

IN THE HIGH COURT OF SINDH, KARACHI.

Before:
Mr. Justice Omar Sial.
Mr. Justice Zulfiqar Ali Sangi.

**Criminal Accountability Appeal No.29 of 2018 &
C.P No.D-6233 of 2018**

Aleemuddin.....Appellant

VERSUS

The State (NAB).....Respondent

Criminal Accountability Appeal No.30 of 2018

Haroon Punjwani.....Appellant

VERSUS

The State through Chairman NAB.....Respondent

**Criminal Accountability Appeal No.31 of 2018 &
C.P No.D-6331 of 2018**

Muhammad Asad Abbassi.....Appellant

VERSUS

The State through Chairman NAB.....Respondent

Date of hearings: 09,10,16,24-06-2020 and 01.07.2020.

Date of Judgment: 17.09.2020.

Mr. Muhammad Yaseen Khan Azad, Advocate for the Appellant/Petitioner in Crl. Acctt. Appeal No.29 of 2018 and CP No.D-6233 of 2018.

M/s Muhammad Ashraf Kazi and Irshad Ali Jatoi, Advocates for the Appellant in Crl. Acctt. Appeal No.30 of 2018.

M/s. Altamash Arab and Muhammad Azad Khan, Advocate for the Appellant in Crl. Acctt. Appeal No.31 of 2018 and CP No.D-6331 of 2018.

Mr. Zahid Hussain Baladi, Special Prosecutor NAB.

J U D G M E N T

ZULFIQAR ALI SANGI, J. The Appellants named above have assailed the judgment dated 23.05.2018 passed by the Accountability Court No.3, Sindh Karachi in Reference No.35 of 2015, wherein the Appellants/accused persons namely Haroon Punjwani s/o Suleman, Aleemuddin s/o Ziauddin and Muhammad Asad Abbasi s/o Muhammad Khurshid Abbasi were convicted and sentenced to suffer R.I. for 07 years each and Appellant/accused Haroon Punjwani was also sentenced to pay fine of Rs.28,680,000/, being the amount paid by 45 affectees/allottees against plots allotted to him. While appellant/accused Aleemuddin and Muhammad Asad Abbasi were also sentenced to pay fine of Rs.39,700,000/- which was to be equally distributed in between three Appellant/accused Aleemuddin, Mansoor Ahmed (absconder) and Muhammad Asad Abbasi who illegally sold-out government land to accused Haroon Punjwani. In case of nonpayment of fine all three accused i.e Haroon Punjwani, Aleemuddin and Muhammad Asad Abbasi would suffer R.I for two years each more. They were also stand disqualified for 10 years to be reckoned from the date they are released after serving the sentence, for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body or any province so also shall not be allowed to apply for or be granted or allowed any financial facilities in the form of any loan or advances from any bank of Financial Institution in the public sector, for 10 years from the date of conviction. The accused persons, however; are entitled to the benefit of Section 382(B) Cr.P.C. The case against absconder accused Mansoor Ahmed s/o Noor Ahmed is hereby kept on dormant file till his arrest.

2. The brief facts of the prosecution case are that it was learned through a source report that precious Government land at Hassan Brohi Goth Na-class-30, Deh Nagan District West, Karachi was occupied by private person namely Haroon Punjwani, who was selling it to public and also handing over fake Sanads of Gothabad Scheme to the general public. Consequently, after taking cognizance of the matter investigation was authorized vide letter No.221002-Khi/IW-I/CO-C/T-6/NAB (K)/2015/1982 dated 07.05.2015 by the then D.G NAB Karachi. During investigation It was found that Government of Sindh passed Sindh-Abad (Housing Scheme) Act 1987 in which housing facilities were to be given to deserving persons residing in old villages in the rural areas of the province of Sindh free of cost after completion of codal formalities however it was also found that culprits prepared fake Sanads of Sindh Gothabad (Housing Scheme) and sold the land to the general public. This issue was highlighted and Board of Revenue had imposed a complete ban on the sanction of new villages and issuance of new Sanads in the year 1996 for Karachi, therefore, all such fake and forged Sanads were canceled except those Sanads which were verified by the District Officer (Revenue) Karachi. Revenue department also decided that new Sanads in Karachi would be issued after completion of the topographical survey of all the existing villages after observing all the legal and codal formalities under Sindh Gothabad (Housing Scheme) Act, 1987. It was also revealed that 45 claimants lodged their claims amounting to Rs.28,680,000/ with the NAB.

