

# IN THE HIGH COURT OF SINDH AT KARACHI

## Special Criminal ATA No.32/2014

Present: Ahmed Ali M. Shaikh, CJ, and Yousuf Ali Sayeed, J

Appellants : Mumtaz Ali & Others through Mr. M.A. Kazi & Mr. Irshad Jatoi, Advocates.

Respondent : The State through Mr. Abrar Ali Khichi, APG

Date of hearing : 06.05.2017

Date of Judgment :

### JUDGMENT

**YOUSUF ALI SAYEED, J.** The Appellants have assailed the Judgment dated 30.04.2014 passed by the Anti-Terrorism Court, Mirpurkhas Division @ Mirpurkhas in Special Case No.9 of 2013 emanating from FIR No.28/2013 registered at P.S. Chachro on 15.05.2013, whereby they were each sentenced to suffer rigorous imprisonment for five (5) years under Sections 6(2)(m) / 7(h) of the Anti-Terrorism Act, 1997 (the “**ATA**”) and to pay a fine of Rs.100,000/- each and in default of payment to suffer further rigorous imprisonment for six (6) months.

2. The Charge framed against the Appellants by the trial Court on 05.12.2013 was that on 11.5.2013, at 6.30 P.M., they had all come to Polling Station No. GPS-261 (Male) situated in village Sahario Taluka Chachro District Tharparkar, armed with pistol, lathis and hatchets, and thus formed an unlawful assembly and in prosecution of their common object created terror and sense of insecurity by firing in the air and beating the Presiding Officer and other Polling Staff. As per the Charge, the Appellants also took the ballot boxes and bags containing ballot papers, destroyed the ballot papers by stamping them with their own stamps, forced the Presiding Officer to declare the result in favour of their Candidate who it was said “in fact had lost election”. Obliquely, it was also mentioned that the Appellants “did many other illegal acts in this connection”.

3. The Appellants were thus charged with offences punishable under Section 82-A, 86(3) (b), 87(1) (a) (b) of the Representation of the People Act, 1976 (“ROPA”) and Section 506, 504, 114, 337-H(2), , 337-F(i), read with Section 148 and 149 PPC and Section 6(2), (i), (m), (n) punishable under Section 7 (h) of the ATA. They all entered pleas of not guilty and claimed trial.
4. The Prosecution examined seven (7) witnesses namely PW-1 Daulat Ram, who was the Presiding Officer at the Polling Station and was also the complainant in the matter, PW-2 Abdul Ghani, PW-3 Kantesh Kumar and PW-4 Bhamo Lal, all of whom were Assistant Presiding Officers at the Polling Station, PW-5 Ali Nawaz, who was a Polling Officer, PW-6 Abdul Ghafoor, the first IO of the case, and PW-7 Ali Muhammad, the second IO thereof. On a reading of the oral evidence of these witnesses, the trial Court held that the prosecution had successfully established the presence of the Appellants at the place and time of occurrence and that they were responsible for commission of the offences with which they had been charged. Hence, they were convicted and sentenced as aforementioned
5. Learned counsel for the Appellants submitted that the Appellants are innocent and were falsely implicated. He contended that the Appellants were strangers to the prosecution witnesses, and their names had been provided by the complainant in his statement under S.154 Cr. PC as they had been mentioned to him by the local inhabitants of the area, but none of these persons had been examined to corroborate such statement. He submitted that there was absolutely no evidence against Appellants in support of the Charge, and in fact, it was evident that the eye-witnesses to the alleged occurrence had specifically stated that the Appellants were not the persons responsible. Be that as it may, the learned trial Court recorded a finding of guilt whilst completely misreading the evidence. In this regard, learned counsel has taken us through the depositions of the prosecution witnesses and pointed out the following relevant excerpts:

**PW-1 Daulat Ram**, whose deposition is Exhibit-14, stated that “it was about 6.30 PM it were dark hours and electricity facility was not available at Polling Station. I saw that all the eight accused persons namely Mumtaz, Abdul Rauf, Ashraf, Muhammad, Asif, Muhammad Yousif, Akbar and Muhamad Muqeem entered into the room of school where we were busy in counting the ballet papers. They

took three empty boxes of ballot papers and cast and un-cast ballot papers and went away. After some time they returned the ballot boxes and ballot papers duly stamped by them and destroyed its utility. After that the accused persons advanced text and went away.” No statement was made as to any of the Appellants firing in the air or beating anyone. PW-1 went on to state that “All the eight accused persons whose names given by me above namely Mumtaz, Ashraf, Muhammad, Abdul Rauf, Muhammad Yousif, Akbar, Asif and Muhammad Muqem present in the Court I say that since the incident had taken place about 7 months back and the time of incident was dark hours as such I cannot say whether they are same persons who had committed the offence.” Furthermore, during cross examination, he stated that “it is correct to suggest that I cannot say which of the present accused persons had caused me fists and kicks blows. It is correct to suggest that I am also not able to identify which of the accused took the ballot boxes and the ballot papers at the time off incident.” He also stated that “I say that names of present accused persons were told to me by the villagers of village Saharario”.

