

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Revision No. S- 75 of 2007

Crl. Appeal No. S-66 of 2007

23-09-2019

Mr. Achar Khan Gabole Advocate for appellant a/w appellant.

Mr. Ghulam Shabbir Dayo Advocate for complainant.

Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

J u d g m e n t

AFTAB AHMED GORAR J., Appellant Gul Hassan (in Crl. Appeal No. S-66 of 2007) was tried by learned Assistant Sessions Judge, Mirpur Mathelo in Sessions Case No.49 of 2003, arising out of Crime No.13 of 2003, registered with P.S, Mirpur Mathelo, whereby appellant was convicted and sentenced as under:

- i. *For offence under Section 324 PPC, appellant was sentenced to R.I for five years and to pay fine of Rs. 10,000/-.*
- ii. *For offence under Section 337A(i) PPC, appellant as sentenced to suffer R.I for one year.*
- iii. *For offence under Section 337F(iii) PPC, appellant was sentenced to suffer R.I for one year. In case of default in payment of fine, appellant to suffer S.I for two months more.*
- iv. *All sentences were ordered to run concurrently with benefit of Section 382-B Cr.PC extended to appellant.*

Whereas Crl. Revision No.S- 75 of 2007 was filed by the complainant Haq Nawaz and injured Rab Nawaz for enhancement of sentence, awarded to the appellant by the trial Court.

2. Learned counsel for appellant contended that appellant is innocent and has falsely been implicated by the complainant in this case. He further added that appellant is not previous convict and is first offender. He also contended that the appellant has expressed his readiness not to press his appeal on merit if his sentence is reduced to that of already undergone as he has served out major portion of sentence and he may be given a chance in his life to rehabilitate himself.

3. Learned counsel for the complainant and injured contended that there is no contradiction among the depositions of the witnesses regarding the time, place and manner of occurrence; that the prosecution has fully established the guilt of the appellant, therefore, appellant was ought to have been awarded full doze for the offence, but while awarding lesser punishment to the appellant, the trial Court has not assigned any mitigating circumstances. He prayed for dismissal of Crl. Appeal filed by the appellant and enhancement of sentence awarded to appellant.

4. Learned Deputy P.G conceded to the reduction of sentence of appellant to that of already undergone. On query, he admitted that appellant is not previous convict.

5. I have carefully heard learned counsel for appellant, learned counsel for complainant/injured as well as learned Deputy P.G for the State and scanned the entire evidence.

6. Admittedly, the appellant has served his sentence for about two years, which appears to be a substantial portion of sentence. In view of above discussion, I am of the view that appellant has made out a case for reduction of his sentence, 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)**, and in order to give a chance to the appellant in his life to rehabilitate himself, instant Crl. Jail Appeal of the appellant is partly allowed. Consequently, while maintaining the conviction of the appellant, the sentence of the appellant inflicted on him is reduced to that of already undergone. Appellant is present on bail. His bail bond stands cancelled and surety discharged. Office to return surety papers to the surety after proper verification and identification.

7. Insofar as Crl. Revision for enhancement of sentence awarded to the appellant by the trial Court is concerned, this is an incident of year 2003. The trial Court in the impugned judgment has also highlighted mitigating circumstances, therefore, no case for enhancement of sentence is made out and Crl. Revision Application No.S-75 of 2007 is without merit, same is dismissed accordingly.

Judge

ARBROHI