IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 54 of 2003

JUDGMENT

Date of hearing: 10.4.2003.

Appellant: Muhammad Ashfaq & another through Superintendent Central Prison.

Respondent: The State, through Mr. Habib-ur-Rasheed, Advocate.

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MUHAMMAD SADIQ LAGHARI, J.

Appellants Muhammad Ashfaq and Talib Hussain were tried and convicted for an offence under Section 393 read with 34 PPC by the learned First Additional Sessions Judge Karachi West. They were awarded sentence of three years R.I. with fine of Rs. 2000/- each. In default of payment of fine to suffer three months simple imprisonment further.

Prosecution case is that on 24.12.1999 Najma Parveen wife of Muhammad Ramzan, her daughter Uzma aged 10 years and son Imran aged about seven years were present in house the main gate whereof was open. At about 12:30 noon two persons entered the house. One of them had Pistol in his hand and they at Pistol point, demanded the money. The children started crying which attracted Mohallah people. On noticing the presence of Mohallah people the culprits started running. Asghar Ali Shah and Muhammad Mansha of same Mohallah chased the culprits. In the meantime a mobile police party arrived and was informed about the incident. They too chased the culprits. Both of the culprits were captured by the police and private persons who were chasing them. The captives introduced themselves as Muhammad Ashfaq and Talib Hussain. A Pistol with magazine loaded with six live bullets was recovered from Muhammad Ashfaq. The captives were then brought before Mst. Najma and then taken to Police Station. Mst. Najma was also taken to Police Station for lodging the FIR which she lodged

there. After the investigation Muhammad Ashfaq and Talib Hussain were sent for trial and the trial Court convicted them as mentioned above, by its judgment dated 10.7.2002. On 3.2.2003 Mercy Appeal filed by the convicts was presented before Superintendent Central Prison Karachi, who forwarded the same to this Court where it was received on 19.2.2003. Although belated the same was admitted with express order that the question of limitation shall also be considered at the time of hearing the appeal. Today the appellants have been produced from Jail, their arguments have been heard. Also the argument of learned State Counsel Mr. Habib-ur-Rasheed have been heard and the entire evidence reappraised with his assistance.

On prosecution side most material evidence is of Mst. Najma, Mst. Uzma, Syed Asghar Ali Shah, Manshah and Inspector Faiz Muhammad. Mst. Najma and Uzma deposed that on the day of incident at about 12:30 two persons entered their house, one of them had Pistol. At Pistol point they demanded money. They further alleged that cries were raised by them and Mohallah people were attracted. The culprits then started running and Mohallah people chased them together with police party which had also arrived at that time. They managed to capture both of the culprits. The culprits were then brought to them and they found them to be the same, who had entered the house and attempted to rob them. Syed Asghar Ali Shah and Mansha, have deposed that. On getting attracted by the commotion they saw two persons coming out of the house of Mst. Najma. They chased those culprits and police party also arrived and join them in chasing the culprits. All of them succeeded in capturing the culprits, one of whom was having Pistol The culprits introduced themselves as Muhammad Ashfaq and Talib Hussain. Pistol was recovered from Ashfaq. All the PWs of them identified the appellant/accused in the Court, claiming them to be the same who were captured by them. The witnesses do not have any enmity with the appellants. They were also cross-examined but nothing such was brought out which could render their evidence doubtful or unbelievable.

Inspector Faiz Muhammad also confirmed the evidence of above P.W. He deposed that they being mobile were attracted by the commotions and had joined the persons chasing the culprits. They succeeding in apprehending the two culprits. He also confirmed the recovery of Pistol from Ashfaq.

The evidence of Muhammad Qadeer Sub-Inspector is also there. He has registered the FIR and taken over the captured culprits from the witnesses. He then investigated the case and recorded the statement of P.Ws and then submitted the challan in Court. He was not cross-examined by any of the accused/applicant.

In their statement the appellants denied the prosecution allegations. They claimed to have been implicated falsely. They also deposed under Section 340(2) stating that they were taken to police station Surjani and then falsely implicated in this case at the instance of the husband of Complainant Najma.. However, their denial can not affect the massive evidence produced by the prosecution. The Appellant had also examined Ghulam Shabbir Bhatti in defence. He deposed that the appellants were arrested from their house, his evidence too can not affect the huge evidence on prosecution side that the applicant attempted to commit robbery and were then apprehended by the people.

The result of above discussion is that the commission of offence under Section 393 PPC by the appellant has fully been established through massive evidence produced by the prosecution. They have rightly been convicted by the learned trial Court. Lenient view has already been taken while awarding them the sentence of three years. The appeal which is surely is belated one fails on merits also. The same is dismissed.

JUDGE