

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-136 of 2021
Cr. Appeal No.S-137 of 2021
Cr. Appeal No.S-138 of 2021
Cr. Appeal No.S-139 of 2021
Cr. Jail Appeal No.S-144 of 2021
Cr. Jail Appeal No.S-145 of 2021
Cr. Appeal No.S-147 of 2021
Cr. Appeal No.S-148 of 2021
Cr. Appeal No.S-149 of 2021
Cr. Appeal No.S-150 of 2021
Cr. Appeal No.S-151 of 2021
Cr. Appeal No.S-152 of 2021

Date of hearings: 07.11.2022.

Date of decision: 07.11.2022.

Appellants: Muhammad Sudheer, Rasool Bux and Yousuf,
Through M/s Ghulam Farooque Abbasi and
Rasool Bakhsh Solangi, advocates.

The State: Through Mr. Mr. Fayaz Hussain Sabki, APG.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Having been convicted u/s 392, 34 PPC to suffer sentence of 07 years rigorous imprisonment and fine of Rs.50,000/-each, in default, 03 months more for committing robbery of a motorcycle HCE-9529 black colour Super Power and cash of Rs.1000/- from complainant Khan Muhammad Brohi and Rs.500/- from PW Ali Hassan Mallah from a road leading towards Gulistan-e-Sarmast near Panhwar Both Latifabad Hyderabad on 15.02.2021 at 1330 hours; in Sessions Cases No. 305 & 330 of 2021 emanating from Crimes No.33, 38 of 2021, u/s 353/34 PPC to suffer sentence of 02 years rigorous imprisonment and fine of Rs.10,000/-each, in default, 02 months more; in Sessions Case No. 306 of 2021 emanating from Crime No.39/2021, and u/s 24 of Sindh Arms Act 2013 to suffer sentence of 05 years rigorous imprisonment and fine of Rs.30,000/-each, in default, 03 months more; in Sessions Case No.307, 308 & 309 of 2021 bearing crime No.40, 41, 42 of 2021, registered at PS A-Section Latifabad/Airport Hyderabad, by learned 5th Additional Sessions Judge Hyderabad, appellants have preferred these appeals.

2. As per brief facts, complainant on the day of incident viz. 15.02.2021 while going towards his village along with PW Ali

Hassan Mallah was waylaid by three unknown accused at Gulistan-e-Sarmast Road near Panhwar Goth at about 01-30 p.m. They robbed a motorcycle from him as well as cash of Rs.1000/- and Rs.500/- respectively from him and PW Ali Hassan Mallah. Complainant approached police of PS A-Section Latifabad, which on such information visited the site, registered FIR and during patrolling arrested the accused on the same day and recovered from them an unlicensed pistol each, regarding which separate FIRs u/s 24 Sindh Arms Act, 2013 were registered against them. Subsequently, on 18.02.2021 the accused led the police to a place beyond Habib Farm Mulakatiar and produced the robbed motorcycle from the bushes. After usual investigation, the trial commenced in which prosecution examined 04 witnesses maximum to support its cases, who produced all relevant documents including FIR, Memos, etc. When the prosecution evidence was put to the appellants, they simply denied it without however leading any evidence in defense.

3. Learned defence counsel after arguing the case have submitted for taking a lenient view stating that appellants are the first offenders and that they would not press the appeals on merits if the sentence is modified and reduced to the period already undergone by them.

4. Learned Assistant PG has recorded no objection to this proposal.

5. I have heard the parties and perused material available on record. Prosecution witnesses have supported the story narrated in the FIR. At least two private persons complainant and PW Ali Hassan Mallah have stood the ground in their cross-examination qua the main features of the case: robbery of motorcycle from them by the appellants, their arrest on the same day at about 1600 hours after an encounter with the police; and recovery of robbed motorcycle subsequently. The appellants were arrested although after an encounter but admittedly no one from either party was injured. It has been admitted by the witnesses that even the police mobile had not received any bullet in the encounter and this is the reason that even the trial court has not believed this part of story and has not convicted the appellants u/s 324 PPC. Trial court has convicted the appellants u/s 392/34 PPC for 07 years, u/s 353/34 PPC for 02 years and u/s 24 of Sindh Arms Act 2013 for 05 years. The appellants are first offenders and it has been admitted by the Assistant PG that they are not previous convict. Learned defence counsel have stated that appellants are remorseful of their actions and have undertaken to improve themselves to become a useful cog in the

machine after release. Jail Roll shows that the appellants have remained in jail for 05 year 09 months and 07 days including remission. Their unexpired portion of sentence is 02 years 02 months and 23 days.

6. The punishments provided u/s 392 PPC is not less than 03 years and not more than 10 years, u/s 353 PPC it is upto 02 years and u/s 24 Sindh Arms Act, 2013, it is upto 10 years. Hence, there is no legal impediment or otherwise in acceding to the request of learned defence counsel particularly when it has not been opposed by learned Assistant Prosecutor General appearing for the State.

7. Consequently, in view of above discussion, the convictions of the appellants u/s 392/34 PPC, u/s 353/34 PPC and u/s 24-A Sindh Arms Act 2013 in separate cases registered against them are maintained, however, their sentences in all the cases is reduced to the period already undergone by them including the period the appellants have to suffer in default of payment of fine. They shall be released forth with if not required in any other custody case.

8. The appeals in hand are disposed of in the terms as stated above.

JUDGE