

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT HYDERABAD**

Cr. Acq. A. No.S- 25 of 2014

1. For orders on office objection.
2. For hearing of main case.

24.02.2020

Mr. Parkash Kumar, Advocate for appellant.

Respondent No.1 Muhammad Hassan present in person.

Mr. Shawak Rathore, D.P.G.

JUDGMENT

**Abdul Maalik Gaddi, J.**-This criminal acquittal appeal has been filed by appellant / complainant Nitesh Kumar, challenging the judgment dated 23.01.2014, whereby the learned trial court viz Additional Sessions Judge, Matiari after full dressed trial and after hearing the learned counsel for the parties, acquitted the private respondents u/s 265-H(i) Cr.P.C. from the charge by extending benefit of doubt to them.

2. Precisely, relevant facts of the case as disclosed in the direct complaint filed by the appellant are that on 20.03.2013 at about 11:00 a.m accused / private Respondents illegally and forcibly occupied the land of complainant / appellant bearing survey No.113/1 admeasuring 04 acres situated in Deh Sultanpur, Taluka and District Matiari and dispossessed him from his aforementioned land. Thereafter, complainant lodged F.I.R. on 27.03.2013 being Crime No.03/2013 at Police Station Odero Lal Station, under sections 447, 504, 506/2, 337-H(ii) and 34 PPC.

3. It appears from the record and while investigation of aforementioned F.I.R. was pending, appellant also filed direct complaint and after recording the statement of appellant it was brought on record

being Criminal Complaint No.07/2013 and process was issued against respondents.

4. After framing the charge against accused / private respondents, the trial court in as much as recorded the evidence of three (03) witnesses including complainant and thereafter, statements of accused as required u/s 342 Cr.P.C. were recorded, wherein they denied the prosecution allegations and pleaded their innocence; whereas Accused / Respondent Muhammad Hassan produced photocopy of sale agreement dated 15.03.2011; however, neither they examined themselves on oath nor produced any witness in their defence.

5. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial court acquitted the accused / Respondents through impugned judgment dated 23.01.2014, hence this acquittal appeal.

6. Learned counsel for the appellant mainly contended that the judgment passed by learned trial court is perverse and the reasons are artificial viz-a-viz the evidence on record; that the grounds on which the trial court proceeded to acquit the accused persons are not supported from the documents and evidence on record. He further submitted that accused have directly been charged and the discrepancies in the statements of witnesses are not so material on the basis of which accused could be acquitted. He further contended that learned trial court has based the findings of acquittal mainly on the basis of minor contradictions on non-vital points of the statements of prosecution witnesses and that the prosecution evidence has not been properly appreciated therefore, under these circumstances, he was of the view that this appeal may be allowed and the accused involved in this case may be given exemplary punishment.

7. On the other hand, learned D.P.G appearing for the State has opposed the impugned judgment by arguing that while delivering the impugned judgment learned trial Court has not discussed the report of the Mukhtiarkar which supports the contention of complainant.

8. During the course of arguments, respondent No.1, who is present in person, files objections to the instant acquittal appeal alongwith copies of certain documents, same are taken on record.

