JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL APPEAL NO.298 OF 2024

Dr. Anwar Ul Haq (Late) through his legal heir Sumera Umer
Vs
The State & 3 others.

Appellant by: Mr. Waqas Ahmed Abbasi and Barrister Abdullah Haroon, Advocates.

Respondents by: Raja Mazhar Hussain Bhatti, Advocate for the respondents No.2.
Respondents No.2, 3 & 4 in person.
Rana Hassan Abbas, Assistant District Public Prosecutor.
Mr. Riaz Noon SI, P.S Bani Gala.

Date of hearing: 09.04.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Appeal under Section 417, Code of Criminal Procedure, 1898 ("Cr.P.C."), the Appellant has assailed the Judgment dated 29.06.2024 **("Impugned Judgment")** passed by the learned Senior Civil Judge-II (Judicial), East-Islamabad, whereby Accused/Respondents No.2 to 4 were acquitted of the charges in FIR No.113/18 dated 09.05.2018 under Sections 452/440 Pakistan Penal Code **("PPC")**, registered at Police Station Banigala.

2. The brief facts of the case, as per the memo of appeal, are that Dr. Anwar Ul Haq, a medical professional who worked in the UK, USA, and Canada for over 17 years, returned to Pakistan in 1986 and established the Islamic Medical Centre in Islamabad, serving as its CEO. The Complainant, at the age of 79, passed away on 11.10.2022 during the pendency of the case before the learned Trial Court, and the instant appeal is now being filed by his real daughter, namely Sumera Umer, being his legal heir (hereinafter referred to as the **"Appellant"**). The Complainant purchased land measuring 31.5 marlas, bearing Khewat Nos. 881 and 883, Khatooni Nos. 1335 and 1337, Khasra Nos. 940 and 951, situated at Mouza Mohra Noor, Tehsil & District Islamabad, from Muhammad Khalid Abbas through registered Sale Deeds Nos. 3263 dated 16.02.2017 and3362 dated 17.02.2017. He was given peaceful possession of the land, including keys of a constructed room, and built a boundary wall around the land. An electricity meter was installed with a

NOC from a neighbor, and the Complainant's employees began residing in the constructed rooms. After purchasing the above-mentioned land, the Complainant got it demarcated through a surveyor, namely Noman Ahmed, who prepared his survey report and map of the land, along with specific boundaries, and confirmed the specific boundaries of the registered sale deeds at the spot. On 03.08.2017, Accused/Respondent No. 2, along with property dealers, attempted to forcibly take over the land, prompting police involvement. Statements were recorded at Police Station Banigala. Subsequently, Accused/Respondent No. 2 filed Civil Suit No. 230/2017 challenging the ownership documents, but her interim relief application was dismissed. Though she filed a civil appeal and obtained a status quo order on 07.03.2018, she again tried to interfere with the Complainant's possession on the same day but was stopped by the police and locals. On 21.03.2018, Accused/Respondent No. 2, accompanied by armed individuals, allegedly entered the constructed rooms by breaking windows, assaulted an employee of the Complainant named Muhammad Amin, and kidnapped him, later abandoning him in a jungle. Multiple complaints were submitted to the police and SSP, and a court-appointed bailiff confirmed illegal possession and demolition of boundary walls by Accused/Respondent No. 2 in his report dated 28.03.2018. On 24.03.2018, Accused/Respondent No. 2 and her accomplices forcibly evicted the Complainant's staff, seized furniture and other belongings, and took illegal possession of the land. On the SSP's directions, FIR No. 113/2018 was registered on 09.05.2018 under Sections 452/440 PPC after considerable delay. Challan/Report under Section 173 Cr.P.C. was submitted before the learned Trial Court. Charge was framed against the accused persons, to which they pleaded not guilty and claimed trial. The prosecution produced two witnesses in support of its version and closed its case. The statements of the accused persons were recorded under Section 342 Cr.P.C.; however, they opted not to produce any defense evidence or appear as a witness. After hearing the arguments of learned counsel for the parties, the learned Trial Court acquitted the accused persons vide Impugned Judgment dated 29.06.2024. Being aggrieved by the Impugned Judgment, the Appellant has filed the instant appeal.

3. The Appellant's counsel argued that the Impugned Judgment is contrary to law and facts and thus untenable. The Trial Court erred by ignoring the specific boundaries detailed in registered sale deeds No. 3262 and 3263, as well as the

original seller's statement confirming those boundaries. The court also failed to consider the independent surveyor Noman Ahmed's report and map, which corroborated the Complainant's possession of 31.5 marlas, including four constructed rooms. Despite photographic evidence and installation of an electricity meter with a valid NOC, the court overlooked repeated attempts by Accused/Respondent No. 2 to dispossess the Complainant, who consistently maintained possession. The order suffers from misreading of evidence, legal irregularities, and an erroneous assumption regarding Khewat/Khatooni numbers and partition. The Trial Court wrongly dismissed the Complainant's application under Sections 540/94 Cr.P.C. seeking summoning of material witnesses, including Muhammad Amin (injured/abductee), and disregarded the bailiff Abdul Qadeer's reports confirming dispossession and damage to the boundary walls. It also ignored the SDPO's inquiry and the Investigating Officer's report and denied permission to summon them. The counsel submitted that the Appellant's valuable rights are at stake, and failure to allow the appeal would cause irreparable loss. He prayed for the acceptance of the appeal, setting aside of the judgment dated 29.06.2024, and legal action against Respondents No. 2 to 4.

