

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Acquittal Appeal No. S – 25 of 2014

Date of hearing: **09.07.2018.**

Date of judgment: **09.07.2018.**

Mr. Aijaz Ahmed Naich, Advocate for the appellant.
Choudhry Shahid Hussain Rajput, Advocate for respondents 4 and 5.
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General for the State.

J U D G M E N T

NAIMATULLAH PHULPOTO, J. - Respondents Ghulam Qadir and others were tried by learned IInd Additional Sessions Judge, Ghotki in Sessions Case No.190 of 2012 for offence under Section 3 of the Illegal Dispossession Act, 2005. On the conclusion of the trial, respondents / accused were acquitted by the trial Court vide judgment dated 01.03.2014.

2. Brief facts leading to the filing of the acquittal appeal are that on 24.12.2011, complainant Abdul Jabbar filed complaint under Sections 3, 5 and 7 of the Illegal Dispossession Act, 2005, against the respondents. Complainant mentioned in the complaint that he along with his brother Abdul Ghaffar owned and possessed agricultural land admeasuring 3.03 acres out of Block No.124/5 and 124/8 situated in Deh Shafiabad, Taluka and District Ghotki, as per revenue record. Complainant has further alleged that on 15.05.2011 at 08:00 a.m., respondents / accused dispossessed them from the land in question and forcibly occupied while constructing *katcha* hut. It is further alleged that respondents / accused cut three trees from the land valued at Rs.1,00,000/- (one lac). Complainant claimed that incident was witnessed by PWs Abdul Qayoom and Naeemullah. Thereafter, complainant approached the accused persons for vacating the land, illegally occupied by them, but they refused. Complainant then approached SHO Police Station 'B' Section Ghotki for registration of the FIR, but he had also refused. Finding no other way, complainant filed the aforesaid complaint before competent Court of law.

3. In compliance of Section 5 of the Illegal Dispossession Act, 2005, it is alleged that inquiry report was called for from SHO Police Station 'B' Section Ghotki as well as from concerned Mukhtiarkar. After observing the legal formalities, complaint was brought on record by learned IInd Additional Sessions Judge Ghotki under the above referred sections.

4. Trial Court framed charge against the respondents / accused under Section 3 of the Illegal Dispossession Act, 2005, to which they pleaded not guilty and claimed to be tried.

5. In order to prove the case, prosecution has examined complainant Abdul Jabbar, PWs Naeemullah, Abdul Qayoom (eyewitnesses), PW Safiullah (Inspector/SHO) and Abdul Hakeem (Mukhtiarkar), who produced the relevant record.

6. The statements of the accused were recorded under Section 342, Cr.P.C, in which accused claimed their false implication in the case and denied the allegations of prosecution. Respondent / accused Ghulam Qadir, in his statement, produced copy of Civil Revision Application No. S-09/2013 of High Court of Sindh Bench at Sukkur and copy of the letter of Mukhiarkar to City Surveyor Khairpur. However, respondents / accused neither examined themselves on oath under Section 340(2) Cr.P.C. nor led any evidence in defence.

7. Trial Court heard the learned counsel for the parties and after assessment of the evidence available on record, recorded acquittal vide judgment dated 01.03.2014.

8. Learned advocate for the appellant mainly contended that respondents / accused illegally occupied the land of the complainant on 15.05.2011 and cut the trees. It is further argued that trial Court failed to appreciate the evidence brought on record against the respondents / accused. Lastly, it is contended that acquittal of the respondents was unjustified and perverse.

9. Choudhry Shahid Hussain Rajput, advocate for respondents 4 and 5 argued that this is appeal against acquittal, not appeal against conviction. It is argued that principles for appreciation of the evidence in the case of appeal against acquittal are different from appeal against conviction. It is further argued that land in question was reserved for *Asaish* of the village. It didn't belong to the complainant. It is also argued that complainant failed to prove that respondents / accused have illegally occupied his land.

10. Mr. Jatoi, Additional PG, after going through the evidence, argued that PWs have deposed that land in question is lying vacant and there is no evidence that has not been occupied by the respondents / accused. It is also argued by APG that dispute, if any, is of civil nature.

Learned APG has supported the judgment of the trial Court and prayed for dismissal of this Acquittal Appeal.

11. I have carefully heard the learned counsel for the parties and scanned the entire evidence available on the record.

12. The close scrutiny of the evidence reflects that learned trial Court has rightly appreciated prosecution evidence and acquitted the respondents / accused for the reasons that complainant failed to prove that land in question belonged to him and respondents / accused illegally occupied the land. It has come on record that land in question was the land for *Asaish* of the village. PW Naeemullah, in his cross examination, has admitted that “it is fact that since 15.05.2011, land of complainant is lying vacant.” Abdul Hakeem, Mukhtiarkar Ghotki has also deposed before the trial Court that during inquiry he could not ascertain whether the land in question comes under *Asaish* of the village or not because of non-demarcation of the land in question. Learned counsel for the respondents has also made reference to the orders passed by this Court in Criminal Revision No. S-09/2013, in which it has been observed that demarcation of subject land has not been made as yet. Trial Court has assigned sound reasons for acquittal of the accused. Relevant findings / reasons of the trial Court, in the judgment dated 01.03.2014, are reproduced as under:

