

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.339 of 2017

Date	Order with signature of Judge
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For hearing of main case.

Present: Mr. Justice Nazar Akbar

Appellant : Nasir Hussain S/o Late Sadiq Hussain (Nemo).

Respondent No.1 : Qaisar Khan S/o Ayub Khan
Through Mr. Taj Fareen Khan, advocate.

Respondent No.2 : The Presiding Officer, Court of J.M XIX
Karachi West.

Respondent No.3 : The Prosecutor General Sindh,
Through Ms. Rahat Ahsan, Addl. P.G.

Date of hearing : 19.07.2018

Date of decision : 19.07.2018

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the order dated **04.05.2017** passed by the learned XIX-Judicial Magistrate, Karachi West in Criminal Case No.505/2010 arisen out of FIR No.35/2010 under Sections 448 and 34 PPC R/W registered at P.S Iqbal Market, Karachi whereby learned trial Court had acquitted the accused/Respondent No.1 by extending them benefit of doubt.

2. Brief facts of the case are that appellant/complainant lodged FIR on 15.01.2010 alleging therein that he used to reside at house No.12/11, Liaquatabad, Karachi and used to work in PWD department. His father was allotted a land for poultry farm by DC West and they were running the same since last many years. Between 14.9.2008 and 15.9.2008 Respondent No.1, and his companions throne stones at appellant's poultry farm with intention

to occupy the same. He has lodged an FIR No.470/2008 U/S 448, 337H(ii), 427, 506, 435, 34 PPC, registered at P.S Pakistan Bazar. On 15.01.2010 when the appellant/complainant went to visit his farm, some persons were lying the stones there and were occupying the said farm by way of raising constructions over there. Then appellant/complainant called the police at Toori Bangash Chowki whereby a police mobile came there and ASI Atta Hussain alongwith other police officials apprehended four persons who disclosed their names as Ali Mohammad S/o Raza Mohammad, Jamshed S/o Babar Khan, Umar Deen S/o Rumaal Deen and Rizwan Ullah S/o Babar Khan, thereafter they were booked in the FIR.

3. Formal charge was framed against accused persons to which they pleaded not guilty and claimed to be tried.

4. In order to prove its case, prosecution examined complainant Nasir Hussain as PW-01 at Ex:06, PW Ameer Ali as PW-2 at Ex:07, PW Mehmood Akhtar as PW-03 at Ex:08, PW Arif Khan as PW-04 at Ex:09 and PW Ishaaq as PW-05 at Ex:10.

5. After examination of witnesses and hearing learned counsel for the parties, learned trial Court acquitted accused/ Respondents No.1 by extending him benefit of doubt. Thereafter the complainant/appellant filed instant Cr. Acq. Appeal against the said order.

6. With the help of learned counsel for Respondent No.1 and Additional Prosecutor General I have gone through the file and perused the record. The trial Court has rightly acquitted the Respondent and relevant portion of the impugned judgment which justifies acquittal is reproduced as under:-

Furthermore complainant has deposed that accused ran away from the place of incident, it means that

accused did not remain there unlawfully, in such circumstances ingredients of section 441 PPC punishable under section 448 PPC are not attracted. PW-03 and PW-04 has also deposed that they did not see the accused at the place of incident i.e said property, thus, it is established that case of prosecution is highly doubtful.

14. In view of above, instant Crl. Acq. Appeal was dismissed by short order dated **19.7.2018**, above are the reasons for the same.

JUDGE

Karachi
Dated: 24.07.2018

Ayaz Gul/PA