9. Arguments heard. Record perused.

10. After scanning the evidence of prosecution witnesses, I have come to the conclusion that prosecution has miserably failed to establish its case beyond any reasonable shadow of doubt. From perusal of the impugned judgment, it reveals that the trial court has recorded the findings of acquittal in favour of the respondents with sound and significant reasoning. Admittedly, the alleged incident took place on 20.03.2013 whereas the FIR as mentioned above was lodged on 27.03.2013 after the delay of about 07 days and the instant direct complaint was filed on 29.03.2013 with a further delay of two (02) days and no plausible explanation in this regard has been furnished by the complainant. Perusal of evidence of complainant recorded before the trial Court shows that he alongwith witnesses went to his land where respondents were already present and they told that they have purchased the land from his (appellant) father but neither this fact is stated by him in his entire complaint nor any his witness in his evidence has stated that respondents disclosed that they have purchased the land from complainant's father. The appellant neither in his complaint nor in his evidence has stated that respondents were armed with weapons; however, both Muhammad Ismail and Ghulam Abbas P.Ws No.2 and 3, respectively, have stated that respondents on seeing them made aerial firing. Further the appellant neither in his complaint nor in evidence has stated that respondents issued them threats of killing; but P.W Muhammad Ismail in his evidence has stated that respondents have issued them threats of killing, whereas P.W-3 Ghulam Abbas who is also eye-witness and was present alongwith the complainant at the time of incident has not stated in his evidence that respondents issued threat of killing to them. There are so many other material contradictions, infirmities and inconsistencies in the complaint / evidence of the complainant as well as evidence of prosecution witnesses, who seem to be interested, hence their evidence is not confidence inspiring. No independent witness of the village has been examined by prosecution. No recovery whatsoever has been affected from any of the accused / respondents. All these aspects have been highlighted by the learned Presiding Officer of the trial court in its judgment (impugned herein).

11. It is also noted that prior to instant direct complaint, complainant / appellant also lodged his FIR with regard to same incident being Crime No.03/2013, as mentioned above, and present respondents were challaned in that case before the concerned Court; however, vide order dated 20.09.2014, learned trial Court / Judicial Magistrate, Matiari acquitted them. For sake of convenience, operative part of the order is reproduced as under:-

“ The record shows that after framing of charge process were issued against the complainant and witnesses but no PW or witness appeared before this Court for their evidence, although they were fully aware with the trial of this case before this Court, which shows that complainant only wants to linger on the matter. Further I have also perused the judgment passed by the Honourable Additional Sessions Judge, Matiari in which accused persons have been acquitted, where witnesses, date, time and place of incident are same, therefore, I am of considered opinion that the charge against accused is groundless and further proceedings would be nothing but a mockery of procedure and an abuse of process of law.

In view of the above facts and circumstances, I hereby acquit the accused Muhammad Hassan s/o Khuda Bux Khoso, 2) Salamoo s/o Khuda Bux Khoso and 3) Muhammad Umar s/o Soomar Mir Jat, under section 249/A Cr.P.C. The accused are hereby discharged accordingly. Accused are present on bail, their bail bond stands cancelled and sureties discharged.”

12. This order has not been challenged by the appellant before any higher forum, thus it reveals that the said order has attained finality. Moreover, it is the case of the respondents that they had purchased the land in question from one Deepak Kumar through sale agreement No.3112 dated 15.03.2011. Respondent Muhammad Hassan while recording his statement under section 342 Cr.P.C has produced photostat copy of the said agreement stating therein that they are in possession of the land in suit since 2011. No convincing evidence is available on record to show that the respondents had forcibly occupied the land in question. However, it appears from the record that on the relevant date and time when the appellant alongwith his witnesses had arrived at the suit land the respondents were already found in possession and in this regard a civil suit for specific performance of contract was also filed by the respondents. All these facts lead to me that perhaps the incident has not taken place in a fashion as stated in the direct complaint and the present appellant (complainant) has tried to convert the civil proceedings in between them into criminal litigation.

13. I have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspect of the matter quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. I am also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, I find that the impugned judgment passed by trial Court is perfect in law and facts and needs no interference by this Court. This matter pertains to year 2013 and this appeal is pending since 2014. About 07 years have been passed and the respondents have faced agony of protracted trial as well as pendency of instant appeal against acquittal. As observed above, the private respondents have been acquitted by the competent Court of law, therefore, under the law once an accused was acquitted by the competent Court of law after facing the agonies of the protracted trial, then he/they would earn the presumption of double innocence which could not be disturbed by the appellate Court lightly. Consequently, this criminal acquittal appeal being devoid of merits is hereby dismissed alongwith pending application(s), if any.

JUDGE

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