3. It is alleged that accused Haroon Punjwani, being a private person, had purchased a Government land at Hassan Brohi Goth Na-class-30 Deh Nagan District West, Karachi consisting of 582

plots of various categories from accused No.2, 3 & 4 against sale consideration of Rs.39,700,000/- and established Memon Colony and sold out plots and houses to the general public and received an amount of Rs.186,959,000/- from over 500 persons so also handed over fake and forged Sanads of Gothabad Scheme to the public showing that the land is regularized by Government under Gothabad Housing Scheme Act-1987. It is also alleged by the prosecution that accused Aleemuddin and Muhammad Asad Abbasi with the active connivance of absconding accused Mansoor Ahmed had illegally sold out Government Land to accused Haroon Punjwani against sale consideration of Rs.39,700,000/- through agreement and received said amount, and they all have cheated public at large through the illegal sale of Government land and deprived the affectees of their hard-earned money, thereby they have committed an offence of corruption and corrupt practices.

4. During the investigation, the Investigation Officer recorded statements of 58 prosecution witnesses namely 1). Aneesa W/o Haroon Punjwani, 2). Sikandar Ali Khushk Director Gothabad, 3). Asadullah Abbasi, AC Mangopir, 4). Akhtar Ali Meo, Director MDA, 5). Sardar Jamali, former Mukhtiarkar Gothabad District Karachi West, 6). Ashraf Kumbar, former Tapedar Gothabad District Karachi West, 7). Atif Raza, Banker, 8). Ahsan Iqbal, Officer of Soneri Bank Ltd. North Karachi branch, 9). Sadiq Hussain, Officer of Bank Al-Habib Sindhi Hotel Branch Karachi and affectees, 10). Irfan Ahmed, 11). Abdul Sattar, 12). Muhammad Rauf, 13). Muhammad Ilyas, 14). Tanveer ul Haq, 15). Muhammad Javed, 16). Kasim Lakhani, 17). Muhammad Farooq, 18). Shahnaz Siddique, 19). Abdul Razzaq, 20). Adnan, 21). Dawood, 22). Muhammad Hanif, 23). Shabana Bano, 24). Amjad Ali, 25). Asif,

26). Umair Ismail, 27). Raheela, 28). Fareeda Bano, 29). Saleem, 30). Karim Syed, 31). Abdul Hameed Sahito, 32). Syed Mohsin Ali, 33). Abdul Rahim, 34). Muhammad Naeem, 35). Memona, 36). Muhammad Imran Khan, 37). Muhammad Farhan, 38). Azra Bano, 39). Rukaya Bano, 40). Muhammad Shahryar, 41). Seema, 42). Tariq Sohail, 43). Arif, 44). Mukhtar Ahmed, 45). Sakina, 46). Faisal Motlani, 47). Muhammad Shoaeb, 48). Rozina Zaheer Khan, 49). Abdul Raheem, 50). Muhammad Farooq, 51). Jameela Bano, 52). Muhammad Hanif, 53). Muhammad Faisal, 54). Mustafa, 55). Anjum Ara, 56). Imtiaz Ali, Examiner who analyzed the signature of accused Aleemuddin, Mansoor Ahmed and Asad Abbasi, and 57). Faheemuddin, Examiner who analyzed the signature of accused Aleemuddin, Mansoor Ahmed, and Asad Abbasi. On completion of the investigation, I/O submitted his final investigation report to the NAB Authorities and after scrutinizing the report Reference No. 35 was filed against them.