“ From above discussed evidence I am clear in my mind that accused named above have not dispossessed complainant from his land measuring 3.03 acres and have illegal occupied it because complainant in his crossed examination has admitted that; accused have constructed their houses over land and remaining land is lying open. After illegally occupying, accused have not cultivated and crop over land in question. Perusal of case file shows that; there is no house of accused constructed over land of complainant. Per complaint, it is alleged that 15.5.2011 accused occupied the categorically admitted: “It is fact since on 15.5.2011 land of complainant is lying vacant”. Not only this but witness Abdul Qayoom, the son of complainant has also admitted in his cross examination that; “It is fact that land in question is lying vacant”. So far as question of straw made Chappars and cattle ponds built over land, as alleged by complainant in his complaint is concerned, leaned defence counsel has strongly argued that; that is a *Asaish* land of village in which accused are residing since decade. Today during arguments learned defence counsel placed on record a copy of order dated 28.3.1994, passed by learned Additional Commissioner, Sukkur, wherein he has held that; Village Rakhyal Kori of accused Ghulam Nabi comes in land within 20 chains of village. The then Mukhtiarkar, Ghotki Abdul Hakeem has also deposed before this Court that; during enquiry he could not ascertain whether land in

question comes under Asaish of village or not because of non demarcation of land in question, which was “imperative”. In his report addressed to this Court, Mukhtiarkar, has opined that; parties required to get measurement of land through Survey Superintendent Khairpur after obtaining Otaro of disputed land. Police Inspector Safiullah, who is supposed to be responsible police officer and independent person. He had to record the statements of independent persons of locality. But he did not do so. In his cross examination he deposed that; he recorded statement of persons of complainant side. He did not record statement of any villager of village Rakhyal Kori. Per complainant 50/60 houses are situated in his village but police Inspector did not record statement of any villager. This is a case of complainant that on 15.5.2011 accused cut trees from his land. Police Inspector Safiullah has visited place of incident on 9.1.2012 viz. after about 8 months, surprisingly still he found three cut trees lying there. Honourable High Court of Sindh Bench at Sukkur while dismissing the Criminal Revision S.09/2013 in this matter has also been pleased to observe that; “but it is noticed that the demarcation of subject property has not been made as yet and admittedly the question of boundaries is arising in between the parties.....”.

Complainant has also alleged that accused cut three Talhy trees of Rs.100,000/- from his land. In prayer clause of his complaint he has prayed that; an amount of rupees one land may also be recovered from accused of cutting of trees. But in cross examination complainant has admitted that he had moved separate application against accused for cutting of trees from his land. That application was withdrawn by him. If it is so, it means that complainant has already relinquished his claim of cutting of three trees against accused.

The sum up of my above discussion is that; material available on record clearly suggests that; land of complainant is lying open and accused have not occupied it. Regarding straw made Chappars etc built by accused over it, it is yet to be determined whether the same have been built over the land of complainant or over a Asaish portion of village. Mukhtiarkar, Ghotki has clearly opined that; “during enquiry he could not ascertain whether land in question comes under Asaish of village or not because of non demarcation of land in question, which is imperative”. There is no partition of land of complainant officially. At this stage it does not appeal to my mind, if accused have forcibly occupied the land in question. Therefore, drastic action against accused at this stage will not be appropriate. Dispute between the parties, may be resolved after official partition of land in question. And after partition of adjacent lands of complainant and village, it may be determined if accused have encroached upon complainant’s land or not. At this stage, case against accused appears to be doubtful. It is well settled principle of law that even slightest possible doubt if any, in case of prosecution, the benefit of same should got in favour of accused. Reliance is placed on case-law Re-Saddat Vs. the State reported in 2009 SCMR 230.

(c) *Criminal trial.*

..... Benefit of doubt, principle of Applicability ... For the purpose of benefit of doubt to an accused, more than one infirmity is not required ... single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful.”

Moreover complainant and his witnesses have admitted that accused are residing at the distance of about 200/250 paces from their houses. Meaning thereby complainant and accused are residing in same village. Accused No.1 to 4 are brothers inter-se and accused No.5 to 7 are also brothers.

Civil Court bears ultimate jurisdiction of resolve controversy between parties. Per learned counsel, civil litigation in between parties, in respect of subject matter, is still pending before civil Court at Ghotki.

No material is on record suggesting if accused belong to Qabza group or land mafia or they have credential or antecedents of being property grabber.

Sequel of my discussion over points No.1 & 2 is that accused do not fall within the category of land grabbers, Qabza mafia. They have no credentials or antecedents of being property grabbers. At this stage, there appears no control or occupation of present accused over the land of complainant, which admittedly is lying vacant. However, this is a clear case of partition in between parties.

Complainant has failed to prove his case against the accused present in Court beyond the shadow of doubt and such benefit of doubt always goes to accused. Consequently, I while extending the benefit of doubt acquit accused Ghulam Qadir, Muhammad Shaban, Ghulam Nabi, Ghulamullah, Muhammad Hashim, Muhammad Qasim and Ghulam Shabbir from the charge from charged offence (Ex.2) in terms of section 265-H(i) Cr.P.C. They are present on bail, their bail bond stand cancelled and surety/ies discharged.”

13. It is settled principle of the law that this Court is always slow in interfering the appeal against acquittal for the reasons that principles for appreciation of the evidence in the case of appeal against acquittal and appeal against conviction are entirely different. Moreover, after acquittal of the accused, there is double presumption in favour of the accused. Reliance is placed upon the case reported as Zaheer Din v. The State (1993 SCMR 1628) and State v. Government of Sindh through Advocate General Sindh, Karachi v. Sobharo (1993 SCMR 585).

14. Judgment of the trial Court is based upon sound reasons. No gross misreading of evidence, resulting in miscarriage of justice is pointed out by counsel for appellant. Neither the findings of the trial Court are artificial nor perverse; hence, no interference is required.

15. For the foregoing reasons, the instant appeal against acquittal merits no consideration and the same is dismissed. Respondents / accused are present on bail; their bail bonds stand cancelled and the sureties are discharged.

Abdul Basit

J U D G E