

SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Acq. Appeal No.140 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For orders on office objection & reply of Adv at flag 'A'.
 2. For orders on M.A No.2128/2019 (Ex/A)
 3. For hearing of main case.
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15.04.2019

Mr. Saathi M. Ishaque, advocate for the appellant.

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NAZAR AKBAR, J:- This CrI. Acq. Appeal is directed against the judgment dated **31.01.2019** passed by the XVIIth Civil Judge & Judicial Magistrate West, Karachi in **Cr. Case No.716/2018** whereby the trial Court has acquitted Respondent No.1 by extending them benefit of doubt.

2. Brief facts of the prosecution case as alleged in the FIR got registered by complainant against accused in case are that complainant's father had let out one shop bearing No.37/A-35-A-1 situated at Wilayatabad, Manghopir Karachi to Mehtab son of Altaf on monthly rent basis of Rs.4000/- and advance amount of Rs.10000/- was paid to him, however, after death of his father rent of shop was being received by his mother. Thereafter, accused Mehtab has obtained another shop on rent basis from the complainant and wind up business of Marble and started Tandoor on both shop and got installed Gas Meter. That accused continued business of tandoor for period of 10 months which causes outstanding dues for i.e Gas, electricity, water and rent for Rs.6,84,471/- and he ran away without payment of same. That complainant demanded for payment of same from the accused in case again and again but accused instead of payment of same extended threats of dire consequences to him. On

23.02.2018 accused in case along with two other unknown persons met him on the way near Hari Masjid and pointed pistol to him so also asked that if ever he will demand for payment from him would face dire consequences. Hence this case.

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

4. The perusal of the impugned order shows that the learned trial Court has rightly observed that:-

.....“There are so many circumstances, discussed above creating serious doubts in the prosecution case which go the roots of the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law.

Conviction must be based on unimpeachable evidence and certainly of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim “it is better that ten guilty persons be acquitted rather than one innocent person be convicted” which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the “mistake of Qazi (judge) is releasing a criminal is better than his mistake in punishing an innocent.

All these infirmities in the Prosecution case render the whole story doubtful and thus it cannot be relied upon for conviction of accused. It is well established that for the purpose of benefit of doubt to an accused more than one infirmity is not required. Single infirmity creating reasonable doubt in the mind of a prudent man regarding the truth of the charge, makes the whole case doubtful”.....

The above observations of the trial Court for acquittal of respondent No.1 were more than enough. In my humble view no case was made out at all. The dispute, if any, was recovery of rental or other dues

but the appellant instead of filing suit for recovery decided to file criminal case.

5. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Crl. Acq. Appeal is dismissed alongwith listed application.

JUDGE

SM