5. After compliance of provision of Section 265-C Cr.P.C, the charge of corruption and corrupt practices as defined under Section 9(a) (ix) (x) of National Accountability Ordinance 1999 punishable under Section 10 of the Ordinance was framed on 19.01.2016 against accused/appellants Haroon Panjwani and Aleemuddin, later on, co-appellant Muhammad Asad was arrested and the charge was amended on 26-03-2016 to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined as many as 29 witnesses who exhibited various documents in support of the prosecution case, and thereafter the prosecution closed its side. The appellants/accused recorded their statements under Section 342 Cr.P.C in which they denied the allegations against them. They

did not give evidence on oath or call any witness in support of their defence case. Thereafter the trial court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellants through the impugned judgment dated 23.05.2018, against which the appellants have filed the instant appeals. As all appeals arise from the same judgment, we will dispose them of through this single judgment.

7. Learned counsel for the appellant *Aleemuddin* contended that there is no evidence against appellant Aleemuddin except sale agreement which was produced by PW-25 Aneesa; that production of said agreement which was produced is an important question and PW- 25 admitted during cross-examination that she due to consequences to implicate her sons in the case produced the sale agreement before the NAB; that no PW signed the sale agreement; that the sale agreement was blank so no reliance can be placed upon the sale agreement. He also pointed out some mistakes in para-3 & 5 of sale agreement according to which vendors and first-party paid sale amount to themselves; that the appellant *Aleemuddin* and the signature of purchaser co-appellant *Haroon Panjwani* were not sent for forensic opinion; that all the witnesses gave contradictory evidence and the same is not reliable nor trustworthy; that no bank employee was examined in Court and no transactions found in the bank account from 05th December 2006 to 25th January 2007; that entire case of the prosecution is doubtful and based on the malafides. He relied upon in the case of *MUHAMMAD ISHAQUE QURESHI Versus SAJID ALI KHAN and another (2016 SCMR 192)*. He prayed for acquittal.

8. Learned counsel for the appellant *Haroon Panjwani* contended that there are 4-5 classes of witnesses, PW-1, 2,3 & 5

are from revenue department and their evidence is concerning sanctioning of the village; that village was sanctioned on 02.09.1993 under Sindh Gothabad Act 1987, thereafter the land was reverted to the Government in 1997 and this land remained sanctioned for five years; that Sanad and Form -II have been issued by revenue officials but they are not implicated as an accused and the I/O not confirmed sanad and Form-II from revenue department; that I/O has neglected to present any verification that this land was not sanctioned; that second category of witnesses is allottees who being beneficiaries purchased the plots and they have no complaints against the appellant; that PW Aneesa produced the sale agreement during the custody of appellant Haroon Panjwani thus her evidence and production of sale agreement was under duress. He finally argued that the signatures of appellant Haroon Panjwani were not sent for the assessment of a forensic expert. In support of his contentions relied upon on the cases of *MUHAMMAD AKHTAR Versus THE STATE* (2010 PCrLJ 374), *HYDERABAD DEVELOPMENT AUTHORITY through M.D., Civic Centre, Hyderabad versus ABDUL MAJEED and others* (PLD 2002 SC 84) *RAFIQ HAJI USMAN Versus CHAIRMAN, NAB and another* (2015 SCMR 1575), *PAKISTAN ENGINEERING CONSULTANTS through Managing Partner Versus PAKISTAN INTERNATIONAL AIRLINES CORPORATION through Managing Director and another* (PLD 2006 Karachi 511), *PIR MAZHAR UL HAQ and others Versus THE STATE through Chief Ehtesab Commissioner, Islam* (PLD 2005 SC 63), *Syed QASIM SHAH Versus THE STATE* (2009 SCMR 790), *WAHID BAKHSH BALOCH Versus The STATE* (2014 SCMR R 985), *PROVINCE OF THE PUNJAB through Collector, Sheikhpura, and others Versus Syed GHAZANFAR ALI SHAH and others* (2017 SCMR 172),

MUHAMMAD SHAH Versus THE STATE (2010 SCMR 1009), *AZEEM KHAN Versus MUJAHID KHAN and others (2016 SCMR 274)* & *MUHAMMAD AKRAM Versus THE STATE (2012 SCMR 440)*. He prayed for acquittal.

