

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Acquittal Appeal No. S- 66 of 2022

Appellant/complainant: Abdul Razzaque son of Faiz Muhammad bycaste Khoso, R/O Pir Bakhar, Taluka Lakhi Ghulam Shah, District Shikarpur at present village Taror, Taluka Rohri, District Sukkur.
Through Mr. Mushtaque Ahmed Shahani, advocate.

Private respondents : Not on notice.
 Date of hearing : 24-10-2023.
 Date of decision : 24-10-2023.

JUDGMENT

IRSHAD ALI SHAH, J.- It is alleged by the appellant that the private respondents by making encroachment over his landed property, threatened him to be killed. On the basis of such allegation, he lodged an FIR with PS Saleh Pat. The private respondents were challaned by the police and on conclusion of trial, they were acquitted by IInd Judicial Magistrate, Rohri vide judgment dated 11-04-2022, which the appellant has impugned before this Court by preferring the instant Crl. Acquittal Appeal.

2. It is contended by learned counsel for the appellant that the learned trial Magistrate has recorded acquittal of the private respondents on the basis of improper assessment of evidence; therefore their acquittal is to be examined by this Court.

3. Heard arguments and perused the record.

4. The FIR of the incident has been lodged with delay of about 19 days; such delay having not been explained plausibly could not be over looked. On asking it was admitted by PW Abdul Jabbar that an application for demarcation of the disputed land has also been filed, which prima-facie suggests that dispute between the parties is only to

the extent of demarcation of their landed property. Beside this, as per the appellant a complaint under the provisions of Illegal Dispossession Act, 2005, has already been filed by him, which is pending disposal before learned Vth Additional Sessions Judge Sukkur. In these circumstances, learned trial Magistrate was right to record acquittal of the private respondents by extending them benefit of doubt by way of impugned judgment, which is not found arbitrary or cursory to be interfered with by this Court by way of instant Crl. Acquittal Appeal.

5. In case of *State and others vs. Abdul Khaliq and others* (PLD 2011 SC-554), it has been held by the Apex Court 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. 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. Judgment of acquittal should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. 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”.

6. In view of the facts and reasons discussed above, instant criminal acquittal appeal fails and it is dismissed in limine together

with listed applications.

JUDGE

Nasim/P.A