

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL. APPEAL NO.350 /2019

Shahid Rind Baloch
Vs
Ch.Faqeer Muhammad, etc

Serial No. of order/ proceeding	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
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27.01.2020

Ch.Muzamal Nazir, Advocate for the appellant.

Appellant (Shahid Rind Baloch) seeks setting aside of impugned judgment dated 28.09.2019 passed by the learned Judicial Magistrate Section 30-East, Islamabad, whereby respondents No. 1 to 4 (hereinafter be called as respondents) were acquitted in case FIR No. 118/2009, dated 15.7.2009 under section 427,447,506,148,149 PPC, Police Station Bahara Kahu, Islamabad.

2. Briefly the allegation against the respondents is that they belonging to Hakaas Company alongwith 40-50 unknown persons entered in the land of appellant situated in khasra No. 2551 Mauza Phulgaran Tehsil & District Islamabad to take the possession of the land of complainant/appellant, demolished the wall on the land and advanced life threats to the appellant and his brother, hence above mentioned case was registered.

3. After registration of FIR, investigation was carried out and thereafter report under section 173 Cr.P.C. was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the accused/ respondents, to which they pleaded not guilty. The prosecution examined as many as six PWs and also produced documentary evidence in support of its case. Thereafter, statements of accused persons were recorded Under Section 342 Cr.PC. The learned Trial Court acquitted the accused/respondents vide Judgment dated 28.9.2019 by giving them benefit of doubt.

4. Learned counsel for appellant contends that he moved an application for registration of criminal case

against the accused persons/respondents, but the FIR was lodged by the police on the order of the learned Additional Sessions Judge/Ex-Officio Justice of Peace; that the Judgment passed by the learned Judicial Magistrate is against the law, facts and material available on record; that the learned Trial Court has badly failed to apply its judicial mind while passing the impugned Judgment; that the accused persons wanted to grab the land of the appellant/complainant; that the accused persons are nominated in the FIR and prosecution evidence fully supported the occurrence as per FIR. He further contends that Judgment of the learned Trial Court is result of mis-reading and non-reading of evidence produced by the prosecution; that the impugned Judgment is result of grave mis-carriage of justice, hence liable to be set aside.

5. Arguments heard, record perused.

6. It transpired from the record that after investigation by the police, report under Section 173 Cr.PC was submitted before the learned the learned Trial Court. After fulfilling the codal formalities, learned Trial Court framed charge against the accused persons to which they pleaded not guilty. On denial of the charge, prosecution was directed to produce evidence in support of its accusation. In order to prove the case, prosecution produced the following witnesses;-

- (a) Shahid Rind Baloch, PW.1
- (b) Mahr Chakar Baloch, PW.2,
- (c) Muhammad Fayyaz Khan Shinwari
Inspector PW.3
- (d) Ameer Umar Khan SI PW.4,
- (e) Qaiser Niaz Gillani Inspector PW.5,
- (f) Muhammad Ishaq SI PW.6.

7. The prosecution also submitted documentary evidence. On closure of the prosecution evidence, the respondents/accused were examined under section 342 Cr.PC. The respondents/accused categorically denied the allegations levelled against them and took defence that there is land dispute in between them and no such

occurrence has taken place. The respondents did not opt to record statements on oath as envisaged under section 340 (2) Cr.PC and also did not produce any witness in their defence.

8. The re-appraisal of the evidence reveals that Pw.1/complainant, in his cross-examination admitted that a civil suit with regard to disputed land is pending against them. He admitted the possession of respondents/accused Akaas Company in khasra number 2551. PW.1 & PW.2 both admitted that respondent/Hakaas Company is also owner of khasra number 2551. He also admitted the possession of the respondents over the disputed land and it has also been noted that no proof for ownership over the disputed land has been placed on record by the complainant. PW.2 has also stated that they have not provided any proof of their ownership to the Court. PW.3 Investigation Officer, during cross-examination has admitted that he did not saw any record of ownership and report about possession of the land from the revenue officer and further stated that the complainant did not provide him any proof of ownership during the course of investigation. It has also been observed that the site plan Ex.PM has been prepared on 15.7.2010, after lapse of one year of the registration of the FIR. The perusal of same reveals that neither presence of witnesses has been shown therein nor it shows the broken wall. PW.5/I.O has further stated that as per people of the locality, no such occurrence had taken place. As far as the allegations of beatings to the complainant by the respondents/accused is concerned, in this regard no medical certificate has been brought on record.

9. From the statements of prosecution witnesses, the allegations levelled against the respondents seems to be doubtful. On the other hand, both the parties claim to be owner in possession of the disputed land and a civil suit over the same is pending in between the parties.

10. The considerations for interference in an appeal against acquittal and in an appeal against conviction are

altogether different. The well settled principles for the appreciation of appeals against acquittal are;-

- (i) That with the acquittal, the presumption of innocence of accused becomes double; one initial, that till found guilty he is innocent, and two, that after his trial a Court below has confirmed the assumption of innocence;
- (ii) That unless all the grounds on which the High Court had purported to acquit the accused were not supportable from the evidence on record, Supreme Court would be reluctant to interference, even though, upon the same evidence it may be tempted to come to a different conclusion;
- (iii) That unless the conclusion recorded by a Court below was such that no reasonable person would conceivably reach the same, the Supreme Court would not interfere;
- (iv) That unless the Judgment of acquittal is perverse and the reasons therefore are artificial and ridiculous, the Supreme Court would not interfere; and
- (v) That the Supreme Court, however, would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion, and that too, with a view only to avoid grave miscarriage of justice and for no other purpose.

11. Keeping in view these principles, the record transpires that the prosecution has failed to prove the charge against the accused persons, by leading cogent evidence. There are glaring discrepancies in the statements of the prosecution witnesses. As such the learned Trial Court has rightly acquitted the accused persons by giving them benefit of doubt.

12. For what has been discussed above, judgment of the learned Trial Court does not suffer from any illegality or irregularity, therefore, does not require any interference by this Court. The instant appeal is, hereby, dismissed in limine.

(GHULAM AZAM QAMBRANI)
JUDGE