

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.45 of 2019

Date	Order with signature of Judge
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1. For orders on office objection as at flag "A"
2. For hearing of main case

Present: Mr. Justice Nazar Akbar

Appellant : Ashraf Moin S/o Moinuddin
Through Mr. Ahmed Nawaz, advocate.

Versus

Respondent No.1 : XIII Judicial Magistrate, South Karachi.
Respondent No.2 : Muhammad Faisal
Respondent No.3 : Muhammad Aamir,
Respondent No.4 : Muhammad Khalid
Respondent No.5 : The State.

Date of hearing : **14.03.2019**

Date of decision : **14.03.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the judgment dated **20.12.2018** passed by the XIII-Judicial Magistrate, South Karachi in Criminal Case No.447/2018 arising out of FIR No.247/2017 registered at P.S Tipu Sultan under Sections 506-B/337-A(I)/427/34 PPC, whereby the trial Court has acquitted respondents No.2 to 4 by extending them benefit of doubt.

2. To be very precise, the facts of the case are that on 13.12.2017 at about 0900 hours respondents No.2 to 4/accused illegally entered into house of appellant/complainant and beaten him with Danda and issued threats of dire consequences to him and his son, therefore, FIR was registered against respondents No.2 to 4/accused.

3. After usual investigation, formal charge was framed against respondents No.2 to 4/accused to which they did not plead guilty and claimed to be tried. To prove its case, the prosecution has examined several PWs. the statement of accused was recorded under Section 342 Cr.P.C who denied the allegations of the prosecution case.

4. The trial Court after recording evidence and hearing counsel for the parties, acquitted respondents No.2 to 4/accused under Section 245(i) Cr.P.C by order dated **20.12.2018**. The appellant has preferred instant Criminal Acquittal Appeal against the said acquittal order.

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

6. The perusal of impugned order clearly shows that there were material contradictions in the statement of the prosecution witnesses and there is civil dispute already pending between the parties, therefore, the trial Court has rightly observed in the impugned order as follows:-

Moreover there is material contradictions in the statement of PWs and it appeared that there is civil dispute in this regard lis is pending between the parties, as such is actual bone contention, which creates doubt in prosecution story its benefit goes to accused persons, reliance is placed upon 1995 SCMR 1345, 2011 SCMR 841, 2013 PCrLJ 843.

Above observation is supported by the fact that appellant himself admitted that “*there is no eye witnesses of the incident from Mohallah*”. He has further deposed that “*there was Danda with Faisal and no weapon was with anyone*”. Therefore, it was not a case of **Section 506-B PPC** and complainant and I.O have not produced medical certificate of any injury.

7. In view of the above, the impugned does not require any interference by this Court and the learned trial Court has rightly acquitted Respondent No.2 to 4. Accordingly, instant Criminal Acquittal Appeal is dismissed

JUDGE

Karachi
Dated:14.03.2019

Ayaz Gul