

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

Cr. Acq. Appeal No. S - 73 of 2023

Appellant : Noor Muhammad, through Shabbir
Ahmed Chachar, Advocate

Respondent Nos.1 to 4: Nemo

Respondent No. 5 : The State, through Zulifqar Ali
Jatoi, APG

Date of Hearing : 16.10.2023

JUDGMENT

YOUSUF ALI SAYEED, J. - The Appellant has preferred the captioned Appeal under Section 417 (2A) Cr. P.C., impugning the Judgment entered by the learned Additional Sessions Judge, Pano Aqil on 08.06.2023 in Session Case No.557 of 2021, whereby the Respondents No.1 to 4 were acquitted of the charge by extending them the benefit of the doubt in terms of Section 265-H(i) Cr.P.C.

2. Succinctly stated, the aforementioned case arose out of a Direct Complaint made by the Appellant under Sections 3,4 and 5 of the Illegal Dispossession Act 2005 (the "**Complaint**"), arraying the aforementioned Respondents as the proposed accused while alleging that there was a longstanding feud between them over his landed property, and that they had illegally disposed him therefrom at about 7:00 PM on 25.10.2020 by force of arms, with the assistance of several other unidentified persons.

3. After the usual investigation and favoring the arrest of the Respondent No.1 the police submitted the challan, with the case thereafter being sent-up to the Sessions Court for disposal in accordance with law, where the accused entered a plea of not guilty in response to the charge and claimed trial.
4. In support of his case, the Appellant examined himself and his paternal nephew, namely Shafiullah, who was stated in the Complaint to have been present at the time of the incident. Upon closure of the Appellants side, the Statements of accused persons present before the Court were recorded under S.342 Cr. P.C, whereby they denied the allegations leveled against them and professed their innocence.
5. From a cumulative assessment of the evidence, the learned trial Court determined that the Appellant had failed to prove the guilt of the Respondent Nos.2 to 4, hence duly extended them and the Respondent No.1 absconder the benefit of doubt, resulting in their acquittal.
6. A perusal of the impugned Judgment reflects that the learned trial Court *inter alia* noted as follows:

“9. I have heard the arguments and gone through the record, it appears that there are material contradictions and major points in the case in hand. Firstly, complainant Noor Muhammad has deposed in his evidence that on the day of incident, he alongwith PW Abdul Razak and PW Shafiullah were available in the house where present accused alongwith 7/8 unknown persons illegally dispossessed the complainant from his lawful landed property; however, PW Shafidullah who is said to be nephew of complainant contradicted the version of complainant by stating that on fateful day, several other persons namely Abdul Khaliq, Abdul Jabbar, Abdul Ghaffar and Amir Ali so also children of complainant were present in the house. Even PW Shafiullah has not stated that he was present in the house of complainant but he was present adjacent to house in question. He came there on hearing of noise of firing. Secondly, complainant failed to disclosed that what kinds of

weapons were carried by the accused at the time of incident., Thirdly, it is admitted position that dispute over allegation of Karap on complainant's son with accused party is going on; however, their testimony is required to be thrashed with great care and caution. The Courts always insist for independent corroboration but same is lacking in this case. Fourthly, the complainant has claimed that alleged incident was witnessed by PW Shafiullah and Abdul Razzak while complainant failed to examine PW Abdul Razzak for no obvious reason, therefore, presumption would be that if the said witness produced in Court and examined, then he would have not favoured to complainant's case. Furthermore, the complainant has admitted that he is co-sharer in landed property bearing Survey No.295 and 460 and cousins of accused persons are also co-sharers in landed property. It is also matter of record that said landed property is un-partitioned and the accused persons have repeatedly claimed that they are residing on share of their cousins, hence, provision of Illegal Dispossession Act, 2005 is a Special Legislation to protect the lawful owners and occupiers of immovable properties from their illegal and forcible dispossession, therefrom by the Land Grabbers or Qabza Group. Admittedly, complainant, his cousin and some other persons are co-sharers in the landed property. The complainant and accused persons are related to each other. Complainant has also not produced any material on record that accused persons are belonging to any Qabza Group and Land Mafia. In this regard guidance has been sought form case law reported on PLD 2010 SC 661."

7. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, learned counsel for the Appellant was found wanting and could not point out any such error or omission.
8. The learned APG also did not support the Appellant, instead, defended the impugned Judgment as being correct and unexceptionable.
9. Indeed, it is well settled principle of law that an appeal against acquittal is distinct from an appeal against conviction, as the presumption of double innocence is attracted in the former case and an acquittal can only be interfered with when it is found to be capricious, arbitrary and perverse.

10. One is fortified in that regard by the judgment of the Honourable Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

“From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.”

11. In the matter at hand the learned trial Judge has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed.

12. As such, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Sukkur.
Dated: