

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S-63 of 2023

Appellant: Salahuddin Son of Mastan Gul through
Mian Taj Muhammad Keerio, Advocate.

Respondent-1 to 6: NEMO

Respondent-7: The State through Ms. Rameshan Oad,
Assistant Prosecutor General, Sindh.

Date of hearing: 27.04.2023.

Date of Judgment: 27.04.2023.

J U D G M E N T

AMJAD ALI SAHITO, J- This Criminal Acquittal Appeal is directed to challenge the validity of the impugned judgment dated 31.03.2023 rendered by learned Additional Sessions Judge-II, Sanghar in Sessions Case No.27 of 2020, whereby present respondents Aamir Altaf, Muhammad Riaz, Muhammad Imran, Muhammad Irfan, Muhammad Rehman and Muzamil Hussain were acquitted from the charge by extending them the benefit of the doubt.

2. The facts relevant for disposal of instant appeal are that agricultural land bearing Survey No.680/3 to 6, 9 to 16 admeasuring 12-00 acres and Survey No.729/1, 8, 9, 16 admeasuring 04-00 acres situated in Deh Samathri, Taluka & District Sanghar is owned by complainant's father namely Mastan Gul under mutation entry No.721 dated 04.10.1992 in the record of rights of village Form VII-B of Deh Samthri. The aforesaid land of Mastan Gul is being looked after by his son present appellant through haris due to his old age. One house was constructed over the area of 00-30 acres of said land out of survey No.680/10, 11 whereupon the respondents/accused being evil eyes were pressurizing the complainant party to sell out the same to them but on refusal, they issued threats of dispossession. It is alleged that the land in question was gifted by one Muhammad Waris through legal gift deed to the father of complainant and then its

possession was handed over to him now the legal heirs of said Muhammad Waris are claiming the land, therefore, a Suit bearing FC Suit No.218 of 2019 has been filed by Ghulam Mustafa and others through present respondent/accused No.1 Aamir Altaf against Mastan Gul and others seeking therein Declaration, Cancellation of Gift Deed, Possession, Mesne Profit and Permanent Injunction same is pending abduction before the Court of 1st Senior Civil Judge Sanghar. The father of the complainant has also filed F.C Suit No.204 of 2019 against Ghulam Mustafa and others for Declaration and Permanent Injunction in the same Court. It is alleged by the complainant that on 18.10.2019 during the pendency of above said Civil Suits he along-with haries namely Samiullah and Sajid Muhammad were present at the above land at about 04:00 p.m. the respondent/accused Aamir Altaf having repeater Gun, Muhammad Riaz, Muhammad Imran, Muhammad Irfan and Muzamil Hussain having pistols came on Datsun pick-up and on the force of weapons issued threats and forcibly occupied the house by issuing warning in case father of appellant did not sale the land to the respondent/accused Aamir Altaf then they will also occupy the land, for which, the complainant approached to the concerned police station but no-response was given, hence he filed ID Complaint No.25 of 2019 before the Court of Hon'ble Sessions Judge Sanghar.

3. The learned trial after observing all formalities and recording evidence of the complainant party as well as statement of accused, acquitted the respondents through the impugned judgment.

4. Learned counsel for the appellant vehemently argued that the learned judge while passing the impugned judgment did not go through the evidence and material available on record and acquitted the respondents without applying his judicial mind; that the learned Trial Court while rendering the impugned judgment has failed to appreciate the evidence of the witnesses, although they have fully supported the prosecution version. Lastly, he prayed for setting aside of impugned judgment and prayed for the conviction for the respondents, in accordance with the law.

5. Conversely, learned Assistant Prosecutor General, Sindh by supporting the impugned judgment has prayed for dismissal of instant acquittal appeal.

6. I have heard learned counsel for the appellant, as well as learned APG and have also gone through the evidence as well as an impugned judgment with their able assistance. The criteria of interference in the judgment against acquittal are not the same as against the cases involving a conviction. The scope of interference in an appeal against acquittal is narrow and limited for the reasons that in an acquittal, the presumption of double 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 double.

7. The impugned judgment reveals that after examining the entire evidence, the benefit of the doubt has been extended to the accused/respondents by observing whatever evidence is in the hands of complainant doesn't want the conviction of the accused/respondents in any way. The complainant in his chief deposed that ***“on 18.10.2019 I along with my haris Samiullah and Sajid Muhammad were sitting in the constructed house, at about 04:00 PM accused Amir Altaf duly armed with repeater while other accused persons namely Muhammad Riaz, Muhammad Imran, Muhammad Irfan, Muhammad Rehman and Muzamil duly armed with pistols came there on white color Datsun and on their arrival all the accused persons abused us and threaten us and forcibly dispossessed us from the constructed house and forcibly occupied over the said house.*** In cross-examination, he has admitted that ***“It is correct to suggest that we both the parties filed civil suits before the civil court against each other. Voluntarily says that firstly, I filed the civil suit in respect of declaration and permanent injunction while the civil suit of accused persons is in respect of possession. Muhammad Waris gifted the said land to my father in the year 1992. It is correct to suggest that I have not produced the gift deed by which my father***