**PW-2 Abdul Ghani**, whose deposition is Exhibit-18, stated that “All of sudden 8-10 persons entered into the Polling Station, they fired arms shots in the air and caused fists and kicks blows to me and other polling staff. He went on to state that “After 2-3 days of the incident, on my enquiry Polling Officer Ali Nawaz informed me that the culprits were Mumtaz and others. All the eight accused persons out of which name of one accused namely Mumtaz and other seven accused namely Ashraf, Muhammad, Abdul Rauf, Mohammad Yousif, Akbar, Asif and Muhammad Muqem, present in Court I say that I do not know them.” During cross examination, he stated that “It is correct to suggest that the persons who on the day and time of incident had attacked upon us and caused fists and kicks blows and also took ballot papers are not the accused persons present in the court.”

**PW-3 Kantesh Kumar**, whose deposition is Exhibit-19, in examination-in-Chief stated that “All the eight accused persons, whose names given by me above namely Mumtaz, Abdul Rauf, Ashraf, Mohammad, Asif, Mohammad Yousuf, Mohammad Muqem present in the Court I cannot say whether they are the same persons who had committed the offence as at the time of incident there was no electricity at the place of occurrence.”

**PW-4 Bhamo Mal**, whose deposition is Exhibit-22, in Examination-in-Chief stated that “I had given the name of accused Mumtaz, who name was disclosed to me by PW-1, complainant Daulat Ram and also of other persons. All the eight accused persons out of them one was Mumtaz, whose name was given by me above and other seven accused namely Abdul Rauf, Ashraf, Muhammad, Asif, Muhammad Yousif, Akbar and Muhammad Muqaem present in the Court I say that they were not the same persons who had committed the offence.”

**PW-5, Ali Nawaz**, whose deposition is Exhibit-23, in Examination-in-Chief stated that “All the eight accused persons namely Mumtaz, Abdul Rauf, Ashraf, Muhammad, Asif, Mohammad Yousif, Akbar and Muqaem who are present in the court and shown to me I say that since the incident took place in dark hours as such I cannot say whether they were the same persons, who had committed the offence.”

**PW-6, Abdul Ghafoor**, the first I.O., whose deposition is Exhibit-24, has stated that “It is correct to suggest that in the mashirnama Exh.20 I had stated that near to the place of occurrence some houses of the persons are situated. It is correct to suggest that I had not enquired from those persons about the incident. It is correct to suggest that on 21.5.2013 when I had left Police Post Chelhar to arrest the nominated accused persons I had not recorded such entry in the daily diary register of Police Post Chelhar.” He also went on to state that “ It is correct suggest there during the investigation accused Muhammad Yousif had disclosed to me that on the date and time of the incident he was on duty at another polling station but he had not produced any proof in this regard. It is correct to suggest that during the investigation I have not enquired from another quarter whether accused Muhammad Yousif was on election duty at another polling station as stated by him.”

**PW-7 Inspector Ali Mohammad**, the second I.O., whose deposition is Exhibit No.27, has admitted that although “specific direction was given to me to conduct fair and impartial investigation in this case. It is correct to suggest that in spite of that neither I had inspected the place of occurrence nor I had called the prosecution witnesses to enquire from them about the incident and also from the independent persons of the village where the incident took place.”

6. In view of the testimony of the prosecution witnesses, it is evident that there was no evidence against the Appellants in support of the Charge, and in fact, such testimony served to exonerate rather than incriminate them. The evidence of the two Investigating Officers also casts down on the very conduct and veracity of the investigation. Faced with such material, the learned APG was unable to put forward any argument whatsoever in support of the impugned Judgment and the finding of guilt recorded by the trial Court therein.
  
7. It is well settled in criminal jurisprudence that even a single circumstance that serves to create reasonable doubt in a prudent mind as to the guilt of an accused entitles him to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. Reference may be made in this regard to the judgment of the Honourable Supreme Court in the case reported as Tarique Parvez v. The State 1995 SCMR 1345. However, in the instant case, convictions were recorded despite the clear exculpatory evidence on record, which, in our view, constitutes a gross misreading of the evidence and a serious miscarriage of justice that obviously cannot be allowed to stand. Accordingly, this Appeal succeeds.
  
8. These are the reasons for of our short Order dated 06.05.2017 whereby the Appeal was allowed with the result that the Appellants were acquitted of the charges and the conviction and sentence awarded to them was set aside.

JUDGE

CHIEF JUSTICE

Karachi  
Dated \_\_\_\_\_