

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 435 of 2021

APPELLANT : **Abdul Khanan**
through Mr. Ajab Khan Khattak, Advocate

RESPONDENT : **The State**
through Ms. Robina Qadir, D.P.G.

Date of hearing : 08-04-2024

Date of judgment : 08-04-2024

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JUDGMENT

OMAR SIAL, J.: Abdul Khanan was convicted for an offence under section 395 and sentenced to rigorous imprisonment of eight years and a fine of Rs. 100,000. In case he did not pay the fine he would have to remain in prison for another one year. The conviction and sentence was handed down to him by the learned 10th Additional Sessions Judge, Karachi South on 24.07.2021.

2. Learned counsel has submitted that he will not argue on merits but requests that the sentence already undergone by the applicant be treated as his final sentence. The prayer is opposed by the learned Deputy Prosecutor General. No one effected an appearance on behalf of the complainant despite notices and several opportunities given. I have heard the learned counsels and perused the record. My observations and findings are as follows.

3. Out of the eight years sentence, the applicant has undergone five years and ten months, according to the jail roll provided by the Senior Superintendent Central Prison & Correctional Facility, Karachi. Section 395 P.P.C., quite strangely provides three brackets of punishment (i) death (ii) life imprisonment or (iii) four to ten year rigorous imprisonment. The

impugned judgment reflects that the learned trial court has sentenced the appellant under the third limb of sentences in section 395 P.P.C. It is most important to however note that some books in which the Code is published, do not show death as a sentence that can be given in a case under section 395 P.P.C. Be that as it may, the two versions of section 395 P.P.C. floating around contain the sentence of four to ten years rigorous imprisonment.

4. The jail report submitted shows that the conduct of the appellant while incarcerated has been satisfactory. The appellant is 64 years of age and apart from a wife has three young daughters and no male off spring. He is the only male member who can support his family. He has shown remorse by not arguing the appeal on merits and as a consequence has saved time of this Court. As indicated above, out of an eight year sentence he has completed five years and ten months. Although the appellant is of advanced age, it may be appropriate to provide him an opportunity to re-adjust in society. I have no reason to disbelieve the learned counsel's submission that the appellant repents his conduct and wants to live the remainder of his life as a law abiding and productive citizen of this country.

5. Given the above, and in the circumstances of the case, the appeal is dismissed however the sentence is reduced to the period the appellant has already undergone. In view of the dire financial distress his family seems to be in at the moment, the fine amount is reduced to Rs. 50,000. If the fine is not paid, the appellant will have to remain in prison for a further period of three months.

JUDGE