

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

Cr. Appeal. No. 17/2017

in

Cr. PLA No. 28 /2017.

The State

Petitioner.

Versus

Shabrang & others

Respondents.

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Amjad Hussain Advocate on behalf of the respondents.

DATE OF HEARING: - 24.08.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition for leave to appeal has arisen out of the impugned judgment dated 09.05.2017 passed by the learned Chief Court whereby the Criminal Appeal No. 19/2017 filed by the State was dismissed by maintaining the judgment dated 25.03.2017 passed by the learned Judicial Magistrate 1st Class Chilas, hence, this petition for leave to appeal.

2. Briefly, the facts of the case are that on 05.05.2009 an FIR No. 46/2009 under Section 457 PPC and Section 14 Hodood Ordinance was registered by one Rooh-ul-Amin ACSI Civil Supply Depot Chilas. The complainant stated in the FIR that he is performing his duties as ACSI. As per contents of FIR, the complainant was facing shortage of wheat quantity at Chilas Depot, later on it has come to his knowledge that the wheat bags are being

stolen by the accused from the depot by using a duplicate key. After receipt of this information, the complainant alongwith two guards namely Abdur-ur-Razaq and Khair-ul-Zaman kept eyes on the activities of the thieves. On 05.05.2009 at about 01:00 PM some unknown persons came to the depot and opened the door of the depot through duplicate keys and has taken out several bags of wheat from depot. Meanwhile, a vehicle (Mazda) also entered in the premises of the said depot and the stolen bags were loaded by the accused in the said vehicle. During the occurrence an ambulance passed through nearby the road. The accused ran away leaving the bags of wheat at the scene of occurrence after seeing the ambulance. The complainant lodged report in the Police Station of the locality. Consequently, the police visited the place of occurrence and started investigation after taking into custody the bags of wheat.

3. During investigation of the case, police arrested the respondents and on completion of investigation submitted challan before the competent court of law for trial. In the first round of trial, charge was framed by the learned Trial Court on 28.03.2014 under Section 14 Hodood Ordinance and 457 PPC wherein the respondents pleaded not guilty and claimed for trial. Upon hearing the accused/respondents were acquitted by the learned Trial Court vide order dated 26.05.2012. The State being aggrieved by and dissatisfied with the order of the learned Trial Court filed appeal before the learned Chief Court. The learned Chief Court upon

hearing set aside the said acquittal order and remanded back the case to the learned Trial Court to proceed with the remaining part of the trial and decide afresh in its own merits. The prosecution produced as many as 08 witnesses in order to prove its case against the accused/respondents and closed its evidence on 18.11.2014.

4. The respondents/accused were examined under Section 342 Cr. PC wherein they refuted the prosecution story by terming it false and fabricate one. Similarly, the accused neither opted to be examined themselves on oath nor they produced any defence witness in support of their version. Upon hearing both the parties, the learned Trial Court again acquitted the respondents vide judgment dated 28.05.2016. The State/petitioner feeling aggrieved challenged the said judgment before the learned Chief Court which upon hearing remanded the case again back to the learned Trial Court with the observation to record the statement of the accused afresh and re-hear the case. In pursuance of the judgment of the learned Chief Court, the statement of the accused under Section 342 Cr. PC was recorded on 16.03.2017. During the trial through mediation, the respondents/accused deposited Rs. 16,72,528/- against stolen wheat. The learned Trial Court upon hearing again acquitted the respondents from the charges leveled against them vide judgment dated 25.03.2017. The said judgment was called in question by the State/petitioner in the learned Chief Court by filing Criminal Appeal No. 19/2017 which upon hearing was dismissed vide impugned judgment dated 09.05.2017.

5. The learned Advocate General submits that there are overwhelming incriminating evidence against the respondents which connect the respondents with the commission of offence. He also submits that the respondents have admitted their guilt during the mediation consequently they have deposited the amount of the looted/stolen wheat in the Government Treasury which is an extra judicial confession on the part of the respondents/accused. Per Advocate General, the learned Trial Court as well as the learned Chief Court failed to appreciate the evidence of the prosecution and passed the impugned judgments without applying their judicial minds. Per learned Advocate General, the Judicial Magistrate has no jurisdiction to take cognizance of the matter as the case was triable by the Sessions Judge. The judgment passed by the learned Trial Court is not tenable being corum non-judice. The impugned judgment as well as the judgment of the learned Trial Court are not sustainable in law.

6. On the other hand, the learned counsel for the respondents supports the impugned judgment dated 09.05.2017 passed by the learned Chief Court. He contends that the prosecution has miserably failed to prove its case against the respondents. Per learned counsel, the statements of the PWs are contradictory in nature. The impugned judgment dated 09.05.2017 passed by the learned Chief Court and the judgment of the learned Trial Court have been passed in accordance with law and facts of the case, hence, the same are required to be maintained.

7. We have heard the learned counsels for the respective parties at length, perused the material on record of the case file and gone through the impugned judgment as well the judgment of the learned Trial Court. In our considered view, the impugned judgment is well reasoned and well founded. No interference is warranted into it. The learned Advocate General also could not point out any infirmity and mis-appreciation of evidence in the impugned judgment.

8. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, impugned judgment dated 09.05.2017 in Cr. Appeal No. 19/2017 passed by the learned Chief Court is maintained.

9. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?