

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Acq. Appeal No.270 of 2019

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

Appellant : Hafiz Muhammad Rafiqs,
through Mr. Tariq Hussain, advocate.

Versus

Respondent No.1 : Syed Azher Hussain Abidi

Respondent No.2 : The State,

Date of hearing : **17.05.2019**

Date of decision : **30.05.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the judgment dated **09.04.2019** passed by the VIth Civil Judge / Judicial Magistrate Malir, Karachi, in Cr. Case **No.178/2017** whereby the trial Court has acquitted Respondent No.1 by extending him benefit of doubt.

2. Brief facts of the prosecution case narrated in the FIR are that on **08.09.2012** accused was handed over a Flat No.J-27, situated at Third Floor Shumail View, Phase-II, Scheme No.33, Gulzar-e-Hijri Karachi by complainant on rent but accused did not pay the rent of the same and later accused occupied the same flat after making forged documents. Hence this case.

3. I have heard the learned counsel for the appellant and perused the record. The counsel was also allowed to file written arguments.

4. The appellant in written arguments has emphasized on the point that the pendency of civil suit has nothing to do with the criminal proceeding in case of the property in dispute. However, in

the case in hand this proposition is not relevant simply because respondent has not been acquitted on the ground that there is civil dispute pending between the parties. Learned trial Court has acquitted the respondent on merit on finding lacuna in the story on the basis of evidence of the prosecution. It is not the case of the prosecution that there is no iota of doubt in the prosecution story and therefore, conviction should have been a natural consequence. Learned trial Court has very elaborately discussed the evidence, which does show several lacunas in the prosecution story. To begin with, the date of incident is shown as **13.2.2017** and the report has been lodged on **09.11.2017** without any explanation that under what circumstances there is such an inordinate delay. The court had hardly any option to convict the respondent when the story of prosecution on the face of it appeared to be doubtful. It, however goes without saying that whatever is the decision of the trial court in Cr. Case **No.178/2017** it would have no bearing on the civil litigation between the parties. In this context the learned counsel for the appellant himself has referred to the case of *Karachi Transport Corpn, and another ..Vs.. Muhammad Hanif and others (2009 SCMR 1005)*. In the reasoning part of the impugned judgment the following evidence discussed by the trial court was more than enough to acquit the respondent.

“The complainant himself deposed in his examination in chief that, I had rented out the flat No.J-27 to Azhar Hussain in Shumail view in year 2012 and as per terms of agreement the rent was fixed Rs.5000/- per month with 20,000/- advance. As the complainant was refused rent by accused from July 2015 and he did not pay the same till 13.02.2017, yet complainant remained indolent and did not approach any forum to recover rent. Complainant deposed in his examination in chief that, “I submitted application before concerned PS”. But when put to the test of cross examination, he admitted that it is the fact that I have not produced application before PS and voluntarily stated and produced that application

at Ex.3/J. The perusal of same application reveals that it was submitted before SHO Sachal on 28.8.2017, and admittedly the refusal of rent was reported after 18 months. As per deposition of complainant he was refused rent by accused on demand on 13.02.2017, yet he approached concerned police station after a delay of 06 months. Such a long and unexplained delay on part of complainant creates doubt over prosecution story. Furthermore, the same application reveals that Union President Mahmood Alam had intervened and accused was duly instructed by him to do the needful. But, the complainant admitted in his cross examination that the same president of union has not been made witness in the instant case, the person who had allegedly heard parties over the dispute once not produced before the court as witness also creates doubts over the prosecution story. Prosecution also failed to explain such a long and inordinate delay in lodging of the FIR. The accused had allegedly stopped paying the rent from July 2015, the complainant was allegedly misbehaved and was again refused the rent on 13.02.2017, the application of the same incidents were submitted to SHO concerned on 28.8.2017, whereas the FIR was lodged on 09.11.2017. The unexplained delay in lodging of FIR creates room presumption of concoction, fabrication after thought and deep consultation”.

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