

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Mohammad Karim Khan Agha, J.

CRIMINAL APPEAL NO. 147 OF 2020

Appellant;	Muhammad Sufyan son of Muhammad Anwar through Syed Shazeel Hassan, Advocate
For State;	Sui Southern Gas Company through Malik Sadaqat Khan, advocate
Date of Hearing;	13.02.2024
Date of Announcement;	21.02.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Muhammad Sufyan was tried in the Court of District & Sessions Judge (South) Karachi in respect of Crime No.10 of 2016 under section 462 C-E PPC, registered at P.S. SSGC Karachi and vide judgment dated 06.02.2020 the appellant was convicted u/s.265-H(ii) Cr.P.C. and sentenced to suffer R.I. for five years with fine of Rs.2,46,700/-. In case of non-payment of fine the appellant shall suffer four (04) months more imprisonment. However, the benefit of Section 382-B was also extended to the appellant.

2. The brief facts of the prosecution case are that on 26th day of January, 2016 at 1250 hours, complainant Abdul Latif Kalwar son of Allah Yar Kalwar, Manager, SSGC, Karachi along with his technical team and police party raided at "Mashallah Halwa Poori & Samosa Shop" situated at Gali No.3, Usmanabad, near Pakistan Hotel, Karachi where at the shop of Halwa Puri Samosa theft of Sui Gas was being committed through rubber pipe direct from service line and three burners were used with stolen sui gas from Auxiliary Line. Accordingly, the said illegal Sui Gas connection was disconnected and a rubber pipe 20 feet in length along with three burners were recovered. The person sitting in said shop disclosed his name Muhammad Sufyan son of Muhammad Anwar claimed himself to have obtained the said shop on rent and doing the said business Halwa Puri & Samosa. The accused was arrested on spot. The photographs of the

occurrence were also obtained by Sui Gas Team and the statement of complainant Abdul Latif Kalwar was recorded under Section 154 Cr.P.C. after preparation of memo of arrest and recovery on spot. Thereafter, the accused and property were brought at PS and the statement u/s 154 Cr.P.C. of the complainant was incorporated in the book under section 154 Cr.P.C. and as such FIR was registered on 26.01.2016 at 1445 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 05 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 however he did not give evidence on oath or call any DW in support of his defence case.

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 conviction.

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 hotel when the SSGC team raided the hotel but was only a waiter and had nothing to do with the illegal gas connection; that there were material contradictions in the evidence of the prosecution witnesses which rendered their evidence unreliable; that no independent mashir was associated which violated S.103 Cr.PC 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 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 with in 2 hours of the incident which slight delay has been explained by the fact that the SSGC team had to raid the premises, recover 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 on the spot 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 the only person present in the hotel at the time of the raid 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.
- (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 Abdul Latif. He is the complainant and is Deputy Manager SSGC.** According to his evidence on 26.01.2016, I along with Ghulam Mujtaba alias Ghulam Mustafa Sheikh Senior Engineer SSGC, Abdul Wahab Bullo Senior Meter Reader, Police Party ASI Flamid Ali, Technical Staff of SSGC, Security left our office at 1210 hours on vehicle to conduct raid on receiving information regarding unlawful theft of gas. We arrived at Street 3, Lyari Usmanabad, near Pakistan Hotel we found a small hotel titled as 'Mashallah' in which the gas was being supplied through rubber pipe from service line of SSGC. Such photographs were also taken and then the said illegal connection was disconnected and the rubber pipe about 10 feet in length used for stealing the gas and so also stoves by technical team was recovered and such

memo was prepared by ASI Hamid Ali in presence of me and Abdul Wahab Bullo. On inquiry, a person standing there disclosed his name as sufiyan claiming to be the owner/proprietor of the said hotel was arrested by ASI in presence of me and Abdul Wahab and prepared such mashirnama of arrest and recovery at Ex.6/A it is same, correct and bears my signature. My statement u/s. 154 Cr.P.C. was recorded by ASI Hamid which I produce at 6/B, it is same, correct and bears my signature. Thereafter we along with property and accused came at PS SSGC where my statement was incorporated in book u/s. 154 Cr.P.C.

This witness had 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 including one nozzle for the purpose. 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 Ghulam Mujtaba Shaikh Senior Engineer SSGC, PW 3 Hamid Ali SI and PW 4 Abdul Wahab senior meter reader SSGC who were all part of the SSGC raiding party where they witnessed the disconnection of the illegal gas pipe which was recovered at the scene, took photo's of the same, prepared the inspection form and arrested the appellant on the spot respectively. They all witnessed 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 their evidence from their S.161 Cr.PC statements which was taken with promptitude and most of them are named in the promptly lodged FIR. The same considerations apply to their evidence as to the evidence of PW 1 Abdul Latif and I also find their evidence to be reliable, trust worthy and confidence inspiring and believe the same.

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 four 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 4 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 hotel where the accused was arrested on the spot and the amount of gas theft was drawn up on the spot.
- (e) All the various memo's and mashirnama's support the ocular evidence.
- (f) That nearly all relevant entries have been exhibited which supports the ocular evidence.
- (g) 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 hotel 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 PW 3 Hamid Ali SI the PW 5 Abid Shah who was the IO of the case who was not dented during a cross examination.
- (h) 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 hotel 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.
- (i) That from the evidence the accused has not denied his presence at the crime scene at the time when the illegal gas connection was discovered which was used to steal gas.
- (j) That in this day and age it citizens do not want to become mashirs in criminal cases and give evidence against an accused in court and this has now become a virtually judicial recognized fact by our courts so I do not consider the absence of any independent mashir based on the particular facts and circumstances of this case where 4 natural eye,

witnesses none of whom have any enmity or ill will with the appellant have directly implicated him in the offence to be of much significance.

- (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 in his cross examination is that he was a waiter at the hotel and its owner was one Mama and he was innocently caught up in the incident when the SSGC raided the hotel. He however did not give evidence on oath or call a single eye witness to give evidence that he was a waiter. He did not mention that he was a waiter or even that mama was the owner of the hotel in his S.342 Cr.PC statement. If he was only a waiter why did he not call another waiter to give evidence to this effect or any one else who worked in the hotel to support his defence case? 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 offence 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.