

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No.S-93 of 2024.
[Rehmatullah and others vs. Muhammad Nawaz and another.]

Criminal Acquittal Appeal No.S-102 of 2024
[Muhammad Nawaz Kalwar vs. The State and others]

Criminal Revision No.S-65 of 2024.
[Muhammad Nawaz Kalwar vs. The State and others]

Before:-
Mr. Justice Ali Haider 'Ada'.

M/s Achar Khan Gabol and Amjad Ali Bhutto, Advocates for appellants in Criminal Appeal No.S-93 of 2024.

Mr. Abdul Mujeeb Shaikh, Advocate for complainant in Criminal appeal No.S-93 of 2024.

Mr. Shabbir Ali Bozdar, Advocate for appellant/complainant in Criminal Acquittal Appeal No.S-102 of 2024 and Criminal Revision No.S-65 of 2024.

Mr. Muhammad Raza Katohar, Deputy Prosecutor General.

Date of hearing : 04.05.2026
Date of short order: 04.05.2026
Date of reasoning : 11.05.2026.

JUDGMENT

Ali Haider 'Ada' J.- By this single judgment, Criminal Appeal No. S-93 of 2024 filed by the appellants namely Rehmatullah, Saddullah, Mumtaz and Khadim alias Khadim Hussain, as well as Criminal Acquittal Appeal No.S-102 of 2024 and Criminal Revision No.S-65 of 2024, both filed by the complainant namely Muhammad Nawaz Kalwar, are being decided together, as all the matters arise out of the same impugned judgment and involve common questions of law and facts.

2. Through Criminal Appeal No.S-93 of 2024, the above-named appellants have assailed the impugned judgment dated 15.08.2024 passed by the learned Additional Sessions Judge-II, Ghotki, (trial Court) in Sessions Case No.124 of 2023 arising out of a complaint instituted by complainant Muhammad Nawaz Kalwar under the Illegal Dispossession Act, 2005. Vide the impugned judgment, the present appellants were convicted and sentenced to suffer rigorous imprisonment for one year each and to pay a fine of Rs.50,000/- each; in default whereof, they were directed to undergo simple imprisonment for three months each. The appellants were further directed to pay compensation of Rs.25,000/- each to the complainant under Section 544-A Cr.P.C., and in case of default thereof, to suffer simple imprisonment for one month more. However, the learned trial Court acquitted the remaining accused persons by extending them the benefit of doubt.

3. Being dissatisfied with the acquittal of the remaining accused persons, the complainant preferred Criminal Acquittal Appeal No. S-102 of 2024. Simultaneously, the complainant also filed Criminal Revision No.S-65 of 2024 seeking enhancement of sentence awarded to the present appellants.

4. Briefly stated, the case of the complainant/prosecution is that on 25.01.2023 all the accused persons, in furtherance of their common object and while armed with deadly weapons, allegedly dispossessed the complainant forcibly from an area measuring 00-24 ghuntas of land out of Survey No.712/5, total admeasuring 01-32 acres, situated at Deh Changulani, Tapa Mathelo, District Ghotki. Consequently, the complainant instituted a complaint under the Illegal Dispossession Act, 2005, which was entertained by the learned trial Court and preceded. After supply of documents under Section 265-C Cr.P.C, charge was framed against the accused persons on 15.08.2023, to which the present appellants and co-accused pleaded not guilty and claimed trial.

5. In support of the complaint, the prosecution examined PW-01 Shahid Hussain, Mukhtiarkar (Revenue), Ghotki, who produced reports and relevant revenue documents pertaining to the land in dispute. The prosecution further examined PW-02 Irfan Ali and PW-03 Barkat Ali, SHO of the concerned police station, who produced certain entries and statements relevant to the prosecution case. Thereafter, the complainant Muhammad Nawaz Kalwar appeared as PW-04 and produced the complaint as well as relevant title and revenue documents in support of his claim.

