

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.419 of 2017

Date	Order with signature of Judge
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Present: Mr. Justice Nazar Akbar

Appellant : Hussain Ahmed S/O Ghulam Rabbani,
Mr. Muhammad Irfan, advocate.

Versus

Respondent No.1 : Muhammad Ali S/O Muhammad Yaqoob

Respondent No.2 : The State,
Through Ms. Amna Ansari, Additional P.G.

Date of hearing : **28.01.2019**

Date of decision : **28.01.2019**

JUDGMENT

NAZAR AKBAR, J:- This Criminal Acquittal Appeal is directed against the judgment dated **25.08.2018** passed by the learned X-Judicial Magistrate, South Karachi in Criminal Case No.1442/2016 arising out of FIR No.88/2016 U/S 337-A(iv), 337-A(i), 354/34 PPC registered at P.S Gizri, Karachi whereby Respondent No.1 was acquitted of the charge by extending him benefit of doubt.

2. Brief facts of the case are that on **08.03.2016** appellant/complainant alongwith his brother Hasan Ahmed went to Bungalow 82/1, Commercial Avenue, where they used to live on rent. Their advance amount of Rs.85,000/- was with accused Muhammad Ali and he told them to bring the keys of the house and the agreement and he will return them their advance amount. At about 1130 hours, when appellant/complainant reached the house, few persons were standing outside the said house. As soon as the lock was opened,

they took the agreement as well as the keys and pushed him. Afterwards, appellant/complainant's brother also arrived and the said unknown persons started beating both, appellant and his brother. Appellant received injuries on his nose, eye, ear, waist and abdomen and his brother's clothes were torn and was beaten and received internal injuries. He stated that he has filed FIR against Respondent No.1/accused and other persons who were armed, and had beaten them and to go to hospital and to slap complainant's sister and pulled her by her hair, therefore, the appellant lodged FIR.

3. After completion of investigation the IO has submitted charge sheet against accused person. Formal charge was framed vide Ex.2 to which he pleaded not guilty and claimed trial. Learned trial Court after examination of witness and hearing learned counsel for the parties, acquitted Respondent No.1/accused by extending him benefit of doubt U/S 245(1) Cr.PC. Thereafter the appellant/Complainant has filed instant Criminal Acquittal Appeal against the said order.

4. I have heard learned counsel for the appellant and perused the record.

5. Learned counsel for the appellant contended that he has no arguments to advance and said that he will go to the Hon'ble Supreme Court.

6. On the other hand, learned Additional P.G appearing on behalf of the State, supported the impugned judgment on the grounds that the trial Court has passed a well-reasoned judgment which does not require any interference.

7. It appears that the prosecution case against the respondent No.1 suffers from various doubts and dents; there are various

contradictions in the prosecution evidence. PW-1 appellant/complainant in his evidence stated that on **08.3.2016** accused called him at 1100 hours at the said premises alongwith his brother. Respondent No.1/accused alongwith 5 or 6 people snatched the tenancy agreement and keys of said premises. Two persons showed pistols and started beating them both and they also beaten him outside the premises on demand of the advanced money. PW-2 complainant's brother Hassan Ahmed stated that on **07.03.2015** they had left the premises where they were living as tenant and accused Muhammad Ali called them at the said premises and started quarrelling with them and snatched the agreement and keys from them and when they asked for their advance amount they were beaten. However, as per the contents of FIR few persons were standing at the alleged place of incident who had pushed the complainant and snatched keys and agreement from him; the FIR is silent with respect to the presence of accused Muhammad Ali. PW-5 MLO declared the weapon as hard and blunt which caused injuries to brother of appellant, however, there is no mention of such declared hard and blunt weapons in the FIR nor in the statement of PW-1 and PW-2 complainant and his brother respectively. Besides, both the appellant/complainant and accused/Respondent No.1 have admitted that Respondent No.1 was the landlord and appellant was his tenant and that Respondent No.1 was supposed to pay the appellant his advance amount of **Rs.85,000/-**, however, Respondent No.1 has stated in his statement under **Section 342 Cr.P.C** that he wanted to pay them the amount after he had arranged utility bills which appellant was supposed to pay but he refused and claimed the entire amount of **Rs.85,000/-** on that very same day. It was stated that the matter was resolved and Respondent No.1 had even paid the alleged

amount to the appellant and returned their cheques, however, afterwards the appellant/complainant refused to uphold the said compromise, the compromise application dated **30.3.2016** was also on the record of the trial Court. Besides, there are several other inconsistencies into prosecution evidence at various stages of the prosecution case, as discussed above. All these factors create substantial doubts and dents and raise questions into the veracity of the prosecution case. In such situation, the impugned judgment of acquittal being speaking and well-reasoned, does not warrant any interference.

8. Further, there is difference between appeal against conviction and appeal against acquittal and in the latter it is settled law that accused who has been acquitted, is credited with two advantages, one that is available to him of his innocence at the pre-trial stage and other earned by him on the basis of Judgment of acquittal from the Court of competent jurisdiction.

9. In view of the above, the learned trial Court has rightly acquitted Respondent No.1. Accordingly, instant Criminal Acquittal Appeal was dismissed by short order dated **28.01.2019** and these are the reasons for the same.

JUDGE

Karachi
Dated: 09.03.2019

Ayaz Gul