

IN THE HIGH COURT OF SINDH, AT KARACHI
Criminal Jail Appeal No.921 of 2019

Appellants: Mushtaque Ahmed and Muhammad Khan @
Hasti through M/s. Muhammad Hanif
Noonari and Abdul Qadir Soomro, advocates

The State: Mr.Khadim Hussain Khuharo, Additional
Prosecutor General Sindh

Criminal Jail Appeal No.308 of 2020

Appellant: Hazrat Sher through Mr. Muhammad Farooq,
advocates

The State: Mr. Khadim Hussain Khuharo, Additional
Prosecutor General Sindh

Date of hearing: 15.08.2023
Date of judgment: 15.08.2023

J U D G M E N T

IRSHAD ALI SHAH, J- The appellants are alleged to have committed murder of Muhammad Nadeem during course of robbery, for that they were booked and reported upon by police. On conclusion of trial, they were convicted u/s. 396 PPC and sentenced to undergo imprisonment for life and to pay compensation of Rupees One million each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of Section 382(b) Cr.P.C by learned Ist-Additional Sessions Judge (MCTC), Malir Karachi, vide judgment dated 25.10.2019, which they have impugned before this Court by preferring two separate appeals from jail.

2. At the very outset, it is pointed out by learned counsel for the parties that the appellants have been charged and convicted for offence punishable under Section 396 PPC, such penal section was not attracted to the facts and circumstances of the present case and more-so the appellants have not been provided the fair chance to defend themselves through their counsel which they engaged themselves for the purpose. By pointing out such omissions, they

suggested for remand of the case for *de-novo* trial right from the stage of framing the charge against the appellants afresh.

3. Heard arguments and perused the record.

4. The provisions of Section 396 PPC could only be attracted when offence is committed by five or more persons conjointly. In the instant matter, the number of culprits involved is only three, therefore, not only the charge framed against the appellants but conviction recorded against them for offence punishable under Section 396 PPC was misplaced; such omission being incurable in terms of Section 537 Cr.P.C has occasioned in failure of justice, consequently, the impugned judgment is set aside with direction to learned trial Court to conduct *de novo* trial against the appellants right from stage of the framing the charge against them afresh in accordance with law by considering the material brought against them by the prosecution during course of investigation.

5. The instant Criminal Jail Appeals are disposed of accordingly.

JUDGE