

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Omar Sial, J*

Criminal Appeal No. 230 of 2020
Ghulam Hussain Morujo v. The State

*Mr. Zulfiqar Ali Langah, Advocate for appellant.
Mr. Siraj Ahmed Khan Chandio, APG for the State.*

JUDGMENT**Background**

1. On 6-5-2017 a direct complaint was filed by Agha Akhtar Ahmed Khan before the learned Special Judge, Anti-Corruption (Provincial) Karachi. Khan narrated that on 19-7-2015, a police party headed by A.S.I. Ghulam Hussain Morujo (the appellant in this case), came to his house and forcibly took away his son Agha Muhammad Sohrab Khan to the Mobina Town police station. Khan further recorded that Morujo demanded a bribe of Rs. 500,000 for the release of Sohrab. This amount was paid by Khan to Morujo in cash on 21-7-2015, however, Sohrab was not released. On 22-7-2015 the SHO of Mobina Town police station, Zafar Abbas, asked Khan for a further Rs. 5,000,000 for the release of Sohrab. Khan paid Zafar an amount of Rs. 1,500,000 through prize bonds but Sohrab was still not released. On 24-7-2015, Khan filed a section 491 Cr.P.C. application before the learned 4th Additional District and Sessions Judge, Karachi East and the learned judge nominated a learned magistrate to conduct a raid on the Mobina Town police station to determine whether Sohrab was illegally confined there. The learned magistrate found Sohrab in the police station, though not confined in the lock up, without any entry having been made in the daily diary. On 25-7-2015, Sohrab was produced before the court. The police showed Sohrab having been arrested on 24-7-2015.

2. An enquiry was ordered by the learned judge in which enquiry it was determined that the accusations against the appellant were correct. Morujo and Zafar were tried and through judgment dated 2-3-2020 the learned Special Judge, Anti-Corruption (Provincial) Karachi convicted and sentenced Morujo as follows:

- (i) For 2 years rigorous imprisonment as well as a fine of Rs. 200,000 (or 6 months further imprisonment in lieu thereof) for an offence under section 161 P.P.C. for accepting a bribe of Rs. 500,000.
- (ii) For 1 year rigorous imprisonment for an offence under section 342 P.P.C. for keeping Sohrab in illegal confinement.
- (iii) For 2 years rigorous imprisonment as well as a fine of Rs. 200,000 (or 6 months further imprisonment in lieu thereof) for an offence under section 5(2) of the Prevention of Corruption Act, 1947.

3. Zafar Abbas was acquitted for the prosecution having failed to establish its case beyond reasonable doubt.

4. It is this judgment dated 2-3-2020 of the learned Special Judge, Anti-Corruption (Provincial) Karachi which has been impugned in these proceedings by Morujo.

Findings

5. I have heard the learned counsel for the appellant as well as the learned APG and have also gone through the available record with their able assistance. The complainant did not effect an appearance. My observations and findings are as follows.

Offence under section 161

For facilitation of reference section 161 P.P.C. is reproduced below.

161. Public servant taking gratification other than legal remuneration in respect of an official act.

Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or for bearing to do any official act or for showing or for bearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Federal, or any Provincial Government or Legislature, or with any public

servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

[Explanations to this section have been intentionally omitted]

6. It is an accepted position that Morujo was a public servant. The allegation was that he took Rs. 500,000 from the complainant Khan as a gratification to release Sohrab from custody who is an accused in the case arising out of F.I.R. No.170 of 2015.

