

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 102 of 2012

Appellant : Hanif Khanzada
through Mr. Jamil Ahmed Rajpar, Advocate.

Respondent : The State
through Mr. Zafar Ahmed Khan, Addl.P.G.

Date of hearing : 22nd September, 2022

JUDGMENT

Omar Sial, J.: The appellant Hanif Khanzada was Head Mohrar at the Kharadar police station in the year 2001. On 24.12.2001 he left the police station with case property in crime number 282 of 2000 to deposit the same in the City Court maalkhana. The property consisted of Rs.241,409, a file and some bill statements. According to him he deposited the property the same day at the City Court maalkhana and had a road certificate to show that the property had been received by the In Charge of the maalkhana. S.I. Mohammad Yaqoob, In Charge of the City Court maalkhana denied that the property was deposited and further alleged that the receiving stamp and signature of the road certificate Khanzada had as evidence of deposit was fake. F.I.R. No. 163 of 2002 under sections 409, 465, 466, 467 and 472 P.P.C. was registered against Khanzada at the Kharadar police station on 08.07.2002. Subsequently, the case was sent to ACE as the status of Khanzada as a public servant made the crime complained of fall within its jurisdiction. It appears that the earlier F.I.R. was quashed for the foregoing reason and that F.I.R. No. 76 of 2006 was registered at ACE police station on 27.12.2006.

2. Khanzada pleaded not guilty and claimed trial. At trial the prosecution examined the following witnesses to prove its case. **PW-1 A.S.I. Raja Masood** was the Head Mohrar at the Kharadar police station on 07.05.2002 and handed over the relevant record to the Anti-Corruption Establishment (ACE) investigators. **PW-2 Inspector Mohammad Abdullah** was the S.H.O. of the Kharadar police station in the year 2002 and who was the person first informed by PW-1 A.S.I. Raja

Masood that the case property in crime number 282 of 2000 was missing. **PW-3 A.S.I. Mohammad Imtiaz** was Khanzada's predecessor at the Kharadar police station. **PW-4 A.S.I. Mohammad Sabir** was a colleague of Khanzada at the Kharadar police station. **PW-5 A.S.I. Inayatullah** was a munshi deployed in the maalkhana of the Kharadar police station in the year 2002. **PW-6 H.C. Moazam Ali** was the court mohrar at the Kharadar police station on 24.12.2001 i.e. the date the property was taken by Khanzada from the maalkhana of that police station for deposit in the City Court police station. **PW-7 Muhammad Aijaz** was a Helper Mohrar at the Kharadar police station during the year 2000-2002. **PW-8 H.C. Maqbool Hussain** was posted at the City Court maalkhana on 24.12.2001. **PW-9 S.I. Mohammad Yaqoob** was the In Charge of the City Court maalkhana on 24.12.2001 when Khanzada said he had deposited the property. **PW-10 Gulzar Ahmed** was the Nazir of the City Court. **PW-11 Gul Hasan Sheikh** was the investigating officer of the case.

3. Khanzada in his section 342 and then again in section 340(2) Cr.P.C. statements professed innocence and also made a long statement to explain that the lapse was not on his part. The statement is a part of the record hence not being reproduced. The learned Special Judge Anti-Corruption (Provincial) Karachi found Khanzada guilty as charged and sentenced him to 2 years in prison as well as pay a fine of Rs. 25,000 or spend another 3 months in prison. This judgment dated 16-3-2012 has been challenged through this appeal.

4. I have heard the learned counsel for the appellant as well as the learned Addl.P.G. My observations and findings are as follows.

5. As has been the ACE tradition, a simple enough case was made convoluted and complex for no rhyme or reason. Persons whose testimony added absolutely no value to the prosecution case were made witnesses. Unnecessary and meaningless cross examinations were conducted. Reams of documents were exhibited without explaining the relevant portions which were material. 11 years passed since the alleged offence before the learned trial court announced its judgment. Another 10 have passed in the adjudication of this appeal. It has thus been 21 years that Khanzada has faced the agony of trial.

