

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No. S – 255 of 2019

For hearing of main case

(Jail Roll received)

Mr. Shabbir Ali Bozdar Advocate for the appellants

Mr. Khalil Ahmed Maitlo, DPG for the State

Date of hearing: 09.12.2019

Date of decision: 09.12.2019

J U D G M E N T

Aftab Ahmed Gorar, J: Through this Criminal Appeal, the appellants namely Mehdi Hassan S/o Arbelo Shaikh and Shahzado alias Shado S/o Muhammad Umar, have assailed the impugned judgment dated 30.10.2019 passed by learned III-Additional Sessions Judge, Mirpur Mathelo, whereby he has convicted and sentenced the appellant as follows;

“For the foregoing reasons, discussion and circumstances of the case, I hereby convict both the present accused namely Mehdi Hassan Shaikh and Shahzado alias Shado Mahar u/s 265-H(ii) Cr. P.C and sentence them for an offence punishable u/s 399 PPC to undergo for the period of 5 years R.I each and a fine of Rs.5000/- each. In case, in default in payment thereof, the accused shall suffer one month S.I each more. I also convict them u/s 265-H(ii) Cr.P.C and sentence them for an offence punishable u/s 401 PPC to undergo for a period of 03 years R.I each and a fine of Rs.3000/- each. In case, in default, in payment thereof, the accused shall suffer 15 days S.I each more. I also convict them u/s 265-H(ii) Cr.P.C and sentence them for an offence punishable u/s 324 PPC to undergo for a period of 05 years R.I each and a fine of Rs.5000/- each. In case, in default, in payment thereof, the accused shall suffer one month S.I each more. I also convict them u/s 265-H(ii) Cr.P.C and sentence them for an offence punishable u/s 353 PPC to undergo for a period of 01 years R.I each and a fine of Rs.1000/- each. In case, in default, in payment thereof, the

accused shall suffer 5 days S.I each more. However, the benefit of Section 382(b) Cr.P.C stands extended to both accused from the date of their arrest. It is also clarified that all the sentences of the imprisonment awarded to the accused shall run concurrently.”

2. Precisely stated facts of the prosecution case are that on 09.11.2018 at 2230 hours, complainant / HC Aijaz Ali Gadani lodged the FIR at Police Station Mirpur Mathelo on behalf of the State, that when they were on patrolling duty, and on receipt of spy information regarding availability of the required accused in Crime No.92/2018 u/s 392 PPC of P.S Daharki near Peer Rabato with intention to commit some offence, hence they proceeded towards the pointed place and at about 2100 hours reached there and on on the light of vehicle the present appellants and one Nizamuddin (absconding accused) having weapons, after encounter, the appellant Mehdi Hassan was arrested in injured condition by the police at the spot and one 30 bore pistol with magazine was secured from his possession while rest two culprits namely Shahzado alias Shadoo and Nizamuddin Mahar made their escape good from the scene of offence. Thereafter PC-Deedar Hussain and PC-Manzoor Ahmed were appointed mashirs, the recovered pistol along with magazine was sealed at the spot and such memo of arrest and recovery was prepared at the spot. The appellant/accused was referred to Civil Hospital Mirpur Mathelo for his medical treatment, where PC Abdul Ghaffar and PC Abdul Moin were left over the injured accused Mehdi Hassan, then the complainant went to Police Station and lodged the FIR, whereas, separate FIR Crime No.162/2018 u/s 24 Sindh Arms Act-2103 was lodged against the appellant

/accused Mehdi Hassan for keeping unlicensed weapon. Thereafter appellant / accused Shahzado alias Shado Mahar also joined the trial

3. The formal charge was framed against the appellants / accused at (Ex.6) to which they pleaded not guilty and claimed to be tried. The prosecution in order to substantiate its case, examined PW-1 complainant HC- Aijaz Ali at (Ex.7), who memo of arrest and recovery of pistol, letter to Medical Officer, FIR and roznamcha entries; PW-2 / mashir PC- Deedar Hussain at (Ex.8); PW-3 I.O / SIP Shah Muhammad Mirani at (Ex.9), who produced entry, mashirnama of visiting the place of incident and report of Forensic Science Laboratory Larkana, Medico-legal Certificate of appellant Mehdi Hassan, Criminal record of appellant. Thereafter side of the prosecution was closed by learned ADPP for the State vide his statement at (Ex.11).

4. The statements of the appellant / accused were recorded u/s 324 Cr.P.C, in which they denied the prosecution allegation and further stated that they are innocent and have falsely been implicated in this false case. They neither examined themselves on oath nor any witnesses in defence.

5. Learned trial Court after hearing the learned counsel for the parties convicted the appellants /accused as stated herein above.

6. Learned counsel for appellants mainly contended that appellants are innocent and have falsely been implicated by the police with malafide intentions and ulterior motives. He further contended that evidence

adduced by the prosecution at trial was not properly assessed and evaluated by learned trial Court, though there are sufficient discrepancies in their evidence, which were not considered by the learned trial Judge while passing the impugned judgment. It is further contended that the appellants have also served out substantive portion of their sentences, therefore, he also prayed for reducing the sentence of the appellants to that of already undergone. In support of his contentions, he relied upon case of **Gul Naseeb v. The State (2008 SCMR 670)** and **Niaz-ud-Din v. The State (2007 SCMR 206)**.

7. Learned Deputy Prosecutor General appearing for the State supported the impugned judgment, however, he conceded to the reduction of sentence of the appellants to that of already undergone. On query, learned DPG admitted that appellants are not previous convict.

8. I have carefully heard the learned counsel for the parties and scanned the entire evidence. After perusing the evidence of prosecution witnesses, it appears that no doubt complainant and P.Ws being the police witnesses have supported the prosecution case in their examination-in-chief, however, there are material discrepancies in their cross-examination. Moreover the appellants have served out the substantive portion of their sentences including the remissions earned by them

9. Upshot of the above discussion is that the learned counsel for the appellants has made-out a case for reduction in the sentence of appellants, therefore, while following the dictum laid-down in cases of ***Gul Naseeb and***

Niaz-ud-Din (supra), the above Criminal Appeal of the appellants is partly allowed. Consequently, while maintaining the conviction of the appellants, the sentence of the appellants inflicted on them is reduced to that of already undergone including sentence of fine amount. Appellants are behind bars. They shall be released forthwith, if not required in any other case. The instant Criminal Appeal stands disposed of in the above terms. These are the reasons of my short order dated 09.12.2019.

Judge

ARBROHI