

HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.241 of 2009

Present:

Mr. Justice Nazar Akbar

Appellant: Syed Jamshed Raza through Mr. Muhammad Imran Baig, advocate

Respondent: None present for the State

Date of hearing **21.10.2015**

J U D G M E N T

NAZAR AKBAR, J.--- Judgment dated 26.09.2009, passed by Judicial Magistrate-XII, Karachi South in Criminal Case No.1911/2009 arising out of FIR No.63/2006, registered at P.S. Gizri, Karachi, has been impugned through instant criminal acquittal appeal, whereby, while extending benefit of doubt, he has acquitted accused Syed Zafar Ali of the charge.

Learned counsel for the appellant argued that the appellant written several letters to SHO regarding illegal occupation over a portion of his house by accused Syed Zafar Ali on 02.02.2006, however, FIR of the incident was registered on 23.02.2006, with a delay of 21 days. He further contended that explanation regarding delay in lodging of FIR has sufficiently been submitted before the learned trial Court but the same has not been appreciated by it. He lastly contended that prosecution has collected sufficient evidence and placed the same on record to connect the accused with the alleged offence but the learned trial Court without taking into consideration the same, acquitted the accused of the charge while extending benefit of doubt.

I have heard the arguments advanced by learned counsel for the appellant and also carefully scanned the entire evidence available on record. I have also gone through the cross-examination of the prosecution witnesses.

The record reveals that no plausible explanation regarding delay in lodging of FIR has been submitted by the appellant. Perusal of depositions

of prosecution witnesses as well as their cross-examination reveals that there are material contradictions in the prosecution evidence. There also exists relationship of landlord and tenant between the complainant and the accused and a case of civil nature has been converted into a criminal case. Learned trial Court after assessment of prosecution evidence has rightly come to the conclusion and acquitted the accused of the charge. No illegality or irregularity in the impugned judgment has been pointed out by the learned counsel for the appellant. It is cardinal principle of criminal law that prosecution remains under heavy burden to prove the charge against the accused beyond any shadow of doubt, whereas in the instant case it has failed to do so. Further, this Court has never desired to interfere in the order of acquittal having double presumption of innocence but for extraordinary strong reasons which do not exist in this case. The impugned judgment passed by learned trial Court granting acquittal to respondent/accused Syed Zafar Ali is neither arbitrary nor based on any mis-appreciation of evidence available on the record.

In above circumstances, no case for interference in the judgment passed by the learned trial Court is made out. Consequently, instant criminal acquittal appeal is **dismissed**, having no merits.

J U D G E

Karachi
Dated:18.12.2015

Gulsher/PA