9. Learned counsel for the appellant *Muhammad Asad Abbasi* contended that the name of the appellant in the sale agreement is Asad Abbas and not Asad Abbasi; that the name of accused was traced from the bank account in which only Rs.150,000/- were available that the accused did not own or possess any property in his name neither was he an estate broker; that the handwriting expert does not possess any degree or diploma from any institution or university; that the opinion of a handwriting expert is a weak piece of evidence. In support of his contentions, he relied upon in the cases of *MUHAMMAD ISHAQUE QURESHI Versus SAJID ALI KHAN and another (2010 MLD 978)*, *MUHAMMAD ISHAQUE QURESHI Versus SAJID ALI KHAN and another (2005 SCMR 152)*, *Muhammad Yousuf Versus The State (SBLR 2009 Sindh 1721)*, & *Mir FAYAZ AHMED Versus THE STATE (2010 P CrLJ 1832)*. He prayed for acquittal.

10. Learned Special Prosecutor, NAB contended that the prosecution proved its case against the appellants beyond a reasonable doubt; that all the witnesses supported the case of prosecution and exhibited the entire documents related to the case; that several innocent people were cheated by the appellants; that this is a case of cheating public at large and the effectees were also examined as prosecution witnesses and supported the case of prosecution; that the trial Court has given cogent reasons for awarding conviction to the appellants; that the judgment of the trial

Court is well-reasoned, therefore, based on these grounds the appeals of the appellants may be dismissed.

11. We have heard learned counsel for the parties and have gone through the material available on the record so also considered the law including that cited at the bar with their able assistance.

12. On our reassessment of evidence, we have found that prosecution has failed to prove its case against the appellants beyond a reasonable doubt. The evidence produced by the prosecution is neither trustworthy nor confidence-inspiring and the same cannot be relied upon for awarding conviction. Our reasons for such conclusion are as follows.

13. PW-1 Sikander Ali in his examination in chief deposed that in the year 2009, a circular was issued by the Director Goth Abad with the approval of competent authority, according to that it was circulated that any Sanad issued before 2009 was deemed to be fake and treated as canceled. He further deposed that a committee was constituted for conducting surveys and after the decision taken by higher authority it was decided that after conducting such survey, Sanads would be issued to the allottees. This witness also produced a letter dated: 30-06-2009 in this respect. The evidence of this PW who was Deputy Commissioner itself speaks that the Government was also interested to issue Sanads to the allottees which clearly showed that the land was not decided to be used for any other purpose which clearly shows that no loss to the Government exchequer was caused by anyone and the land was available for the peoples under the Goth Abad scheme.

14. PW-2 Asadullah Abbasi stated during cross-examination that **“It is correct to suggest that the ban on sanctioning of new villages was imposed the first-time year 2009 though the public notice dated 3, June 2009. It is correct to suggest that prior to public notice dated 30, June 2009 no ban ever imposed on the Goth Abad scheme.”**, he further admitted in cross-examination that nowhere it is mentioned in the Exhibits produced by him that Hassan Brohi village was not sanctioned under the Act, 1987, which evidence otherwise supports the case of appellants.

15. PW-4 Akber Ali (Director Estate, Malir Development Authority, Karachi) deposed during his examination in chief that as per his Deh Map he informed the investigation officer the location of Deh and area of 10 Acres and two Ghuntas, he also informed him that as per Map the area encroaches and this land is disputed in between (MDA) Malir Development Authority and Revenue Department. He further deposed that they wrote several letters to Board of Revenue and District Administration but no response was received, thereafter MDA filed a constitutional Petition against Board of Revenue and District Administration before High Court and according to him High Court issued direction to Revenue Department, Police and District Administration to remove the encroachment from the land in question. Again he sent letters to different headquarters and after making efforts they removed encroachment from 400 acres land against fake villages. We note that the order was passed by this Court on 10.10.2012 in CP No.D-2005 of 2011 and after the order encroachment was removed but the beneficiaries as stated in the Reference are still in

possession and enjoying all the benefits including utilities which suggest that they were legally settled in the village Hassan Brohi.

