

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Criminal Acquittal Appeal No.655 of 2018**

Date	Order with signature of Judge
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**For orders as to non-prosecution.**

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(As per diary of Deputy Registrar, Judl. as at flag "A").  
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**05.04.2019**

Mr. Afaq Yousuf, advocate for the appellant.  
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**NAZAR AKBAR, J:-** This Criminal Acquittal Appeal is directed against the Judgment dated **05.11.2018** passed by the learned VI-Judicial Magistrate, Malir Karachi Criminal Case No.139/2017 arising out of FIR No.360/2017 registered at P.S Sachal, Karachi under Sections 146/147/506/354/342/186/337-A(i)/34 PPC, whereby learned trial Court had acquitted the accused/ Respondents No.2 to 8 under Section 245-(1) Cr.P.C.

2. Through the appeal is listed for non-prosecution, since the learned counsel is present, therefore, I have heard him before issuing notice to Respondent.

3. To be very precise the facts of the case are that on 08.07.2017 at about 0930 hours at Dow Hospital, the accused/Respondents have formed unlawful assembly with the common object and beaten appellant/ complainant for getting illegal favour against the other officials of Dow Hospital and upon her refusal, they issued threats to the appellant/ complainant. Therefore, appellant/complainant registered FIR against the accused persons.

4. After usual investigation, challan was submitted in the trial Court and formal charge was framed against accused persons.

Learned trial Court after recording of prosecution evidence and hearing learned counsel for the parties, acquitted accused/ Respondents No.2 to 8 by judgment dated **05.11.2018**. 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 contended that the impugned judgment is against the basic principles of criminal justice and the learned trial Court has passed a capricious judgment. He further contended that the trial Court has not appreciated the deposition of the complainant and her witnesses were not specifically confronted during cross-examination by the counsel for the accused and the presence of the accused persons at the scene of occurrence was not challenged as the accused persons admitted their presence at the scene of occurrence, therefore, the impugned judgment is liable to be set aside.

7. The perusal of impugned judgment shows that there were contradictions in the cross-examination of appellant/ complainant and it was found by the trial Court that the charge against the accused/ respondents was groundless. In this context the observations of the trial Court in the impugned judgment are well reasoned on the basis of following observations of the trial Court about evidence of the appellant herself:

*It is pertinent first to evaluate the evidence of complainant, who was examined at Ex.3. She deposed in her chief-examination that the accused torn off her cloths and her body parts was exposed. Later in her cross-examination she admitted that she did not disclose her alleged outraging of modesty in her application submitted*

*to vice chancellor. It casts doubt upon the happening of the same event since she did not mention such grievous offence in her earlier account of events addressed to the competent authority but, later deposed the same before this court. Moreover, prosecution did also not produce any case property E.g. any torn of shirt/cloths of the complainant. Regarding the same point she also admitted in her cross-examination that it is a fact that I have not specifically disclosed under the contents of my FIR as to how my modesty was outraged. She further went on to admit that it is a fact that I did not mention under my press conference that my modesty was outraged by the accused, she voluntarily explained that I deliberately withheld that fact before the media to save myself further embarrassment. The same explanation does not inspire confidence as when she could write her plight and ordeal to the competent authority, but she did not, and later went on to disclose all at PS regarding the same embarrassing moment.*

*Furthermore, the accused under their statement under section 342 Cr.P.C stated that there was an inquiry conducted against the complainant for her malpractices and alleged embezzlements, and that she lodged instant case over the same grudge. The same plea taken by accused was well supported by complainant herself who had admitted in her cross-examination that, it is correct to suggest that as per practice in our hospital forged slips were made and the money was charge upon surreptitiously. She further admitted that, it is correct to suggest that my I.D was being used for such forgery and illegal making of money. Considering such admission by complainant, the presumption of concoction, exaggeration and grudge against accused cannot be completely ruled out.*

The above facts and evidence of appellant/complainant before the trial Court were enough for acquittal of the Respondents/accused and the trial Court has relied on certain judgments of superior Court mentioned in the impugned judgment.

8. In view of the above, instant Criminal Acquittal Appeal is dismissed in limini.

JUDGE