4. On the other hand, learned counsel for Respondents No. 2 to 4 resisted the instant appeal and prayed for its dismissal on the ground that the Impugned Judgment is a well-reasoned order; that it does not suffer from any illegality or irregularity, and does not call for any interference.

5. I have heard the learned counsel for the parties and perused the record with their able assistance.

6. The allegation in brief against the Accused/Respondents Nos. 2 to 4 is that they entered into the plot of the Complainant measuring 31.5 marlas situated at Korang Road, Banigala, Islamabad, on 24.03.2018 and, through use of force, occupied the said plot. Besides, they also damaged the furniture and other articles belonging to the Complainant lying in the said plot. In support of the allegations, the Complainant/prosecution produced PW-2, namely Sabir Ali son of Ahmed Yar, who is a servant of the Complainant. He stated that he served with the Complainant for 30 years as Assistant and Driver, and during these 30 years, he is well-conversant with the dealings, including sale and purchase of property, etc. The disputed property was purchased by the Complainant from one Khalid Abbas Khan

through two registered sale deeds, upon which his name appears as a witness. The boundaries were determined through a surveyor, and thereafter registered sale deeds were executed. On cross, he admitted that he came to know that after registration of this case, Accused/Respondent No. 2 [Rukhsar Kousar] purchased some land and has become owner. He has shown ignorance to the fact that the sale deed of Accused/Respondent No. 2 is prior in time to that of the Complainant. He further stated that he was present on the spot only at the time of intrusion of the Accused on 13.10.2017, but all other episodes of intervention of the Accused/Respondents No. 2 to 4 into the property of the Complainant happened in his absence. He also admitted that the occurrence regarding subjecting the servant Muhammad Amin to physical torture also did not happen in his presence. He further admitted that the registered sale deed of the Complainant contains Khasra Nos. 951 and 940, and the sale deed of Accused/Respondent No. 2 [Mst. Rukhsar Kousar] also contains Khasra Nos. 940 and 951, which implies that both the Complainant and Accused/Respondent No. 2 are owners in the same Khasra number. He further admitted that during all the occurrences, the Complainant was not present at the spot and that Khalid Abbas Jatoi did not appear as a witness. Similarly, he admitted that Muhammad Amin has also not been produced as a witness.

7. The other witness, namely Irshad Ahmed S.I. (PW-1), who investigated the case, in his cross admitted that the area is thickly populated; however, no one amongst the residents of the area turned up for recording their statements in support of the occurrence. He further stated that he did not know about the house regarding which the sale deeds were produced by the Complainant, and no recovery was effected from the possession of the Accused/Respondents No. 2 to 4.

8. In a criminal case, the onus of proof lies on the shoulders of the complainant/prosecution in order to bring home the charge against the accused. In this regard, reliance is placed upon the judgment of the august Supreme Court of Pakistan in a case titled *"Ali Ahmad and another Vs. The State and Others"* cited as **(PLD 2020 Supreme Court 201)**, relevant portion of which is reproduced as under: –

> *"8. In a criminal trial, it is now jurisprudentially well- entrenched, the proper course for the court is to first discuss and assess the prosecution evidence, particularly the reliability of the eye-*

> *witnesses, in order to arrive at the conclusion as to whether or not the prosecution has succeeded in proving the charge against the accused on the basis of its evidence. Burden is always on the prosecution to prove its case and it is only when a prima facie case is made out against the accused sufficient to justify his conviction, does the burden shift upon the accused under Article 121 of the QSO, if he relies on any of the General Exceptions in the P.P.C or within any special exception or proviso contained in any other part of the P.P.C. or in any law defining the offence charged. If the prosecution fails to prove its case against the accused, the question of shifting of burden upon the accused does not arise as it becomes immaterial."*

The Accused/Respondents No. 2 to 4 in this case are charged with offences under Sections 452 and 440 PPC. Section 452 PPC relates to house trespass, while Section 440 PPC pertains to entering into or upon property in the possession of another with intent to commit an offence. The evidence produced during the trial is insufficient to prove that the Accused/Respondents No. 2 to 4 facing trial had entered into the property of another, or that they committed criminal trespass by entering into any building. The prosecution witness himself admitted that neither the Complainant was present at the time of occurrence, nor was he himself present, and the only person who was allegedly the eye-witness was Muhammad Amin, but that eye-witness was also not produced before the learned Trial Court. In such a scenario, the learned Trial Court has rightly acquitted the Accused/Respondents No. 2 to 4 facing trial in the absence of any cogent and reliable evidence with respect to the offence of house trespass or commission of any mischief by them.

9. For the foregoing reasons, the Impugned Judgment passed by the learned Trial Court dated 29.06.2024 is hereby upheld, and the instant Criminal Appeal is being devoid of any merit is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on this _____ day of May 2025.

JUDGE

Sajid/--