

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Crl. Appeal No. D-65 of 2012**  
**Crl. Jail Appeal No. D-116 of 2016**

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For Regular Hearing.

Present:  
**Mr. Justice Abdul Rasool Memon &**  
**Mr. Justice Aftab Ahmed Gorar.**

Mr. Manzoor Hussain Larik Advocate for appellant in Crl. Appeal No.D-65 of 2012.  
Mr. Riaz Hussain Khaskheli Advocate for appellant in Crl. Jail Appeal No.D-116 of 2016.  
Mr. Abdul Rehman Kolachi, Deputy Prosecutor General.

Date of hearing: 30-08-2017.  
Date of Judgment: 30-08-2017.

**J U D G M E N T**

**Aftab Ahmed Gorar J.,** Through captioned appeals, appellants Noor Muhammad alias Nooro and Sultan Kaleri have assailed impugned judgments dated 24.09.2012 and 01.06.2016, arising out of same crime No.40 of 2010 of P.S.Gambat, passed by learned Judge, ATC Khairpur.

2. During trial, prosecution examined PW-1 complainant H.C. Subhan Ali Khaskheli at Exh.9, P.W-2 H.C.Khadim HussainKhokhar at Exh.10, PW-3 Inspector Altaf Hussain Burdi at Exh.11, PW-4 PC Muhammad Hassan Jamro at Exh.13 and PW-5 Inspector Muhammad Ameenat Exh.17, however, after arrest of appellant Sultan Kaleri, prosecution examined PW-1 HC Subhan Ali Khaskheli, at Exh.4, PW-2 HC Khadim Hussain Khokhar at Exh.5 and PW-3 Inspector Altaf Hussain Burdi at Exh.8.

3. Statements of appellants were recorded in terms of section 342 CrPC, wherein they denied the prosecution story. However, appellants did not examine themselves on oath in disproof of charge so also declined to record statements of defence witnesses.

4. Learned counsel for appellants mainly contended that appellants are innocent and have falsely been implicated by the police. They further contended that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial court. They also added that encounter continued for about 05-minutes but none from the either side sustained any scratch nor the police vehicles received any damage, as such case against the appellants is highly doubtful, therefore, they also prayed for reducing the sentence of the appellants to that of already undergone as the appellants have served out substantial portion of sentence.

5. Learned Deputy P.G supported the impugned judgments, however, he conceded to the reduction of sentence of appellants to that of already undergone. On query, he admitted that appellants are not previous convicts.

6. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

7. On scanning the evidence of prosecution witnesses, it appears that the encounter continued for about 05-minutes, but none from the either party/side received any scratch nor the police vehicles received any damage. Moreover, per jail rolls dated 30.8.2017, the appellant Noor Muhammad has served out his sentence for 04-years, 11-months and 06-

days with remissions earned by him are 01-year, 02-months and 13-days, while appellant Sultan Kaleri has served out his sentence for 02-years, 06-months and 26-days with remissions of 03-months and 03-days, which appears to be a substantial portion of sentence.

8. Upshot of the above discussion is that the learned counsel for the appellants have made out a case for reduction in the sentence of appellants, therefore, while following the dictum laid down in case of **Gul Naseeb v. The State (2008 SCMR 670)** and **Niaz-ud-Din v. The State (2007 SCMR 206)**, the above CrI. Appeals of the appellants are 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 be released forthwith, if not required in any other case.

JUDGE

JUDGE

Ahmed