16. The most important witness who was examined as PW-5 (Mukhtiarkar) deposed that the I/O showed him his (Mukhtiarkar's) signatures on various papers and inquired whether those were the Mukhtiarkar's, which he denied and further stated that these documents were managed by someone else. He admitted during cross-examination that I/O showed him Sanad and Form-II which were before his posting in District West. Definitely, a person who was not posted at the time of preparation of documents he may state like that, that the documents were prepared by someone else.

17. We carefully examined the evidence of PW- 7 to 24 who are private persons and according to them, they have purchased the plots from appellant Haroon Panjwani who gave them copies of receipts, Sanads, agreements, and form-VII, some of these witnesses during cross-examination admitted that these documents had never been given to them by Haroon Panjwani and some of them admitted that they had not produced any evidence that they actually paid the money to the appellant Haroon Panjwani. PW=10 Muhammad Javed admitted during cross-examination that there is no written agreement between him and the accused Haroon Panjwani. PW-11 during cross-examination stated that **“It is correct to suggest that there was no any written agreement regarding allotment and issuance of receipts in the name of other persons.”** He further stated during cross-examination that **“It is correct to suggest that receipts (Exh.24/1) are not showing Hassan Brohi Goth and M Colony. It is correct to suggest that receipts (24/1) are not showing**

location and description of plots except plot numbers. It is correct to suggest that tittle of receipts (Exh.24/1) bearing address of Mosamiyat Karachi.” likewise other witnesses also gave contradictory evidence in this respect. The witnesses however admitted that the Sanads and the Form-VII bear the signatures of Government officials. We found no evidence that would reveal conclusively as to who actually prepared these documents and put stamps on it which belong to the Government officials and no investigation in this respect was conducted. These witnesses are the beneficiaries and admittedly to date are in possession of the alleged plots, have raised constructions, and are enjoying all utilities in their houses which otherwise were provided by the Government on Government expenses. No any action has been taken against them by the Government or the NAB to remove them from the illegal possession instead they are under protection therefore being the beneficiaries their evidence cannot be relied upon and is doubtful.

18. We have carefully examined the evidence of PW-25 who is the wife of appellant Haroon Panjwani and who produced a sale agreement at trial. She, during cross-examination, stated that she does not know where the sale agreement was prepared and further stated that the sale agreement which she produced in court was given to accused Haroon Panjwani by accused Aleemuddin and further admitted that the I/O NAB demanded said agreement from her and she further deposed that I/O directed her to produce the sale agreement otherwise he will also implicate her two sons as accused in this case. She further stated in cross-examination that Abdul Sattar is General Secretary of Hassan Brohi Goth welfare Association and he is still selling the plots in the area so also give

receipts in the name of accused Haroon Panjwani. This aspect of evidence was not considered by the trial court which creates doubt that she was pressurized by the investigation officer NAB to depose against her husband. We also carefully examined the agreement Exhibited in evidence and found no signature of accused Haroon Panjwani on each page. In the agreement, the signature of accused Haroon Panwani as available at the column of his name is in English which, according to the learned counsel for appellant Haroon Panjwnai, is not Punjwani's but is that of one Asad Abbass whereas in the agreement at the place of Asad Abbass there is no signature, the disputed signatures of appellant Haroon Panjwani were not sent to a handwriting expert for verification.

