

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.S-263 of 2012

Appellants : Gul Muhammad and others through Syed Tarique Ahmed Shah,
Advocate.

The proceedings against appellant No.8 Saleh S/o Sher Muhammad and appellant No.28 Haji Sadiq S/o Shahoo have been abated by this Court since they were expired during proceedings.

Respondent : The State
Through Ms. Safa Hisbani,
Assistant Prosecutor General, Sindh.

Date of hearing : 24-09-2019

Date of Judgment : 11-10-2019

J U D G M E N T

AMJAD ALI SAHITO, J:- This Criminal Appeal has been directed against the impugned judgment dated 31-08-2012, passed by 1st Additional Sessions Judge, Badin, in Criminal Complaint No.03 of 2012, whereby he convicted all the sixty five appellants under section 3 (2) of Illegal Dispossession Act, 2005 sentencing them to undergo five years R.I with fine of Rs.50,000/= each and in default thereof to further suffer S.I for six months more.

2. The facts in brief are that complainant Muhammad Khan Soomro, Assistant Commissioner Matli District Badin filed subject complaint stating therein that “Devri-Jo-Daro” situated in Deh Seetan Tapa Phulejani Taluka Matli of District Badin is potential and archaeological land having illegally occupied by the appellants, therefore, on the directions of Deputy Commissioner Badin to save Government land proceedings under Illegal Dispossession Act, 2005 initiated against the appellants before the learned Trial Court.

3. The appellants were charged sheeted at Ex.02, to which, they pleaded not guilty at Ex.03 to Ex.67. The matter came at evidence stage where Muhammad Ali Mukhtiarkar examined at Ex.68, SIP/SHO Salahuddin at Ex.69 and complainant Muhammad Khan Assistant Commissioner at Ex.70 and thereafter complainant side after examining all the material witnesses closed its evidence side at Ex.71. Statements of accused were recorded at Ex.72 to Ex.136, wherein the appellants had denied the illegal occupation of subject land. The Trial Court after recording evidence and hearing parties’ counsel had passed impugned Judgment as discussed *supra*-I.

4. Learned counsel for the appellants has mainly contended that no any date of incident has been given by the complainant in his memo of complaint; that the impugned Judgment is against the facts, law and equity; that Trial Court while passing impugned Judgment did not appreciate the aspect of locus standie and retrospective effect of the case. He lastly prays for acquittal of the appellants from the Charge.

5. On the contrary, learned Assistant Prosecutor General, Sindh though supported the impugned Judgment but she was unable to give satisfying replies to the queries of the Court regarding the subject complaint.

6. I have heard learned counsel for the appellants, learned Assistant Prosecutor General, Sindh and have perused the available record.

7. From perusal of the record, it reveals that no material documents produced by the complainant to believe that the appellants were in illegal occupation of the subject land. The appellants were vagabond persons having been shifted due to heavy rains at disputed land. Furthermore, the Mukhtiarkar in his cross examination admitted that *“the archeological department had not moved any application to me for vacating the plot in dispute.”* So it is clear from the admission of Mukhtiarkar that no application was moved by archeological department on the basis of which this complaint has brought on record against the appellants. Only mere words to words with regard to illegally occupy the said land is not justified in absence of strong piece of evidence to connect the appellants in the commission of offence and when there are also material admissions of complainant Muhammad Khan Soomro as under:-

“It is correct to suggest that on the date of filing of this complaint i.e. 19.1.2012, the Devji Jao Daro was not notified as Archeological historical site. It is correct to suggest that the accused persons filed F.C.Suit No.143 of 2011 before the Court of Senior Civil Judge Matli in which I was shown as defendant NO.8. Voluntarily says that the said suit was dismissed. It is correct to suggest that the letter dated 28.12.2011 issued by Director Archeological department addressed to Deputy Commissioner Badin at that time, the disputed Daro was not notified by Government of Sindh as Archeological site.

8. In view of above, the impugned Judgment is not sustainable under the law and it is well settled law that there should not be many circumstances creating doubt in the case for acquitting the accused but a single circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused is sufficient to acquit the accused by extending benefit of doubt not as matter of grace and concession but as a matter of right. In this regard, I am fortified with the cases of *‘TARIQ PERVAIZ V. The STATE’ [1995]*

SCMR 1345] and *'MUHAMMAD AKRAM V. The STATE [2009 SCMR 230]*.

Therefore, vide my short Order dated 24-09-2019, instant appeal was allowed and the conviction and sentences awarded to the appellants were set-aside. These are the reasons for the same.

JUDGE

*Muhammad Danish Steno**