

Judgment Sheet.

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Acq. Appeal No. S-20 of 2019

Date of hearing : 13.03.2020.

Mr. Ghulam Abbass Akhter Advocate for Appellant/Complainant.

Mr. Permanand alias Prem Kumar Advocate for respondent/accused.

Mr. Ali Raza Pathan Assistant Attorney General.

J U D G M E N T

Naimatullah Phulpoto, J. Through this Acquittal Appeal, appellant/complainant State through Prosecution Inspector of Pakistan Railway Attaullah Kalwar has impugned the judgment dated 20.08.2018 passed by Civil Judge & Judicial Magistrate-I Rohri in criminal case No. 01/2018 for offence under Section 122(3) Railway Act, 1890. On the conclusion of trial, Civil Judge & Judicial Magistrate-I Rohri vide judgment dated 20.08.2018 acquitted the respondent/accused from the charge.

2. Brief facts of the prosecution case as reflected in the impugned Judgment are as under :-

“ Brief facts of the prosecution case are that complainant stating therein that on 17-12-2017, at unknown time, at Railway Newyard, Rohri, accused Abdul Razaque made encroachment upon Railway land along with Block No231/A&B Quarters and constructed Pacca/cemented construction of area measuring 1700 square feet valued about Rs.700400/- to the Railway Quarters being property of Pakistan Railways, therefore, complainant lodged instant FIR.”

3. On the conclusion of the investigation, challan was submitted against the respondent/accused.

4. Trial Court framed the charge against respondent/accused for offence under section 122(3) of Railway Act, 1890. Accused pleaded not guilty and claimed to be tried.
5. At the trial, prosecution examined five (05) PWs and prosecution side was closed.
6. Statement of accused was recorded under Section 342, Cr. P.C in which accused claimed false implication in this case and denied the prosecution's allegations. He did not examine himself on oath nor produced any witness in his defense.
7. Learned trial Court after hearing learned counsel for the parties and assessment of the evidence, by assigning sound reasons in point No.1 of the impugned judgment, acquitted the accused vide judgment dated 25.02.2014, for the following reasons.

“ POINT NO.1.

In order to prove this point, prosecution has examined five witnesses in all but from perusal of their evidence, it appears that there are material contradictions in between their evidences. As complainant PW Muhammad Yameen and Muhammad Qasim at Ex.03 & Ex. 04 deposed that accused Abdul Razaque has illegally occupied plot area 1700 Sqft adjacent to Quarter No.231 AK-07. PW Qasim deposed that on 14-12-2018 he along with complainant went to restrain accused but he not stopped from encroaching area of Railway. On 17.12.2017 complainant issued memo for FIR and FIR was registered. While on the contrary PW Muhammad Ismail at Ex.05 has deposed that on 14-12-2018 he received message that encroachment is going on at Block No.T-231 A/B Quarter where he along with complainant Muhammad Yameen, Muhammad Qasim went and accused was encroaching and they stopped him and he stopped work and on 17-12-2017 he received information that accused again started encroachment at same place. They went there and stopped accused but he not stopped and FIR was registered on memo of IOW. It is also on record that neither complainant nor IO has mentioned any Survey number of land of Railway

nor produce any document which shows that land belong to Railway. It is also deposed by witnesses that unauthorized people are residing adjacent to place of wardat but PW Muharnmad Yaseen has deposed during cross that total population of Railway Colony belongs to Railway Department while PW Muhammad Ismail deposed that most of quarters are possessed by private persons and they are unauthorized and no any record is produced by prosecution if any action is taken against any other person of locality. Counsel for accused has also taken plea that civil suit was pending and alleged accused filed harassment petition on 15-12-2017 against Muhammad Ismail who used to claim bhata and DS & DEN Railways were also party thereafter, this false case was registered. PW Rao Gulfan was SHO of RPS Rohri at that time and he deposed at Ex.08 that SSP railway contacted him on phone call on 14-12-2017 at 1355 hours and told him that Abdul Razaque had made encroachment in Nowyard Colony Rohri. He informed IOW Yameen. PW Rao Gulfan remains SHO RPS Hon till his retirement but during his cross examination he has shown ignorance when asked many Questions, he replied that he does not know about that facts which creates doubt that he tried not to disclose real fact. He told that he took pictures from his mobile but Io has neither recorded his statement for receiving pictures produced by him nor any identification mark is shown in pictures which place was encroached by alleged accused. ASI Muhammad Yaseen investigation officer has shown his ignorance and during his cross examination has deposed that he does not know that place of wardat belongs to Saleemabad Colony which shows that I.O has also not confirm that land belong to Railway or not. It is also clear that neither accused was arrested from encroachment nor any other worker/mason was working at encroachment at the time when police went there. It is admitted that many persons of locality were gathered at place of alleged incident but IO has not associated any single independent person of locality as eye

