

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Acquittal Appeal No.201 of 2018

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

Appellant : Muhammad Salahuddin, through
Mr. Muhammad Arshad, Advocate.

Versus

Respondent No.1 : The State
Ms. Rahat Ahsan, Additional P.G.

Respondent No.2 : Muhammad Gulfam
Respondent No.3 : Waqar S/O Muhammad Gulfam
Respondent No.4 : Irfan S/O Muhammad Gulfam
Respondent No.5 : Rizwan S/O Muhammad Gulfam

Date of hearing : **12.04.2019**

Date of decision : **12.04.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the Judgment dated **19.02.2018** passed by the learned XIII-Judicial Magistrate, Central Karachi in Private Complaint No.08/2017, whereby learned trial Court had acquitted the accused/Respondents No.2 to 5 under Section 265(i) Cr.P.C.

2. Brief facts of the case are that the appellant/complainant filed private complainant against the accused/Respondents No.2 to 5 stating therein that the accused/Respondents had illegally encroached in front of their shops No.7, 8 and 9 situated at Ground Floor of Laiba Terrace, Nazimabad No.5, Block-C, Karachi and they also made illegal/ unauthorized construction for which appellant has earlier filed C.P No.D-1577/2014 before this Court which was

disposed of on 25.10.2016, as the appellant would have to approach the Anti-encroachment Tribunal and even the Anti-encroachment cell, KMS staff on his complaint had come to remove such illegal encroachment of the above said accused persons on 22.02.2017 at about 12:30 noon but the accused persons at that time resisted and also influenced them through a phone call from some Mr. Amir of C.M House, therefore, they stopped removal of encroachment work of such date. Thereafter on 23.02.2017 at about 0800 hours when the appellant came out from his flat to buy newspaper and was returning to his home back then the accused/Respondents attacked upon him, they were armed with Dandas, Chappar and one pistol and they had beaten the appellant due to which appellant's tooth was broken and thereafter the accused/Respondents threatened the appellant that if the appellant again bring the Anti-encroachment staff for removal of encroachment, they will kill him. The incident was seen by the witnesses Yasir, Nasir, one newspaper wala Haji Farkhruddin and other Mohalla people who also saved the appellant from accused/Respondents. Therefore, the appellant filed direct complaint against them.

3. Before taking cognizance by the trial Court, appellant/complainant was examined under Section 200 Cr.P.C and thereafter summons were issued to the accused/ Respondents to appear before the trial Court, thereafter the accused persons attended the Court. In order to prove the charge, the applicant/complainant examined five PWs and closed their side. Statements of accused under Section 342 Cr.P.C were recorded wherein accused persons claimed their innocence but they neither examined themselves on oath nor the lead any evidence in their defence.

4. Learned trial Court after hearing learned counsel for the parties by judgment dated **19.02.2018** acquitted the accused/respondents under Section 265(i) Cr.P.C. Against said judgment the appellant/complainant preferred instant Criminal Acquittal Appeal.

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

6. Learned counsel for the appellant contended that the learned trial Court had erred in law while holding that there are contradictions in the depositions of the appellant/complainant. He further contended that an uninterested and star witness has also supported the version of the appellant/complainant so also the medical officer/MLO has also supported the version of the appellant/complainant in his medical report as well as in his evidence but the trial Court has failed to consider the said evidence.

7. Learned Additional P.G. representing the State has also supported the impugned judgment. She contended that the impugned judgment has been passed in accordance with the law.

8. The perusal of impugned judgment shows that there were contradictions in the prosecution evidence 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 evidence of the prosecution witnesses:-

Further, perusal of evidence clearly shows major contradictions in the evidence adduced by the witnesses as complainant deposed that all four accused persons were present but very contrary PW-Muhammad Yasir has admitted in his cross examination at Ex.5 that accused Rizwan was not present at the place of occurrence. Not only this but complainant has also deposed that his two sons

Muhammad Nasir and Muhammad Yasir came there and rescued him but PW-Farkhruddin at Ex.6 has admitted in his cross examination that only a son of complainant came at the place of occurrence. Further, deeper appreciation of evidence reveals that complainant deposed that accused Rizwan was holding pistol, Waqar was holding Chappar and Irfan was holding wooden stick whereas PW-Fakhruddin has admitted in his cross examination that nothing was in the hands of other three accused persons. In view of such contradictory statement of witnesses, case of the complainant is full of doubts and dents and it appears that incident did not took place in the manner as setup by the complainant.

Further, delay in going to Abbasi Shaheed Hospital after two days, no explanation was furnished by the complainant. Incident took place on 23.02.2017 as alleged but complainant got letter for medical on 24.02.2017 meaning thereby he went police station after a day of incident which also creates doubt in the case. It is also noted from evidence that when complaint (complainant) got letter for medical on 24.02.2017 then why he went to Abbasi Shaheed Hospital on 25.02.2017 but very contrary PW-2 Muhammad Nasir deposed that his father went for medical on 24.02.2017 and got medical report on same day which was also admitted in his cross examination. Medical Report says right lower tooth was broken whereas PW-2 has admitted in his cross examination that left side tooth of his father was broken, these contradictory statements of the witnesses have shaken the credibility of the complainant's case and makes it highly doubtful.

The above evidence before the trial Court was enough for acquittal of the Respondent and the trial Court has relied on findings of superior Court mentioned in the impugned judgment.

9. In view of the above, instant criminal Acquittal Appeal is dismissed.

JUDGE

Karachi
Dated: 29.03.2019

Ayaz Gul