

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acctt. Acquittal Appeal No.02 of 2015

Present:

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Mohammad Karim Khan Agha

Appellant/State: Mr. R.D. Kalhoro, Special Prosecutor NAB.

Respondents: None.

Date of hearing: 26.03.2019.

Date of Judgment: 29.03.2019.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J.-** Reference No.15/2009 was filed by the National Accountability Bureau (NAB) against accused/respondents (1) Capt (R) Muhammad Arif S/o. Mirza Abdul Rashid, (2) Dr. Gulzar Ahmed S/o. Muhammad Ibrahim, (3) Syed Sajid Rauf S/o. Syed Abu Hurera, (4) Hajra Mazhar W/o. Mazhar Ali Abro, (5) Abdul Karim, (6) Syed Munawar Ali Shah S/o. Syed Pannah Ali Shah, (7) Masood Ali S/o. Syed Muhammad Ali, (8) Najeeb-ur-Rehman S/o. Haji Aziz-ur-Rehman, (9) Dr. Rao Saeed Ahmed, (10) Dr. M. Masood A. Siddique and Dr. Iqbal Ahmed Memon for offences of corruption and corrupt practices under S.9 of the National Accountability Ordinance 1999 (NAO) in the Accountability Court No.I, Sindh, Karachi. The Accountability Court No.I, Karachi acquitted the respondents/accused from the charge vide judgment dated 14<sup>th</sup> April, 2015 (the impugned judgment). Being aggrieved and dissatisfied with the impugned judgment dated 14<sup>th</sup> April, 2015 the appellant/State preferred this appeal against acquittal of the respondents.

2. The brief facts of the case as per reference are that accused Capt. Muhammad Arif, Dr. Gulzar Ahmed, Syed Sajid Rauf, Hajra Mazhar, Abdul Karim and Syed Munawwar Ali Shah were employees of Sui Southern Gas Company Limited (SSGCL), wherein the Government of Pakistan was

having its share to the extent of 79.73%, and were holders of public offices. It is alleged in the reference that in the year 1997 to 2001 the annual hospitalization related expenses incurred by SSGCL on its Sui based employees remained within the range of Rs.2.00 Millions to Rs.8.00 Million per year but subsequently the same were abnormally increased up to 110 Million during the year 2001-2002.

3. In effect it has been alleged in the Reference that the respondents, some of whom were employees of SSGCL and others of whom were heads of various medical centres to who the respondents had sent employees of SSGCL for medical treatment had connived with each other by misusing their authority in claiming and approving 320 fake medical bills in respect of SSGCL employees which led a loss to the government exchequer of Rs.14.908 Million and thereby had committed the offence of corruption and practices under section 9 of the NAO which led to the Chairman NAB filing the aforesaid Reference against the accused/respondents.

4. After a full dressed trial, the accused were acquitted of the charge vide the impugned judgment. Being aggrieved and dissatisfied by the impugned judgment, the appellant (NAB) has filed this appeal against the acquittal of the respondents.

5. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment dated 14.4.2015 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. When we asked the Special Prosecutor NAB to point out any legal infirmity in the impugned judgment which could show that it had been wrongly decided through a failure by the trial court to properly appreciate the evidence on record or as matter of law, the learned Special Prosecutor NAB was unable to point out any such legal infirmities in the impugned judgment apart from contending that the learned trial court had not given due weight to the evidence produced by the prosecution.

9

187

7. We have gone through the evidence placed on record by the appellant as well as the impugned judgment to assess whether there are any legal infirmities in the same.

8. We note that that respondents were mainly acquitted by the learned trial court by extending them the benefit of doubt for the following reasons at typed page-24 of the impugned judgment which for ready reference reads as under:-

*"In view of the above discussion, and evaluation of evidence it has been proved that the case of prosecution is highly suffering from doubts for the reasons, summarized as under:-*

1. *The departmental committee exonerated the present accused of SSGCL from the charge leveled against them.*
2. *The departmental committee fixed the responsibility only upon Dr. S. Iqbal Ahmed (CMO), who is since dead and no more alive.*
3. *The audit report as prepared by Dr. Munawwar Hayat cannot be relied upon due to the reason that his MCPs diploma certificate is said to be fake and fabricated and he was also facing an enquiry before the FIA on the allegations of corruption of a huge amount, as admitted by him in his cross-examination.*
4. *The audit report prepared by an independent and well reputed company namely A.F. Ferguson the Chartered Accountant was not brought on record by the prosecution.*
5. *The civil litigation between the parties was said to be going on.*

*I am also conscious about the fact that for convicting a person for an offence a confidence inspiring evidence viz-a-viz corroboration is required which is lacking in the present case. It is a settled principle of law that the benefit of doubt always goes in favour of accused. The Hon'ble Superior Courts have also laid down this principle and it has been held that benefit of a slight doubt shall run in the favour of the accused and he cannot be deprived of such benefit.*

*Therefore, adhering to this principle laid down by Hon'ble Superior Courts and keeping in view the evidence available on record, as discussed above, I am of the firm opinion that the prosecution case is highly doubtful and I hereby acquit accused*



*Capt Muhammad Arif, Dr. Gulzar Ahmed, Syed Sajid Rauf, Hajra Mazhar, Abdul Karim, Syed Munawwar Ali Shah, Masood Ali, Najeeb-ur-Rehman, Dr. Rao Saeed Ahmed, Dr. Masood A Siddique and Dr. Iqbal Ahmed Memon of the charge U/s 265-H(1) Cr.P.C. The accused persons are present on bail, their bail bonds stand cancelled and sureties discharged".*

9. After our own consideration and analysis of the evidence on record, we do not find any legal infirmity or perversity in the impugned judgment as would necessitate any interference with the same on our part especially keeping in view that in our opinion one of the main planks on which the prosecution case rested was the evidence and audit report as prepared by their star witness Dr. Munawwar Hayat whose evidence was not confidence inspiring and his own credibility was seriously damaged in cross examination and as such neither his evidence nor his report can be safely relied upon. The failure of the prosecution to bring on record the audit report carried out by A.F. Ferguson an independent auditor of repute was a major omission on its part which tends to suggest that such audit report may not have supported the prosecution case. Furthermore, it appears that the main responsibility for any wrong doing which may have occurred fell at the door of Chief Medical officer Dr. Syed Iqbal Ahmed (now dead) who has per the internal inquiry of SSGCL was found to be mainly at fault for any wrong doing in respect of the allegations contained in the reference. Even otherwise a number of PW's who received medical treatment confirmed their treatment and as such did not support the case of the prosecution.

10. It is settled law that judgment of acquittal should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is double as held by the Honorable Supreme Court of Pakistan in the above referred judgment.

11. Thus, keeping in view the above law and our analysis of the impugned judgment, we find that the respondents have rightly been acquitted of the charge by the impugned judgment as the findings of the trial court are neither perverse nor speculative but rather well reasoned and we find no reason to interfere with the same and as such the appeal against acquittal of the respondents is dismissed in limine.

12. The appeal against acquittal of the respondents is disposed of in the above terms.

*Arif*