

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.S-08 of 2021

Appellant : Ghulam Abbas son of Mohammad Aalam Kandhro,
through M/s Habibullah G. Ghouri and Irfan Badar
Abbasi, Advocates.

Respondent : The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing : 06.05.2021.

Date of Judgment : 06.05.2021.

J U D G M E N T.

Omar Sial, J.: Ghulam Abbas Kandhro was convicted for an offence under section 474, P.P.C and sentenced to rigorous imprisonment for 2 years as well as directed to pay a fine of Rs.50,000/- or suffer a further period of 6 months imprisonment in default of payment of the fine. He was also convicted under section 225-B, P.P.C. and sentenced to 6 months imprisonment. The conviction and sentence was handed down to him by the learned 2nd Additional Sessions Judge, Kamber vide his judgment dated 27-1-2021.

2. A background to the case is that upon the directions of the learned Incharge District & Sessions Judge, Kamber, Zulfiqar Ali Bhutto, the Accountant of the Court, lodged F.I.R. No.191 of 2009 under sections 474, 225-B, 468 and 511, P.P.C. at the Kamber Police Station. In the said F.I.R. Bhutto recorded that on 18-6-2009 Ghulam Abbas Kandhro (the appellant) appeared and submitted before him an affidavit along with a Solvency Certificate. The affidavit and Solvency Certificate were submitted by Kandhro as he wanted to stand surety for one Abdul Hafeez Kandhro, who had been granted bail in a separate case. The Solvency Certificate was sent for

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verification to the Mukhtiarkar, Nasirabad, who disclosed that the Solvency Certificate had not been issued by his office.

3. Kandhro pleaded 'not guilty' to the charge against him and claimed trial. He was accordingly tried by the court of the learned 1st Assistant Sessions Judge, Kamber and vide judgment dated 04-1-2011 the learned judge convicted Kandhro for an offence under section 474, P.P.C. to 5 years imprisonment as well as directed him to pay a fine of Rs.20,000/- or remain in jail until he paid the said fine. This judgment dated 04-1-2011 was appealed against and this Court remanded the same back to the learned trial court with the directions that Kandhro be given an opportunity to cross-examine the prosecution witnesses and subsequently to record his statement under section 342, Cr.P.C. afresh and then render a judgment. This appeal arises from the fresh judgment that was rendered after compliance of the orders of this Court i.e. the judgment dated 27-1-2021 passed by the learned 2nd Additional Sessions Judge, Kamber.

4. At trial, the prosecution examined 5 witnesses. P.W-1 H.C. Muhammad Uris Nangraj was a witness to the inspection of the place of incident as well as the arrest of the appellant. P.W-2 A.S.I. Abdul Rasool Tunio was the investigating officer of the case. P.W-3 Zulfiqar Ali Bhutto, was the complainant in the case. P.W-4 S.I. Munawar Ali Brohi was the police officer who registered the F.I.R. P.W-5 A.S.I. Dost Muhammad Sandano was the second investigating officer of the case, whose role was confined to submitting the final police report under section 173, Cr.P.C. The appellant in his section 342, Cr.P.C. statement pleaded innocence and submitted that the mistake of confirming the incorrect survey number was that of the Mukhtiarkar, Nasirabad.

5. I have heard the learned counsel for the appellant as well as the learned Addl. P.G. For the sake of brevity, their respective arguments are not

being reproduced here but are reflected in my observations and findings, which are as follows.

6. The entire prosecution case hinged on the question as to whether the Solvency Certificate No.PM-944 of 2009, dated 16-6-2009 was a forged document. The document was ostensibly issued by the Mukhtiarkar (Revenue), Nasirabad. It appears from the record that a telephonic conversation that the said Mukhtiarkar had with the Accountant of the Court formed the basis of the conclusion that the Solvency Certificate was a forged one. Subsequent to the telephone conversation the Mukhtiarkar wrote a letter to the learned judge, in which it was stated that his office had not issued the Solvency Certificate as the office's outward register did not show the number 944 and that the area of land for which the certificate was issued did not fall within his jurisdiction.

7. Section 353, Cr.P.C provides that all evidence recorded at trial is to be taken in the presence of the accused. Section 510, Cr.P.C. is an exception to the general rule laid down that all evidence shall be taken in the presence of the accused. It makes a departure from the elementary rule of law that unless evidence is given on oath, and is tested by cross-examination it is not legally admissible against the party affected. The letter written by the mukhtiarkar does not fall within the ambit of section 510, Cr.P.C. In the absence of the mukhtiarkar or an authorized person from his office appearing to testify at trial and being exposed to cross-examination, such a letter was not admissible as evidence on this count.

8. Article 72 of the Qanun-e-Shahadat Order of 1984 provides that the contents of a document should be proved either by primary or secondary evidence. The succeeding Article 73 defines "*primary evidence*" as the document itself produced for the inspection of the court. Article 74 lists the documents that may be proved by secondary evidence. Article 75 of the Order of 1984 stipulates that a document must be proved by primary evidence

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unless production of secondary evidence is allowed by the Order. Article 76 lists the documents for which secondary evidence is admissible. One such situation mentioned at serial f is "when the original is a public document within the meaning of Article 85". Arguably the outward register may fall within the definition of a public document according to the definition contained in this Article and as such secondary evidence may have been produced to prove the document. Even then, Article 76 states that only a certified copy and no other evidence could be treated as secondary evidence. In the present case, the letter written by the mukhtiarkar mentions that the outward register of the office did not show an outward entry for the certificate. Neither was the original register produced at trial to determine the veracity of the statement nor was a certified copy of the same produced. Further, the accused in his section 342, Cr.P.C. statement was not confronted with the letter written and obviously not even with the outward register. The letter thus remained inadmissible in evidence and could not be relied upon to base a conviction.

9. In view of the above, the conviction of the appellant was based on inadmissible evidence, which evidence could not have formed basis of conviction. The appeal is therefore allowed and the appellant acquitted of the charge. He may be released forthwith if not required to be detained in any other case.


JUDGE