purchased the disputed land from one Muhammad Haris....It is correct to suggest that, the said Muhammad Waris gifted the disputed land to my father due to his love but there is no blood relation of Muhammad Waris with my father. If the assertion made by the complainant in his complaint is believed to be true then he has to prove his title over the subject land which has not been established prior to alleging dispossession therefrom before the competent Civil Court. Witness Samiullah in his examination-in-chief has deposed that ***“Accused Aamir Altaf was having repeater, while the other accused duly armed with pistol and hatchets.*** The said witness has improved the case by deposing that accused being armed with hatchets however no word has been deposed by the complainant about hatchets which is clear exaggeration on his part. *The said witness in his cross-examination has also admitted that* ***“It is also correct to suggest that no family members of complainant were resided at the disputed house... I am deposing at the instance of complainant/Mastan Gul.*** PW-3 Sajid Muhammad in his cross-examination has admitted that ***“At the time of incident no any resistance was taken place between us and accused persons... I do not know the incident of murder of accused Altaf Hussain prior to filing of this complaint.*** SHO P.S Mangli namely Ashok has admitted that ***“in the inquiry report no statement and any complaint of the parties concerned is on record at PS Mangli in respect of alleged incident as mentioned in the complaint.. It is fact that during spot inquiry the then SHO did not collect the titled documents from the both side as he has not produced such documents with his inquiry report. It is fact that one criminal case is registered at PS Mangli U/S: 302 PPC lodged by preset accused / Aamir Altaf against the complainant side bearing FIR No.77/2019 of PS Mangli.*** The SHO failed to collect titled documents from the parties suggesting that no proper investigation was carried out to dig out the truth of the alleged dispossession of the complainant or there is/was an issue over the same that is why parties are disputing on both civil and criminal side to win over against each other. From the above, it

reveals that there are material contradictions in the evidence of the complainant's story.

8. The preamble of this Act is only to protect the lawful owners and occupiers from their illegal or forcible dispossession and prevent them from the land grabbers/Qabza group or land mafia. In the instant case, there is a question in respect of the examination of the title of the parties. It is pointed out that it is the sole function of the Civil Court to give an authoritative decision with regard to the title of the property and the Criminal Court is not competent to give any finding qua title of the property. In such like cases, Criminal Court is simply required to examine the material available before it to form an opinion as to whether a prima facie case is made out for holding that the person who has complained about his dispossession was in lawful possession or owner because the words used in Section 3 of the Act are "owner" and "occupier" of the property. The word occupier has been defined in section 2(c) of the Act viz. "occupier" means the person who is in lawful possession of a property; the word owner is defined in section 2(d) of the Act viz. "owner" means the person who owns the property at the time of his dispossession, otherwise than through a process of law; and the word property has been defined in section 2(e) of the Act, as "property" means immovable property. Thus to attract the provisions of section 3 of the Act, the Court is required to examine as to whether the property was an immovable property and; secondly whether the person was the owner of the property or in its lawful possession. Thirdly, the accused has entered into or upon the property unlawfully. Fourthly, that such entry is with the intention to dispossess i.e. ouster, evict or deriving out of possession against the will of the person in actual possession, or to grab i.e. capture, seize suddenly, take greedily or unfairly, or to control i.e. to exercise power or influence over, regulate or govern or relates to authority over what is not in one's physical possession or to occupy i.e. holding possession, reside in or something. The definitions of the above words have been drawn from Black's Law Dictionary and Concise Oxford Dictionary. Though all four words

carry somewhat similar meanings in general, but individually applicable to different situations, times, places and circumstances, therefore, they cannot be given one and same meaning as by doing that one or more words become redundant, which cannot be attributed to the Legislature. To examine the question of title in respect of the property, as already pointed out, the Court has to simply form an opinion as to whether prima facie any party is coming within the ambit of definition mentioned in section 3 of the Act and if the Court forms such opinion from the material placed before it, then the Court can proceed with the matter or otherwise, as the case may be.

9. It is an admitted position that the parties were disputed over the title and possession of the disputed property and such civil litigation is pending before a competent Civil Court as well as Revenue authorities. The report Ex. 09/B submitted by the SHO/PW-01 Ashok of police station Mangli clearly suggested that the accused/Respondent No.2 Muhammad Riaz was in possession of the disputed property, before the incident as alleged by the complainant in his I.D complaint. It is essential to differentiate between cases where a person is accused of an act of illegal dispossession and where a person proceeded against is a professional grabber and is notorious for grabbing property as and when an opportunity presents itself. In this case, no evidence has been brought on the record by the complainant and his witnesses, which could suggest that the respondents are belonging to a gang of land grabbers.

10. I am fully satisfied with the appraisal of evidence done by the learned trial Court and of the view that while evaluating the evidence, the difference is to be maintained in an appeal from conviction and acquittal and in the latter case, interference is to be made only when there is a gross misreading of evidence resulting in miscarriage of justice. The appellant has failed to disclose any misreading or non-reading of evidence. In the case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**, the Hon'ble Supreme Court of Pakistan has held that:-

“We have examined the record and the reasons recorded by the learned appellate court for acquittal of respondent No.2 and for not interfering with the acquittal of respondents No.3 to 5 are borne out from the record. No misreading of evidence could be pointed out by the learned counsel for the complainant /appellant and learned Additional Prosecutor General for the State, which would have resulted into grave miscarriage of justice. The learned courts below have given valid and convincing reasons for the acquittal of respondents Nos. 2 to 5 which reasons have not been found by us to be arbitrary, capricious or fanciful warranting interference by this Court. Even otherwise this Court is always slow in interfering in the acquittal of accused because it is well-settled law that in criminal trial every person is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. As a sequel of the above discussion, this appeal is without any merit and the same is hereby dismissed.”

11. The sequel of the above discussion is that I am satisfied with the appreciation of evidence made by the learned trial Court while recording the acquittal of the respondents/accused by extending them the benefit of the doubt, which does not call for any interference by this Court. Consequently, the instant acquittal appeal merits no consideration and was dismissed through short order dated 27.04.2023 and these are the reasons of my short order.

JUDGE