

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Acq. Appeal No. S – 39 of 2024

(*Ashiq Soomro versus Muhammad Ramzan Soomro and others*)

Date of hearing : **08.04.2024**

Date of decision : **08.04.2024**

Mr. Alam Sher Bozdar, Advocate for appellant.

JUDGMENT

Naimatullah Phulpoto, J. – Respondents were tried by learned Civil Judge and Judicial Magistrate-I / MTMC, Mirpur Mathelo in Cr. Case No.91 of 2021, arising out of Crime No.51 of 2021, registered at Police Station Mirpur Mathelo for offences under Sections 468, 471, 420 PPC. After regular trial, vide judgment dated 01.03.2024, respondents were acquitted by the trial Court.

2. Brief facts leading to the filing of this appeal are that it is alleged that on 03.07.2020, respondents forged an agreement on stamp paper for sale of the land of the complainant regarding Survey No.54/9, 54/6, 54/5, 53/12 and 53/11, and put fake signatures on it for the purpose of cheating.

3. After usual investigation, challan was submitted before the Civil Judge and Judicial Magistrate, Mirpur Mathelo. The trial Court framed the charge against the respondents, to which they pleaded not guilty and claimed for trial. At the trial, prosecution examined four prosecution witnesses. Thereafter, prosecution side was closed. The trial Court recorded statements of respondents under Section 342 CrPC, in which they claimed their false implication in this case and denied the prosecution's case.

4. Trial Court, after hearing the learned Counsel for the parties, vide judgment dated 01.03.2024, acquitted the respondents mainly for the following reasons:

“16. That complainant PW-1 Ashiq Hussain in his cross examination recorded on 25.11.2022 has stated that present FIR was registered by him on 20.3.2021 upon court orders. He has

further admitted that he has also filed Illegal Dispossession Act petition against accused before instant FIR of survey no: 53/11, 53/12, 54/5, 54/6 and 54/9, same was dismissed by court of Honourable Additional Sessions Judge and Gul Hassan, Muhammad Nawaz, Shahnawaz, M. Shahban, Lai Sher, M. Ramzan, Gulsher, M. Saleem, Abdul Jabbar, Abdul Ghaffar and Abdul Razzaque were accused nominated by him. Bare perusal of Memo of Criminal Complaint No: 39 of 2020 filed by Complainant Ashiq Hussain under section: 3 of ID, Act 2005 before Honourable Sessions Judge, Ghotki and same was entrusted to Court of Honourable II-Additional Sessions Judge, Mirpur Mathelo it reveals that complainant in para no: 2 has mentioned that he was in possession over disputed property viz. S.No: 53/11, 53/12, 54/5, 54/6 and 54/9 and complainant purchased from his father through registered sale deed No: 1447 dated: 25.6.2020 till 2009 up till now and proposed accused no: 1 to 9 namely Gul Hassan, M. Nawaz, M. Shahban, Gulsher, Nadeem Ahmed, M. Saleem, Gul Muhammad and Abdul Jabbar came on disputed property on 5.1.2010 at about 10:00 am along with unknown muffled faces however complainant in his examination in chief recorded on 12.8.2020 before court of learned C.J and J.M-II Mirpur Mathelo has stated that accused M. Ramzan illegally occupied on his land..

17. Further bare perusal of order dated: 13.4.2021 passed by Honourable II-Additional Sessions Judge, Mirpur Mathelo in DC no: 39/2021 filed by complainant it reveals that Mukhtiarkar Revenue Mirpur Mathelo has submitted his report by mentioning that disputed land is block survey and there is no stone/sign affixed at the site and further stated that in the said block no: 53/11, 53/12 and others both the parties are shareholders.”

5. During course of arguments by learned Advocate for the appellant / complainant, Mr. Zulfiqar Ali Jatoi, learned Additional Prosecutor General has waived the notice.

6. Learned Advocate for the appellant / complainant mainly argued that the impugned judgment is perverse in law. The trial Court has failed to appreciate the evidence according to the settled principles of law. It is also argued that the documentary evidence was not considered by the trial Court.

7. Mr. Jatoi, learned Additional Prosecutor General has argued that the impugned judgment is based upon the sound reasons. After acquittal, respondents have double presumption of the innocence. It is also argued that principles for appreciation of evidence in the case of appeal against acquittal are different from the appeal against conviction. It is further argued that the trial Court in the impugned judgment has mentioned that both parties are co-sharer in the disputed land. Lastly, it is argued that ingredients of the offences, in which the respondents were tried, were not proved before the trial Court, and prayed for dismissal of appeal against acquittal.

8. I have carefully heard the learned Counsel for the parties and re-examined the judgment of the acquittal passed by the trial Court.

9. In Para No.16 and 17 of the impugned judgment, the trial Court has assigned sound reasons for acquittal of the respondents. Mainly, description of the land has not been mentioned before the trial Court. The trial Court has also held that parties are the co-sharer in the land, and the prosecution has utterly failed to prove its case against the respondents. It is a settled position of the law that appreciation of evidence in the case of acquittal is different from the case of conviction in the appeal. After acquittal, respondents have double presumption of the innocence.

10. Moreover, the scope of interference in appeal against acquittal is 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 as held in the case of The State and others v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Relevant portion is reproduced as under:

“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. The Court of appeal should not interfere simply for the reason that on the re-appraisal 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. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals.”*

11. The impugned judgment passed by learned trial Court is neither perverse nor speculative, but it is based upon sound reasons, which requires no interference by this Court.
12. Accordingly, this acquittal appeal, having no merit, is **dismissed**.

J U D G E

Abdul Basit