6. On 26.01.2024, learned counsel for the complainant closed the prosecution side. Thereafter, statements of the accused persons under Section 342 Cr.P.C. were recorded, wherein the appellants and co-accused professed their innocence, denied the allegations levelled against them and claimed false implication. They also relied upon certain revenue entries and defence documents in support of their plea.

7. Subsequently, on 08.04.2024, one Siraj Ahmed, an official from the office of the Superintendent, Khairpur, was examined by the learned trial Court, who also produced and relied upon certain revenue record. Upon conclusion of the evidence and after hearing learned counsel for the parties, the learned trial Court passed the impugned judgment, whereby the present appellants were convicted while the remaining accused were acquitted. Hence, the present criminal appeal, acquittal appeal, and criminal revision application.

8. Learned counsel for the appellants mainly contended that the matter essentially pertains to a civil dispute regarding ownership and possession of land and does not attract the provisions of the Illegal Dispossession Act, 2005. It was argued that the entire controversy revolves around disputed questions of title and possession, which could only be adjudicated by a competent civil

court and not through criminal proceedings. Learned counsel further contended that even the revenue functionaries did not fully support the prosecution case and, therefore, the appellants are entitled to acquittal.

9. Learned counsel for the complainant argued that the sentence awarded to the present appellants is grossly inadequate considering the nature of allegations and the manner in which the complainant was allegedly dispossessed from the property in question. It was contended that the appellants deserved a harsher sentence in accordance with law.

10. Conversely, learned counsel for the complainant, while arguing Criminal Acquittal Appeal No.S-102 of 2024, submitted that the learned trial Court failed to properly appreciate the evidence available on record and wrongly acquitted the remaining accused persons despite the fact that illegal occupation over the complainant's property had been established through ocular as well as documentary evidence.

11. Learned counsel appearing in support of Criminal Revision No.S-65 of 2024 also submitted that the conviction recorded by the learned trial Court is based upon proper appreciation of ocular and documentary evidence and, therefore, the conviction calls for no interference. However, he reiterated that the sentence awarded to the appellants requires enhancement.

12. On the other hand, learned Deputy Prosecutor General supported the impugned judgment and submitted that the same has been passed after proper appreciation of the evidence available on record. He, however, conceded that the revenue functionaries had also reflected ownership claims of the accused persons with regard to connected survey numbers, which aspect requires consideration.

13. Heard learned counsel for the parties and perused the material available on record.

14. The prosecution case was that the appellants, along with other accused persons who were subsequently acquitted of the charge, had illegally occupied the land in question measuring 0-24 guntas out of total area admeasuring 1-32 acres comprised in Survey No. 712/5. Consequently, a complaint under the Illegal Dispossession Act was entertained by the learned trial Court.

15. A careful appraisal of the prosecution evidence reveals that the Mukhtiarkar, who was examined before the learned trial Court as PW-1, categorically deposed during his cross-examination that the land bearing Survey No.712 also comprised Survey Nos.204/1, 204/2 and 204/3. He further admitted that the ownership of Survey No.204/1 vested in the accused persons and that they had remained in possession of the said land for the last more than (20) twenty years.

16. The record further reflects that the survey numbers are joint and no proceedings for partition, fixation of separate boundaries or proper demarcation of the disputed property were ever undertaken, which was a prerequisite before setting the criminal law into motion under the Illegal Dispossession Act, 2005. Such demarcation was essential to ascertain with certainty the exact portion allegedly under illegal occupation of the accused persons. In absence thereof, even the revenue official was not in a clear position regarding the precise ownership and possession of the disputed land, particularly when he himself admitted the ownership rights of the accused in respect of the included survey numbers. This aspect creates serious doubt in the prosecution case, as the question regarding partition and proper demarcation of the disputed land ought to have been resolved by the competent revenue forum before initiation of criminal

proceedings. Reliance in this regard is placed upon the case of **Barkat Ali v. The State (2025 PCr.L.J 41)**

