

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.D-38 of 2021

Before:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Arbab Ali Hakro

Appellants : Kareemdad and Hussain Bux Brohi through
Mr. Aziz Ahmed Laghari, advocate.

Respondent : The State through Mr. Shahzad Saleem
Nahiyoon, Additional Prosecutor General
Sindh.

Date of hearing: 18.07.2023
Date of decision: 26.07.2023

J U D G M E N T

KHADIM HUSSAIN TUNIO, J:- The appellants were convicted of an offence punishable u/s 193 PPC in New Special Case No.19/2019 vide order dated 10.02.2021 and were sentenced to suffer rigorous imprisonment for twelve months with fine of Rs.30,000/- each which they challenge through this appeal.

2. The facts relevant to the instant appeal are that the appellant Hussain Bux was allegedly abducted by two individuals with muffled faces and such an FIR was lodged by the complainant. At trial, appellants Kareemdad and Hussain Bux, both, allegedly implicated the acquitted accused Khan Muhammad for the kidnapping, but in their cross-examination, they took a turn and stated that they could not identify Khan Muhammad anymore and that he is innocent and they had seen him for the first time. Resultantly, Khan Muhammad was acquitted and the learned trial Court received an application from the APG concerned, issued show cause notice to the appellants and ultimately after hearing their advocate, convicted and sentenced them as stated supra.

3. Learned counsel for the appellants has mainly contended that the incident dated back to 10 years and the appellants due to a lapse in memory had given such contradictory statements, however both of them deposed in line with the FIR.

4. Learned Additional Prosecutor General, on the other hand, has supported the impugned judgment while contending that the appellants intentionally contradicted themselves to provide benefit to the acquitted accused and ruin the prosecution case.

5. We have heard the learned counsel for the appellants, the learned Additional Prosecutor General Sindh and have perused the record available before us.

6. Appellant Kareemdad, a victim in the case himself, and his son, appellant Hussain Bux who was abducted, were both convicted by the trial Court for the offence of perjury punishable u/s 193 of the Penal Code. The incident pertains to the year 2009 and the impugned judgment was passed in the year 2020 whereas the examination-in-chief of the appellants was recorded in the year 2019. The appellant Kareemdad lodged such FIR with the police, disclosing such facts while admitting that the faces of the accused were muffled. In their examination-in-chief, both the appellants stated that they recognized the acquitted accused Khan Muhammad, however they turned away from such a statement and stated in their cross-examinations that the faces of the assailants were in fact muffled and that the acquitted accused Khan Muhammad had not been seen by them prior to that day in Court. It is crucial to underscore the fact casting doubt on the credibility of witnesses is a common strategy employed in legal proceedings. A successful challenge to a witness's credibility does not *per se* indicate that the witness was dishonest, but rather that there exist reasons to question the veracity or reliability of their account. There are many factors that could contribute to a witness's testimony being unreliable or inconsistent such as lapses in memory, misunderstandings, misinterpretations or even the stress and pressure of being a witness in a court case that has been ongoing for a decade. Such instances may often lead to contradictions in their testimonies, such as their differing perspective of the event, lack of clear visibility or audibility during the incident. It is, therefore, the responsibility of the court to weigh the evidence of each witness. It is the job of an effective cross-examiner to shatter the evidentiary value of the prosecution witnesses, but the same cannot be at the cost of the victims. Every successful challenge to a witness' credibility may weaken the prosecution, but may not automatically imply that the witness perjured himself if the same witness has corrected himself at a later stage. Moreover, the legislature in its wisdom has thought it fit that before initiation of proceedings for perjury, the Court has to apply its mind and has to record the finding whether further probe into the matter was

necessary in the interest of justice, and apart from that, whether it was expedient and necessary. The reason is obvious, there is a distinction to be made between evidence which is not believed to be true or relied upon by the Court, and the evidence which is proved as false evidence given on oath. The Court ought to examine this issue from that angle and accordingly record the finding. Besides the above, it is imperative to note that no charge was framed against the appellants in the present case which vitiates all proceedings. Framing of charge is mandatory provision, so the same is not remediable under section 537, Cr.P.C. because under this section, only on the basis of any error, omission or irregularity in the charge. Without such framing of charge, they could not have been tried for the offence punishable u/s 193 PPC.¹

7. The provisions of S. 195(b) Cr.PC provide that the complaint, in writing, needs to be made by the Court itself, however, in the present case the proceedings were initiated on a complaint received by the APG concerned. Such an omission also strikes at the core of the case.²

8. As already observed, it is open to a witness to correct himself without being afraid of being proceeded against for perjury if the same is done with promptness. It is a matter of record that in the present case, the cross-examinations were conducted after more than a year of the examination-in-chief and in first instance, both the appellants corrected themselves to align with the version provided by them in the FIR. In the case of **Muhammad Amin v. The State**³, the Hon'ble Apex Court has been pleased to observe that:-

“Even if, a witness makes contradictory statements while appearing in Court he cannot be charged under section 191, P.P.C. unless he fails to reconcile the true statement. It is always open to the witness to correct himself in a judicial proceeding, but correction has to be immediate and prompt. A witness has a locus poenitentiae to correct himself and that would not amount to perjury.”

9. As for the remand of the case, it is important to note that the appellants have faced not only the agony of their own 'trial' albeit short, but had also been victims at the hands of the abductees and had faced a whole decade of Court dates to seek justice. If good conscience prompted them to not send an innocent man to the gallows on false pretext, such an act is not

¹ Habib-ur-Rehman and others v The State, 1993 MLD 1738

² See Muhammadullah v The State, 2014 YLR 964

³ 2004 SCMR 1792

deserving of a punishment nor would any purpose be served by the remand of the case when the end result would be the same.

10. For what has been discussed above, the appeal in hand is allowed, the conviction and sentence awarded to the appellants is set aside and they are acquitted of the charge. They are present on bail, their bail bonds stand cancelled and surety discharged.

JUDGE

JUDGE