6. The record reflects that inappropriate and lax police procedures led to the case property disappearing. It seems that the practice in vogue at the relevant

time was that the Head Mohrar of the maalkhana on many occasions took the case property as, what they termed, *amanat*, but did not issue a receipt. That was done subsequently. This was confirmed by PW-1 A.S.I. Raja Masood. Be that as it may, the case boiled down to Khanzada's word, who said that he had deposited the property, against that of PW-9 S.I. Mohammad Yaqoob, who said that Khanzada had not. The requisite paperwork for the handing over-taking over of the case property appears to be complete in the case in that Khanzada had officially taken the property from the Kharadar police station maalkhana and had made the requisite roznamcha entries as well. Khanzada claims his innocence on the basis of a Road Certificate dated 24.12.2001 which bears a stamp and signature that the property was received by the City Court maalkhana whereas Mohammad Yaqoob termed the stamp and signature to have been made by Khanzada. None of the witnesses added much value or insight to this difference of opinion. It was relatively simple if the investigation officer would have had the stamp and the signature/writing on the Road Certificate forensically examined. The investigating officer PW-11 Gul Hasan Sheikh, for reasons best known to him did not do so.

7. Article 78 of the Qanun-e-Shahadat Order, 1984 provides that:

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.*

Article 84 of the Order further provides that where parties had not brought forward any expert witness to give opinion about genuineness of signatures in question (as was the situation in the present case), the trial Court would be competent to form its own opinion by comparing disputed signatures with admitted signature. If the learned trial court in its wisdom was of the view that a hand writing expert's opinion was not required, it should have then formed an opinion based on powers given to it by Article 84 of the Order. It appears from the record that this was also not done. The learned trial court concluded that Khanzada had produced the same Road Certificate in his defence, it must necessarily be forged. The learned trial court's assumption completely eludes me.

8. I notice that a report of the Criminalistics Division dated 07.10.2002 was produced in court by PW-9 S.I. Mohammad Yaqoob himself which showed that the stamps on Road Certificates in crime numbers 282 of 2000, 97 of 2001 and 159 of 2000 were sent for analysis and it was opined that the Road Certificates on these 3 Road Certificates were different to the one being used by the City Court maalkhana. It was not explained as to why the Road Certificates in the remaining 2 crimes were also found different from the one being used. In the internal enquiry held by SDPO Muhammad Rizwan dated 29.06.2002 observed that it was suspected that it was PW-9 S.I. Mohammad Yaqoob who was using 2 stamps in his office. He had recommended action against both Khanzada and Rafiq. In an unexplained move, Rafiq was excluded as a suspect and included as a witness. While Khanzada's record also does not appear stellar and has massive room for improvement, the fact that Mohammad Yaqoob's conduct too in this saga is debatable, creates a doubt whether Khanzada did in actuality deposit the case property or not. Benefit of such doubt must go to the accused in accordance with well settled principles.

9. As regards the other witnesses who were examined at trial, PW-1 A.S.I. Raja Masood's testimony is restricted to him confirming that he had handed over the relevant documents to the ACE. PW-2 Inspector Mohammad Abdullah testified that he had made a complaint to the higher ups in the police department that case property was missing and thus the first F.I.R. was lodged. PW-3 A.S.I. Mohammad Imtiaz was Khanzada's predecessor at the Kharadar police station and testified that he had given the 12 bags of plastic danna to one Zaheer to deposit in the maalkhana. PW-4 A.S.I. Mohammad Sabir was a colleague of Khanzada at the Kharadar police station who testified that Khanzada had made the relevant arrival and departure entry in the roznamcha on the day he had gone to deposit the property. PW-5 A.S.I. Inayatullah and PW-6 H.C. Moazam Ali testified that they knew nothing about the case property in crime number 282 of 2000. Absolutely no value was added by PW-7 P.C. Muhammad Aijaz. PW-8 H.C. Maqbool Hasan quite arbitrarily stated that Khanzada had affixed a false seal. He gave no basis for his arbitrary statement. PW-10 Gulzar Ahmed was the Nazir of the City Court and he testified that 12 bags of plastic danna had been deposited by Khanzada in the Nizarat on 05.08.2002. PW-11 Gul Hasan Sheikh'simony in itself is a reflection of his lethargic attitude towards the

case. Not an iota of meaningful investigation was done for him. It seems he completely focus of the fact that his responsibility as an investigating officer was to find out the true facts of the case.

10. In view of the above observations I am of the view that it will not be safe to uphold the conviction against Khanzada. The appeal is therefore allowed and he is acquitted of the charge. He is on bail. His bail bonds stand cancelled and surety discharged.

JUDGE