witness of this incident and neither IO nor complainant has produced any document which shows that land belongs to railway or accused was residing at the house which was allegedly encroached which creates heavy doubt in story. Pl for railway has relied upon case laws for credibility of evidence of police officials and no doubt evidence of police official is good evidence but there is material contradiction between evidence of PWs and no documentary proof was come on record which connect accused with commission of offence hence case laws quoted by Pl are not helpful to his plea and Counsel for accused has shown that there was dispute between Muhammad Ismail AIOU Railway and accused Abdul Jabbar and accused filed petition for harassment u/s 22/A/B CrPC against Police officials and Railway department, therefore, this case was registered. Therefore, it is admitted position that the prosecution could not prove its case against accused beyond shadow of reasonable doubt. It has been decided by Honourable Superior Courts the prosecution is bound to prove its case against accused beyond beyond shadow of reasonable doubt. ! respectfully rely upon MLD 2014 513(b) Peshawar, in which it has been held as under:

" Prosecution was bound to prove its case beyond any shadow of doubt---If any reasonable doubt would arise in the prosecution case, the benefit of same must be extended to accused, not as grace or concession, but as matter of right--- So many doubts in the prosecution case were not needed, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicious mind was sufficient for acquittal of accused.

The prosecution has not established its case against accused regarding commission of offence beyond shadow of reasonable doubt, hence these points are answered as not proved against accused. "

8. Complainant being dissatisfied with the acquittal of the accused has filed this appeal.

9. Learned advocate for the appellant/Pakistan Railway mainly contended that impugned judgment is perverse and arbitrary. Trial Court has failed to consider trust worthy and confidence inspiring evidence. It is further submitted that respondent has illegally occupied Railway plot; that acquittal is based on non-reading and misreading of evidence. Lastly, it is prayed that acquittal may be converted to the conviction.

10. Mr. Permanand alias Prem Kumar Advocate for respondent/accused argued that impugned judgment has been passed by the trial Court while deeply appreciating the prosecution evidence and trial Court has highlighted the material contradictions in the evidence of prosecution witnesses. It is further submitted that complainant failed to produce any document before the trial Court to show that land in question belongs to Pakistan Railway. Lastly, it is submitted that Investigation Officer during investigation had also failed to collect document to satisfy the Court that disputed land belongs to Pakistan Railway.

11. Mr. Ali Raza Pathan Assistant Attorney General of Pakistan questioned the maintainability of this Acquittal appeal and argued that appeal is incompetent.

12. I have carefully heard learned counsel for the parties and perused the evidence as well as impugned judgment minutely. Trial Court has highlighted material contradictions in the evidence. Investigation Officer had also failed to collect relevant record from Pakistan Railway to establish that plot in question belongs to Pakistan Railway. At trial, prosecution failed to examine concerned Mukhtiarkar or other Survey Officer to establish that plot in dispute belongs to Pakistan Railway. It appears that trial Court has rightly appreciated the evidence according to settled principles of law. An accused is presumed to be innocent in law and if after regular trial he is acquitted he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said

presumption as held in the case of Muhammad Shafi vs. Muhammad Raza and another (2008 SCMR 329). In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, I am therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant inference. Judgment of the trial Court appears to be justified and well-reasoned. Learned counsel for the appellant / complainant has not been able to point out any serious flaw or infirmity in the impugned judgment. View taken by the learned trial Court is a possible view, structured in evidence available on record and as such not open to any legitimate exception. It is by now well settled that acquittal once granted cannot be recalled merely on the possibility of a contra view. Unless, impugned view is found on fringes of impossibility, resulting into miscarriage of justice, freedom cannot be recalled.

13 . This Criminal Acquittal Appeal is without merit and the same is **dismissed**. Before parting with this judgment, it is observed that Pakistan Railway may approach competent forum to protect it's property.

J U D G E