

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.184 of 2019

Date	Order with signature of Judge
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Fresh Case

1. For orders on M.A No.2826/2019 (U/A)
2. For orders on M.A No/2827/2019 (Ex/A)
3. For hearing of main case.

26.03.2019

Mr. Irfan Ali, advocate for the appellant.

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the Judgment dated **21.02.2019** passed by the learned XIX-Judicial Magistrate, East Karachi in Criminal Case No.526/2018 arising out of FIR No.87/2018 under Sections 448, 380, 506-B PPC registered at P.S Shakra-e-Faisal, Karachi, whereby learned trial Court had acquitted the accused/Respondent No.2.

2. To be very precise, the facts of the case are that the appellant/complainant lodged the FIR against respondent No.2 stating therein that accused/Respondent No.2 on unknown date and time illegally trespassed flat of appellant/complainant i.e flat No.A-114, First Floor, Omega Heights, Block-13, Gulistan-e-Johar, Karachi and committed theft of articles of appellant/complainant and on 23.01.2018 at a road near union office of Omega Heights, Block-13, Gulistan-e-Johar, Karachi the accused/Respondent No.2 issued threats of dire consequences to the appellant/complainant, therefore, appellant lodged such FIR against him.

3. After usual investigation, challan was submitted in the trial Court and formal charge was framed against respondent/accused to which he pleaded not guilty and claimed to be tried. The prosecution

examined several PWs and closed their side for evidence. Statement of respondent/accused under Section 342 Cr.P.C was recorded. He did not opt to be examined on oath nor produced any evidence in his defence.

4. Learned trial Court after hearing learned counsel for the parties, acquitted accused/ Respondent No.2 by judgment dated **21.02.2019**. Therefore, the appellant/ complainant has filed the instant Criminal Acquittal Appeal.

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

6. Learned counsel for the appellant/complainant contended that the impugned judgment passed by the trial Court is based on mis-reading and non-reading of evidence as the learned trial Court has totally ignored the evidence of two independent witnesses namely Anjum Husain and Usman Ghani. He further contended that three witnesses have fully supported the version of the appellant/complainant, therefore, the impugned judgment has been passed in a hasty manner without discussing the material evidence of the case.

7. From perusal of record and evidence of the parties, it appears that this was case of no evidence for prosecution against accused/ Respondent No.2. The following observations of trial Court are worthy of taking note of:-

Now coming towards the cross of complainant, it may be mentioned that complainant admitted in his cross that the application produced at Ex:3/D was moved after the delay of almost 21 days from the date of incident. Complainant also admitted in his cross that the delay of 21 days is not explained in the contents of application produced at Exh.3/D. From the perusal of contents of FIR produced by prosecution at Exh.3/A, it appears that the date of incident is mentioned as 23.01.2018 and the date of report (registration of FIR) is mentioned as

17.02.2018 which reflects that FIR of this case was also got registered after the delay of more than 21 days. As per examination in chief of complainant, he (complainant) was accompanied by his friend Muhammad Afzal during the occurrence of incident Dated 23.01.2018 but complainant during his cross admitted that the name of any friend namely Muhammad Afzal is not stated in contents of FIR and in application produced at Exh.3/D. Similar admission was also made by Investigation Officer Muhammad Iqbal as the (Investigation Officer Muhammad Iqbal) admitted in his cross that it is not stated in the FIR that complainant was accompanied by his friend at the time of incident. As per examination in chief of complainant, area people had also gathered at the time of occurrence of incident Dated: 23.01.2018 and out of them Anjum and Usman came forward and offered their help to complainant and they (i.e complainant, Anjum and Usman) shared their contact numbers with each other but complainant during his cross admitted that nothing in respect of two eye witnesses of incident is mentioned in the contents of FIR and in the contents of application produced at Exh.3/D.

The above observation of the trial Court for acquittal of the respondent are also based on several judgments of superior Courts specifically mentioned in the impugned order. The learned counsel for the appellant has not even suggested that the case law referred by trial Court was not relevant in the case of respondent.

8. In view of the above observations, instant Criminal Acquittal Appeal is dismissed in *limini* alongwith pending applications.

JUDGE

Ayaz Gul