

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Jail Appeal No. D-106 of 2015
Crl. Appeal No. D-112 of 2017.

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. Nisar Ahmed Bhanbhro Advocate for appellant.
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

Date of hearing: 24-08-2017.
Date of Judgment: 24-08-2017.

J U D G M E N T

Aftab Ahmed Gorar J., Through captioned appeals, appellant Nazeer Shaikh has assailed impugned judgment dated 19.11.2015, passed by learned Judge, ATC Khairpur in special cases No.83 and 84 of 2014, whereby appellant was convicted and sentenced as under:

- i. U/s 148 PPC in crime No. 4/2014, appellant was convicted for 03-years with fine of Rs. 10,000/- and in case of default to suffer R.I for 02-months.
- ii. U/s 365 r/w section149 PPC, appellant was sentenced for 07-years RI with fine of Rs. 20,000/- and in case of default to suffer R.I for 03-months.
- iii. U/s 324 r/w section 149 PPC, he was sentenced to RI for 10-years with fine of Rs. 50,000/- and in case of default to suffer R.I for 06-months.
- iv. U/s 353 r/w section 149 PPC, he was sentenced to suffer R.I for 02-years.
- v. U/s 23(i) of Sindh Arms Act, 2013 in crime No. 5/2014, appellant was sentenced to suffer R.I for 07-years and to

pay fine of Rs.20,000/- and in case of default to suffer R.I for 03-months.

- vi. U/s 7 of ATA, 1997, appellant was sentenced to suffer RI for 10-years and fine of Rs. 50,000/- and in case of default to suffer R.I for 06-months.
- vii. All the sentences were ordered to run concurrently with benefit of section 382-B CrPC was extended to the appellants.

2. During trial, prosecution examined as many as 04-prosecution witnesses and thereafter statement of appellant was recorded in terms of section 342 CPC, wherein he denied the prosecution story. However, appellant did not examine himself on oath in disproof of charge so also declined to record statements of defence witnesses.

3. Learned trial court after hearing learned counsel for parties by judgment dated 19.11.2015, convicted and sentenced the appellant, as stated above.

4. Learned counsel for appellant mainly contended that appellant is innocent and has falsely been implicated by the police. He further contended that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial court. He further added that evidence of both the alleged abductees being star witnesses has not been recorded before the trial court. He further argued that encounter continued for about 20-minutes but none from the either side sustained any scratch nor the police vehicles received any damage, as such case against the appellant is highly doubtful, therefore, he also prayed for reducing the

sentence of the appellant to that of already undergone as the appellant has served out substantial portion of sentence.

5. Learned Additional P.G supported the impugned judgment, however, he conceded to the reduction of sentence of appellant to that of already undergone. On query, he admitted that appellant is not previous convict.

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 evidence of star witnesses i.e. both alleged abductees has not been recorded before the trial court to prove the charge against the appellant. Furthermore, the encounter continued for about 20-minutes, but none from the either party/side received any scratch nor the police vehicles received any damage. Moreover, per jail roll dated 22.8.2017, the appellant has served out his sentence for 03-years and 18-days with remission of 04-months and 15-days, which appears to be substantial portion of sentence.

8. Upshot of the above discussion is that the learned counsel for the appellant has made out a case for reduction in the sentence of appellant, therefore, while following the dictum laid down in case of **Gul Naseeb v. The State (2008 SCMR 670)**, the above CrI. Appeals of the appellant are 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 including sentence of fine amount. Appellant is behind bars. He be released forthwith, if not required in any other case.

JUDGE

JUDGE

Ahmed