 SCMR 474). Thus, I believe the evidence of the IO who was not dented during a lengthy cross examination.
 - (g) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of *Zakir Khan V State* (1995 SCMR 1793) *Khadim Hussain v. The State* (PLD 2010 Supreme Court 669) and *Maskeen Ullah and another versus The State and another* (2023 SCMR 1568). The evidence of the PW's provides a believable corroborated unbroken chain of events from the SSGC raiding party raiding the shop on spy information where they found illegal gas connections which was causing the theft of gas to its recovery to the arrest of the appellant on the spot.
 - (h) That from the evidence the accused has not denied his presence at the crime scene when the illegal gas connection was discovered which was used to steal gas.
 - (i) The acquittal of the appellants' co-accused is of no assistance to the appellant as the acquitted co-accused role was much different. Namely, he was not arrested on the spot along with the apparatus used to illegally steal the gas and there was no evidence that the shop where the illegal gas connection was found actually belonged to him or he had anything to do with its ownership apart from the appellant implicating him. It being well settled by now that the implication of an co-accused by another co-accused is of no evidentiary value.
 - (j) *Sikander Ali* who recorded the S.154 Cr.PC statement of the complainant was not a star witness as alleged by learned counsel for the appellant at all as he only wrote down what the complainant told him which became the FIR. It was the complainant's evidence which was of importance not the person who recorded his S.154 Cr.PC statement.
 - (k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was looking for work at the shop at the time when he was innocently caught up in the incident when the SSGC raided the shop.

He however did not give evidence on oath or call a single eye witness to give evidence that he was out of working and was visiting shops looking for work. If he was an innocent by stander looking for work how was he then able to implicate the co-accused in the case who was not at the shop at the time? This does not appeal to logic reason or common sense. It is well settled that if the defence puts forward a specific plea then he must prove it. In this case he has miserably failed to do so. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

11. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and sentenced in the impugned judgment and as such his appeal is dismissed. The appellant's bail is cancelled and SSGC police are directed to arrest him and return him to prison to serve out the remainder of his sentence