7. In order to prove the allegation concerning illegal gratification, the prosecution examined the complainant Khan as its first witness. Khan testified that he (Khan) was informed by his friend Altaf Hussain (who appeared as the prosecution's third witness) that the police wanted a bribe of Rs. 500,000 to release Sohrab and that Altaf had accompanied Khan to the police station with a packet containing Rs. 500,000 in Rs. 5,000 notes. This packet was given to Morujo. Altaf corroborated the complainant's version and further disclosed that it was Morujo who had made the demand of Rs. 500,000. In his cross examination however Altaf admitted that he had not disclosed to the enquiry officer that it was Morujo who had demanded the bribe. He also admitted that he had not disclosed to the enquiry officer that it was Morujo who had received the bribe nor had he disclosed the mode of payment. In fact Altaf disclosed that he had not told the enquiry officer any of the details that he testified in court at trial. It is also an admitted position that no trap proceedings took place nor was any account of the conversation between the complainant and Morujo given at trial or prior to it. Similarly, the complainant in his cross examination also testified that he had not mentioned the demand or payment of the alleged bribe to Morujo when he had requested the learned Sessions Judge, Karachi East for a raid on Mubina town police station. The complaint was filed 2 years later in 2017 in which the story of the bribe seems to have first come up.

8. In view of the obvious animosity that the complainant party would have towards Morujo coupled with the non-disclosure of the demand or payment of bribe at the first instance by the complainant and his witness to anybody, I am willing to give Morujo concession on account of the vague details of Rs. 500,000 having been given as bribe to Morujo. The conviction and sentence of the learned

trial court on account of section 161 P.P.C. is therefore set aside giving Morujo the benefit of doubt.

Offence under section 342

9. The complainant testified that on 19-7-2015 while he was in the presence of his friends Altaf Hussain, Shahbaz and Junaid, the appellant Morujo, accompanied by some other police officers, had in a rude and belligerent manner forcibly taken away Sohrab from their house. In the complaint that Khan filed he had also stated that the house watchman Allah Bachayo as well as Mohammad Imran-ur-Rehman, Muhammad Arshad, Muhammad Rashid Ali Sangi, Nadeem Ali Sangi and Ayaz Ahmed were also witnesses to the occurrence. Apart from Altaf Hussain none of the other eye witnesses were produced as witnesses at trial. No reason was given for their non-appearance. In such circumstances, the presumption of Article 129 illustration g of the Qanun-e-Shahadat Order, 1984 would come into play and it would be presumed that the said eye witnesses would not have supported the prosecution case had they appeared as witnesses.

10. As mentioned in the preceding paragraph that the only other witness who appeared to corroborate Khan's version that Sohrab was picked up on 19-7-2015 was Altaf Hussain. Altaf Hussain apart from being an old friend of the complainant admitted at trial to a number of allegations he had not disclosed prior to the filing of the complaint. These were material improvements. I am not convinced with the justification that Altaf gave at trial for the improvements he had made i.e. that the enquiry officer had not recorded all that Altaf Hussain had told him and that he was illiterate and that his statement was not read out to him. The testimony of Altaf Hussain cannot be safely relied upon for conviction in the circumstances of the case.

11. The record otherwise that was produced at trial appears to show that Sohrab was found outside the lock up of the police station on 24-7-2015 by the learned magistrate. The learned magistrate was also not produced at trial to testify. No reason was given for his absence. Even if it were presumed that the learned magistrate did raid the police station on 24-7-2015 and found Sohrab at the police station, admittedly, not in lock up, the record further reveals that Sohrab was arrested the same day and produced before the concerned judge the

next day. Evidence led at trial is not of a nature which would conclusively show that Sohrab was kept in illegal confinement from the 19th till the 24th.

Conclusion

12. No specific details of the incident being narrated by the complainant at the time he requested a raid be carried out; material improvements being made in his statements as time went on; non-disclosure of the bribe demand to any senior police officer or the learned court at the time the incident occurred; no explanation for the 2 year delay in filing the direct complaint; admitted position that Sohrab is an accused in an acid throwing case; non-appearance of material witnesses at trial; the learned trial judge finding that the complainant could not even prove his allegations against the co-accused Zafar Abbas; the possibility that the delay in filing the complaint is on account of gaining benefit in the cases registered against Sohrab not conclusively eliminated – create doubt in the prosecution case, the benefit of which doubt should have gone to the accused.

13. In view of the above, the appeal is allowed and the appellant acquitted of the charge. As he is on bail his bail bonds stand cancelled and surety discharged.

JUDGE