19. PW-26 Irfan Ahmed who was a lawyer and according to him he drafted the sale agreement. He during cross-examination stated that he did not know the first parties of the sale agreement and admitted that the stamp paper of said agreement was issued in his name. He during cross-examination further admitted that the sale agreement is not bearing survey numbers and further admitted that title documents were not provided to him at the time of the drafting of sale agreements. He admitted that some portion of para No. 7 of the sale agreement is blank and also that the schedule of property is not mentioned in the draft of the sale agreement. He admitted that the sale agreement was not signed in his presence by any party or witnesses and also admitted that on the last page of the sale agreement the date is not mentioned and that on the last page of the agreement there is no signature or CNIC number of accused Asad Abbasi. He further stated during cross-examination that he is also affected, we found the evidence of this witness is not reliable as such not of much use to the prosecution.

20. We observed that the production of documents and proof of documents are two different subjects. The document could be produced in evidence that was always subject to proof as required under Art. 78 of Qanoon-e-Shahadat, order, 1984, for ready reference Art. 78 is reproduced as under:-

“78. Proof of signature and handwriting of person alleged to have signed or written document produced: If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting”.

21. We carefully examined the evidence of PW-28 forensic experts who verify the signature of accused on the basis of documents produced by the NAB which were obtained from the Banks. The appellants were not produced before forensic experts for taking their signatures for verification, no signature of the appellant allegedly mentioned in the agreement produced by PW-25 was sent to handwriting expert as required under Art. 78 of QSO, 1984. However, witness No. 28 (Forensic Expert) had admitted during cross-examination that the signature of accused Haroon Panjwani on alleged sale agreement was not verified nor NAB requested for it. This witness admitted during cross-examination that he had not obtained any specialization from the National Association of Documents of Examiner; he further admitted during cross-examinations that names of signatories are not mentioned under the signature on the sale agreement. The learned trial court has also not given a finding whether it itself was satisfied that the signatures were indeed of Punjwani or not. In view, thereof the evidence of forensic experts is not reliable.

22. The other aspect regarding the proving of the document is that the subject sale agreement is not signed by any witness and

columns of witnesses are left blank nor was registered before the Sub-Registrar office and we have already discarded the evidence of PW-26 Irfan Ahmed who prepared the draft of the alleged agreement, therefore the agreement is of no evidentiary value in view of Art, 79 of Qanoon-e-Shahadat Order, 1984 which read as under:-

“79. Proof of execution of document required by law to be attested: If a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least have been called for the purpose of proving its execution, if there be two attesting witnesses alive, and subject to the process of the Court and capable of given Evidence.

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

23. It is a settled principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the court of law in any manner from the due course to judge and make the appraisal of evidence in a letdown manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the judges to patently wrong collusion. In that event, justice would be the casualty.

24. As we have discussed above that the prosecution had failed to produced trustworthy and confidence-inspiring evidence against the appellants and the presumption contained in S.14 (c) of National Accountability, Ordinance, 1999, the initial burden of proof always rests on the prosecution. The burden to prove all the

ingredients of the charge always lies on the prosecution and it never shifts on the accused, who can stand on the plea of innocence assail to him under the law, till it is dislodged prosecution would never be absolved from proving the charge beyond reasonable doubt and burden would shift to the accused only when the prosecution would succeed in establishing the presumption of the guilt against him. In the present case, the prosecution had failed to prove the charge against the accused beyond any shadow of a doubt. It is a settled principle of law that even single circumstance creates a reasonable doubt the benefit must be given to accused not as a matter of grace but as a matter of right.

25. Based on the above discussion and our reassessment of the evidence on record we are of the view that the prosecution has failed to prove its case against the appellants beyond any reasonable doubt and therefore, we allow the instant appeals and set aside the conviction and sentences awarded by the trial court vide judgment dated 23-05-2018 and acquit the appellants of the charge by extending to them the benefit of the doubt and they shall be released forthwith unless wanted in any other custody case.

26. The main appeals of the appellants have been decided therefore the constitution petitions filed for suspension of their sentences during the pendency of the appeals become infructuous and are dismissed accordingly.

27. The above appeals and the constitutional petitions are disposed of in the above terms.

JUDGE

JUDGE