

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acquittal Appeal No. 387 of 2017

Mushtaq Ahmed S/o Nazeer Ahmed..V/s.. *The State and another*

Disposed of Matter.

For orders on M.A. No. 9118 of 2018

ORDER

Date of hearing : 03-12-2018.
 Date of Order : December, 2018.
 Appellant : Mr. Khawaja Muhammad Azeem, advocate
 Respondents : Mr. Siraj Ali Khan, Addl. PG.
 None for Respondent No.2.

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Kausar Sultana Hussain, J:- Through captioned Misc. Application, appellant Mushtaq Ahmed S/o Nazeer Ahmed has impugned judgment dated 09.08.2017, passed by the Court of learned Xth Judicial Magistrate, Karachi Malir in complaint Case No.16/2016 (Old No.09/2015) Police Station, Malir Cantt., Karachi, whereby accused was acquitted under Section 245(1) Cr.P.C. by intending benefit of doubt.

2. Relevant facts of the case are that initially FIR bearing No.207 of 2010 was registered at Police Station Malir for offence under Section 302/34 PPC. It was alleged that as a counter blast of the above mentioned FIR, accused Muhammad Rafique Gujjar S/o Ali Muhammad involved in Crime No.207 of 2010 had got registered a FIR bearing No.25 of 2012 dated 09.03.2012 under Section 395 PPC at Police Station Malir Cantt., Karachi (dated of offence is 24.09.2011) directed against some of the prosecution witnesses of FIR No.207 of 2010 including Mushtaque Ahmed S/o Nazeer Ahmed appellant in the present appeal.

3. It revealed from record that the complainant firstly moved an application regarding registration of case u/s. 395 PPC before SHO Malir Cantt., but he did not lodged the FIR, thereafter the complainant Muhammad Rafique Gujjar S/o, Ali Muhammad moved the Criminal Petition No.139 of

2011 before the learned Session Judge, Malir Karachi as such upon the direction of learned Sessions Judge, FIR was lodged against the nominated accused persons. After registration of FIR, investigation was completed and final Challan was submitted under 'B' Class with the Court of learned Vith Judicial Magistrate, Malir Karachi, who vide order dated 21.07.2012 approved the final report of the case in "C" Class instead of "B" Class. Subsequently, approval of such report in "C" Class was challenged by the accused persons before a Division Bench of this Court at Karachi in C.P. No.D-3785/2012 which by order dated 09.09.2014 allowed the Petition that the impugned order dated 21.07.2012 passed by the learned Vith Judicial Magistrate modified to the extent that the final report of the case was approved in Class "B" instead of Class 'C'. Subsequently, one of the accused namely Rustom Ali and Dr. Abu-Eijaz Rustam moved an application before the Court of learned Vth Judicial Magistrate, Malir Karachi requesting therein to pass order directing police to submit Challan/Report to commence proceedings against Muhammad Rafique Gujjar the complaint of Crime No.25 of 2012 as per provisions contained in Section 182 PPC. Consequently on 13.10.2014 SHO Police Station Malir submitted Challan report under Section 182 PPC before the Court of Ilaga Magistrate, Police Station, Malir Cantt., Karachi stating therein that final report u/s.173 Cr.P.C. for Challan No.19/2012 for FIR No.25/2012 dated 09.03.2012 u/s. 395 PPC has already been submitted before the Court which has been approved by the Court with the orders that proceeding u/s.182 PPC be initiated and accordingly as per directions of the Court Challan report against Muhammad Rafique Gujjar S/o, Ali Muhammad u/s. 182 PPC is submitted for legal action. On the other hand the complainant had proceeded before the learned Additional Sessions Judge III, Malir Karachi for registration of private complaint in the same matter wherein FIR No.25/2012 was already lodged. He in his statement u/s.200 Cr.P.C. alleged that Police is favouring other party; that SHO of Police Station Malir without consent of complainant changed the Investigation Officer of the case with malafide intention and thus dispose of the matter under Class

“B” and released the accused persons u/s. 169 Cr.P.C, that he has already submitted an application with DIG Investigation, Zone East, Karachi for transfer of investigation as he has no confidence upon the Investigation Officer but no action taken on such application. The learned Additional Sessions Judge III Malir, Karachi vide order dated 01.08.2016 in private Complaint No.02/2012 filed by the complainant Muhammad Rafique Gujjar passed order whereby dismissing the private complaint, the operative part of the above mentioned Court order is as under:-

“In view of the above facts and circumstances of the case I am at the humble opinion in the light of above evidence that there is old enmity as well as family disputes between the parties and criminal litigation as well as counter cases are pending against the parties, there is no sufficient ground for proceedings therefore, I see no substance in the private complaint in hand which is hereby dismissed as not maintained”

4. The court of learned Xth Judicial Magistrate, Malir Karachi proceeded with the case u/s 182 P.P.C and examined the prosecution witnesses and after framing points for determination passed a well reasoned order whereby the trial Court reached to conclusion that the prosecution has failed to prove its case against Muhammad Rafique S/o, Ali Muhammad for commission of offence punishable u/s.182 PPC, therefore by giving benefit of doubt, the accused was acquitted from the charge u/s. 245(1) Cr.P.C.

5. During trial it came on record that PW.1 Inspector Irshad Ahmed Gopal had no concern with the investigation of Crime No.25/2012, PW2 SIP Dildar Hussain during his Cross-examination admitted that statement u/s. 161 Cr.P.C. of witnesses namely Ghulam Mustafa, Allah Ditta, Maqsood Ahmed, Muhammad Mushtaq and Muhammad Siddique were already recorded by the Investigating Officer ASI Faisal Raza. He also admitted that statements of above mentioned witnesses supported the version of the complainant/accused. The said PW further admitted that he had neither

recorded statements of any person of the locality where alleged incident dated 24.09.2011 took place and neither issued any notice u/s. 160 Cr.P.C. to any person.

6. It is well settled principle of law that acquittal of accused from charge always carries double presumption of innocence is his favour. Parameters of appreciation of evidence in appeal against acquittal are completely different from the appeal against conviction. Consequently Court are always reluctant to interfere in the judgment of acquittal unless trial Court had failed to consider any material evidence having direct link with the commission of offence or same is perverse and suffering from serious illegality or material irregularity.

7. From the facts and circumstances, referred above, I am of the view that there is no sufficient and concrete evidence against the accused to prove his guilt for commission of the alleged offence which is based on enmity and animosity.

8. I have also scanned the impugned judgment and found no illegality or irregularity as such same does not invite interference by this Court. Consequently, instant acquittal appeal being devoid of any legal substance stands dismissed.

J U D G E