17. Moreover, the complaint was instituted in the year 2023, whereas the revenue functionaries themselves categorically deposed that the accused persons had been in possession of the disputed land for the last twenty years. This admission materially contradicts the version advanced by the complainant, who alleged a recent act of illegal occupation. On the contrary, the evidence produced by the prosecution itself establishes that the possession of the accused dates back to the year 2003, much prior to the promulgation of the Illegal Dispossession Act, 2005. It is now established that the Illegal Dispossession Act, 2005 cannot be given retrospective effect. In the present case, the prosecution evidence itself demonstrates that the accused persons were admittedly in possession of the land long before the enactment of the Illegal Dispossession Act, 2005; therefore, the very applicability of the statute becomes doubtful. Support in this regard is drawn from the cases of **Niaz Mohammad (deceased) v. Umer Khayam (2022 PCr.L.J Note 14)**, **Shahid Hakeem v. Altaf Hussain Agha (2013 PCr.L.J 188)**, and **Muhammad Alim v. Muhammad Younis (2013 MLD 1245)**.

18. It is further noteworthy that, on the very same set of allegations and evidence, the learned trial Court extended the benefit of doubt to the co-accused persons and acquitted them of the charge. The case of the present appellants does not stand on a different footing, nor has any independent, direct, or confidence-inspiring piece of evidence been brought on record to distinguish their role from that of the acquitted co-accused. It is a settled principle of criminal jurisprudence that where the evidence against all accused persons is of the same nature and emanates from a common source, selective conviction of some accused while acquitting others, without assigning any cogent reason for differentiation, is not sustainable in the eyes of law. Once the

prosecution evidence has been disbelieved to the extent of acquitted co-accused, the same evidence cannot legally be relied upon for maintaining conviction against the remaining accused persons in absence of strong corroboratory material. Reliance in this regard is placed upon the case of **Pervaiz Khan v. The State 2022 SCMR 393**.

19. The scope of interference in an appeal against acquittal is extremely narrow and limited. In such matters, the prosecution carries a heavy burden, as the accused enjoys a double presumption of innocence. Firstly, under the cardinal principle of criminal jurisprudence, every accused is presumed to be innocent until proved guilty beyond reasonable doubt; secondly, once an acquittal has been recorded by a competent Court of law, such presumption of innocence stands further strengthened and reinforced. The superior Courts have consistently held that interference in an acquittal judgment is unwarranted unless the same is shown to be perverse, arbitrary, passed in gross violation of law, or suffering from grave misreading or non-reading of evidence. Reference in this regard may be made to the cases of **Fida Hussain v. The State (2025 SCMR 993)** and **Sardaran Bibi v. The State (2024 SCMR 1116)**.

20. It is a settled principle of criminal jurisprudence that if there exists even a single circumstance creating reasonable doubt in the prosecution case, the accused would be entitled to the benefit of such doubt as a matter of right and not as a matter of grace or concession. The prosecution is bound to prove its case beyond shadow of reasonable doubt, and any infirmity or inconsistency striking at the root of the prosecution story must necessarily be resolved in favour of the accused. The Honourable Supreme Court of Pakistan, in the case of **Laiq Shah v. The State (2026 SCMR 257)**, has reiterated this principal

21. In the present matter, the prosecution evidence suffers from material contradictions and serious legal infirmities, therefore, the

plea for enhancement of sentence is wholly without substance and merits no consideration. Reliance in this regard is also placed upon the cases of **Sohail Akhtar v. The State (2024 SCMR 67)**, **Maskeen Ullah v. The State (2023 SCMR 1568)**, and **Muhammad Anwar v. The State (2022 SCMR 1128)**.

22. Keeping in view the foregoing reasons, discussions, and the material thoroughly examined, it transpires that the judgment passed by the learned trial Court, to the extent of conviction and sentence awarded to the appellants, cannot be sustained and is hereby set aside. The appellants are accordingly acquitted of the charge. Consequently, the criminal acquittal appeal referred to above and the criminal revision application filed for enhancement of sentence is hereby dismissed. These are the detailed reasons for the short order dated 04.05.2026.

JUDGE