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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio.

Criminal Appeal No.98 of 2009.

Appellant	Jawaid Iqbal S/o. Abdullah through M/s. Muhammad Ashraf Kazi and Irshad Ahmed Jatoi, Advocates.
Respondent	The State through Mr. G.M. Bhutto, Assistant Attorney General.
Date of Judgment	27.03.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Jawaid Iqbal S/o. Abdullah was tried in the Special Court (Offences in Banks) Sindh at Karachi in Case No.97/2002 pursuant to FIR No.19/2002, FIA CBC-II, Karachi U/s. 409/420/468/471/477-A/34 PPC r/w section 5(2) of PCA-II 1947 and vide Judgment dated 27.05.2009 the appellant was convicted and sentenced for the offence punishable under section 409 PPC and sentenced to 03 years R.I and to pay fine of Rs.3,99,550/- and in case of default in payment of fine he was to further undergo R.I. for 06 months. The amount if recovered to be paid to the concerned branch of ABL.

2. The brief facts of the case is that the accused was sent up to face trial along with absconding accused person namely Rana Humayoon Rasheed and Muhammad Imran Baloch (deceased) in the case/crime referred above by FIA-CBC II Karachi registered u/s. 420/468/471/477-A/34 PPC against them vide Crime No.19/2002 at FIA, CBC II, Karachi. The perusal of the file shows that charge against the present accused was original framed on 19.08.2003 but subsequently on the application of the prosecution charge was amended on 29.8.2005 and section 409 r/w section 5(2) of PCA-II 1947 was added.

3. After usual investigation the PIA submitted the challan against the accused and when substance of the allegation as alleged in the FIR and charge sheet was explained and read over to accused by way of formal charge as amended on 29.08.2005 the accused pleaded not guilty.

4. The prosecution in order to prove its case examined 09 Prosecution Witnesses and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. At the very outset, learned counsel for the appellant stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reduction in sentence based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation.
- b) That the appellant had a large family to support.
- c) That the amount involved was relatively minor.
- d) That by accepting his guilt the appellant has shown genuine remorse and;
- e) That he has served a substantial portion of his sentence.

7. Based on these mitigating circumstances mentioned by the appellant, learned Assistant Attorney General had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the evidence on record and find that the prosecution through confidence inspiring ^{oral} evidence along with documentary evidence has proved the case against the appellant beyond any reasonable doubt for which he was convicted and as such we maintain his conviction.

9. With regard to sentence based on mitigating factors mentioned by learned counsel for the appellant and the no objection to a reduction in sentence by learned Assistant Attorney General, we hereby reduce the sentence of the appellant to the time already spent in Jail. The appellant is on bail, his bail bond stand discharged and he is free to go.

10. With regard to his fine of Rs.3,99,550/-, we note that vide order dated 07.02.2003 whereby the appellant was granted bail, an amount of Rs.4,00,000/- was deposited with the Nazir of this Court as Surety in respect of this offence. The Nazir of this Court is directed to forward amount of Rs.3,99,550/- out of Rs.4,00,000/- to ABL, Defence Garden Branch, Karachi. The balance amount, if any, with any profit earned out of Rs.4,00,000/- shall be returned by the Nazir of this Court to the appellant. A copy of this order shall be sent to the Nazir of this Court and the Manager, ABL, Defence Garden Branch for information and compliance.

11. The appeal stand disposed of in the above terms.

M Anj