

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Crl. Jail Appeal No. D-94 of 2014.
Crl. Appeal No. D-103 of 2017.
Crl. Appeal No. D- 108 of 2017.
C.P. No.D- 5410 of 2016.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
-----------------	--------------------------------

For Regular Hearing.

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

Mr. Nadeem Ahmed Malik Advocate for appellants in all appeals and for petitioner in petition.
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., Crl. Jail Appeal No. D-94 of 2014 (filed by appellants Sadam Hussain and Hubdar), Crl. Appeal No.D- 103 of 2017, Crl. Appeal No.D-108 of 2017 (filed by appellant Sadam Hussain) and petition filed by petitioner Sadam Hussain (seeking his release on bail after suspension of operation of impugned judgment) are being decided by this single judgment due to commonality of the impugned judgment dated 11.12.2014, passed by learned Judge, ATC, Khairpur in 04-special cases, whereby appellants were convicted and sentenced as follows:

- i. U/s 365-A PPC in crime No. 73/2013, both appellants were sentenced to imprisonment for life and their moveable and immoveable properties were also forfeited to the state.
- ii. U/s 344 PPC in crime No .73/2013, both appellants were sentenced to suffer R.I for 03-years each with fine of Rs.

10,000/-each and in case of default to suffer R.I for 06-months more.

- iii. 324 PPC in crime No.74/2013, both appellants were sentenced to R.I for 10-years each and fine of Rs.25,000/- each and in default to suffer R.I for 06-months.
- iv. U/s 353 PPC, appellants were sentenced to R.I for 02-years.
- v. U/s 392 PPC, appellant Sadam Hussain was sentenced to suffer R.I for 10-years each with fine of Rs. 25,000/- each and in case of default to suffer R.I for 06-months more.
- vi. U/s 23(i) of Sindh Arms Act, 2013, appellant Sadam Hussain was sentenced to suffer R.I for 05-years and to pay fine of Rs.10,000/- and in case of default to suffer R.I for 02-months.
- vii. U/s 23(i) of Sindh Arms Act, 2013, appellant Hubdar was sentenced to suffer R.I for 05-years and to pay fine of Rs.10,000/- and in case of default to suffer R.I for 02-months.
- viii. U/s 7(e) of ATA, 1997, both appellants were sentenced to suffer imprisonment for life.
- ix. 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 09-prosecution witnesses and thereafter statements of appellants were recorded in terms of section 342 CPC, 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.

3. Learned trial court after hearing learned counsel for parties by judgment dated 11.12.2014, convicted and sentenced the appellants, as stated above.

4. Learned counsel for appellants mainly contended that appellants are innocent and have falsely been implicated by the police. He further contended that there are major contradictions and infirmities in the evidence of prosecution witnesses and that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial court. He further added that complainant and alleged abductee have not implicated the appellants in their evidence so also PW-7 Mashir P.C Allahdino Maitlo has also given a different version. It is also contended that appellants are previous non-convicts and there is no other instance of appellants involvement in any case, therefore, he also prayed for reducing the sentence of the appellants to that of already undergone as the appellants have served out major portion of sentence.

5. Learned Additional P.G supported the impugned judgment, 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 transpires that P.W-1 complainant Syed Waryal Shah has deposed that he saw four armed persons, two with muffled faces while two were with open faces, but they did not identify any of them and when the accused were confronted to him, he did not identify the accused present in court to be the same. Furthermore, the star witness of the alleged incident is PW-3 Ghulam Murtaza Shah, who is alleged abductee. He has also not implicated both the

appellants in the commission of offence and he has also not identified the accused present in court to be the same, as such the conviction

8. As per jail roll dated 22.8.2017, both the appellants have served out their sentence for 03-years, 09-months and 24-days with remission of 07-months and 06-days.

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 case of **Gul Naseeb v. The State (2008 SCMR 670)**, 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.

10. The constitution petition No.D-5410 of 2016 seeking suspension of sentence by releasing the appellant Sadam Hussain on bail stands dismissed as not pressed being infructuous.

JUDGE

JUDGE