

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 228 of 2012

Appellants : 1. Naeem-ur-Rehman Niazi
2. Hamood-ur-Rehman
3. Ibad-ur-Rehman
through Mr. Irshad Ali Jatoi, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 28th September, 2022

JUDGMENT

Omar Sial, J: Syed Ahad Hussain on 21.09.2010 reported to the Aziz Bhatti police station that on 21.07.2010 he received a phone call from a person who introduced himself as a Pakistan Custom's official named Naeem-ur-Rehman Niazi. Niazi told him that he had 20 laptops for auction which he will sell to Hussain for a low price. Hussain accompanied by 2 of his friends named Muhammad Aijaz Aslam and Syed Muhammad Asim went to Niazi's house to conclude the deal. Once inside the house Niazi declined to give them the laptops instead he, along with his wife Samina and sons Hamood and Ibad abused and beat the 3 visitors and snatched Rs.360,000 from them. Niazi pulled out a pistol and made an ineffective fire. The visitors then left the premises.

2. Ibad was arrested on 04.10.2010, Niazi on 09.10.2010, Hamood on 13.10.2010 and Samina on 16.10.2010. All pleaded not guilty to the charge against them and claimed trial.

3. The learned 4th Additional Sessions Judge, Karachi East on 11.07.2012 sentenced Niazi to 5 years in prison and a fine of Rs. 50,000 (or an additional 6 months in prison) for an offence under section 419 P.P.C. All the accused, except Samina, were sentenced to 7 year in prison and a fine

of Rs. 10,000 each (or an additional 3 months in prison) for an offence under section 392 P.P.C. Samina was acquitted.

4. The learned counsel for the appellants at the outset stated that he did not wish to press the appeal to the extent of Naeem-ur-Rehman Niazi. I have therefore not commented on the evidence connected with him. Learned counsel further submitted that Niazi's entire family was dragged into several cases because of the doings of Niazi. His wife, Samina, had been estranged from him for some time and even when the incident is said to have happened she was living separately with her children Ibad and Hamood in an apartment in Clifton whereas Niazi lived in Gulshan, where the incident is said to have occurred. The learned APG halfheartedly supported the impugned judgment as far as the case against Ibad and Hamood was concerned.

5. I have heard the counsels. The complaint was issued several notices but no body effected an appearance on his behalf. I have reappraised the evidence and my observations and findings are as follows.

6. **Syed Ahad Hussain (PW-1)**, the complainant in his testimony raised a general allegation against Ibad and Hamood to the effect that they were also present when the incident occurred. Samina and her 2 sons Ibad and Hamood had taken part in abusing and beating the complainant party. The allegation of taking money and firing is on Niazi. This witness could not satisfactorily explain why it took him 2 months to lodge the F.I.R. Deliberations and consultations to throw the net wide cannot be ruled out.

7. **Mohammad Ijaz Alam (PW-2)** who said that he had accompanied PW-1 Ahad for the transaction when the incident occurred also assigned the same role to Samina and her 2 sons as PW-1 Ahad. **Syed Muhammad Asim (PW-3)** who ostensibly also accompanied PW-1 Ahad to the place where the incident occurred also assigned Samina and her 2 sons the same role as PW-1 Ahad and PW-2 Alam. No identification parade was held for the supposed eye witnesses to identify Samina and her 2 sons when they were arrested. **S.I. Zulfiqar Ali (PW-5)** admitted that he had recovered

nothing in this case from the accused i.e. not the money, not the laptops, not the pistols nor did he inspect the place of incident, though there is a memo supposedly made by this witness reflecting that he did inspect the place. Dishonesty of the investigating officer is obvious.

8. The case against Samina and her 2 sons was identical. All 3 were accused of beating and abusing the complainant party. On the same set of evidence Samina was acquitted whereas Ibad and Hamood were convicted. Learned judge did not explain why the same relief was not given to the 2 boys and how was their case different from that of Samina. The learned APG has also been unable to distinguish their case from that of Samina.

9. In view of the above, apart from the fact that in my view the prosecution failed to prove its case beyond reasonable doubt, Ibad and Hamood are entitled, on the ground of consistency, to get the same relief as their mother Samina. The appeal to the extent of Ibad and Hamood is allowed. They are on bail, their bail bonds stand cancelled and sureties discharged. The sureties may be returned to their depositors upon identification.

10. As far as the appeal to the extent of Naeem-ur-Reman Niazi is concerned the same is dismissed as not being pressed. The sentence however awarded to him in the cases arising out of CrI. App No. 226 of 2012, CrI. App No. 227 of 2012 and CrI. App No. 228 of 2012 shall run concurrently.

JUDGE