

IN THE FEDERAL SHARIAT COURT  
( APPELLATE JURISDICTION )

Present

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MR.JUSTICE ALI MUHAMMAD BALOCH

CRIMINAL APPEAL NO.36/K OF 2001

- 1.Nadeem alias Gitta son of Iqbal Ahmed,  
resident of H.No.30/2, Delhi Colony,  
Chandio Village, Gizri Road, Karachi.
- 2.Nadeem Shah son of Sharif Shah,  
resident of 1st Floor, House No.6,  
Regal, Saddar, Karachi, both presently  
confined in Central Jail, Karachi.

.....Appellants.

Versus

The State

.....Respondent.

For the appellants:

Syed Khalid Shah, Advocate.

For the State

Mr. Javed Akhtar, Advocate.

JAIL CRIMINAL APPEAL NO.54/K OF 2001

Muhammad Nasir s/o Muhammad Sadiq,  
(Convict No.C 1656, confined in  
Central Prison, Karachi.

.....Appellant.

Versus

The State

.....Respondent.

For the appellant

Agha Zafir Ali, Advocate.

For the State

Mr. Javed Akhtar, Advocate.

JAIL CRIMINAL APPEAL NO.56/K OF 2001.

Zareen Khan son of Raza Khan,  
presently confined in Central Prison,  
Karachi.

.....Appellant.

Versus

The State

.....Respondent.

For the appellant:

Miss Aftab Bano, Advocate.

For the State

Mr. Javed Akhtar, Advocate.

No. & Date of FIR/PS

No.152/97, 20-6-1997,  
P.S. Darkhashan, Karachi.

Date of judgment  
of trial court

25-8-2001

Dates of institution  
of appeals

10-10-2001, 5-12-2001, 5-12-2001.

Date of hearing

28-2-2002

Date of decision

28-2-2002

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JUDGMENT

ALI MUHAMMAD BALOCH, J.- The four appellants namely Nadeem alias Gitta, Nadeem Shah, Muhammad Nasir and Zareen Khan faced their trial in the court of VIth Additional Sessions Judge, Karachi South and on having been found guilty in the case registered vide F.I.R. No.152/1997 of Police Station, Darkhashan, Karachi South were sentenced to undergo R.I. for seven years each under sections 397 PPC, 458 PPC read with section 34 PPC and section 412 PPC. Since the sentence of fine against the appellants was imposed in the case registered vide F.I.R. No.175/97 of Police Station, Garden, Karachi South, no further sentence of fine was imposed on them in this case.

The question of appellants having been convicted for the offence registered vide F.I.R. No.175/97 was also taken into account by the trial court while deciding this case. Benefit under section 382-B Cr.P.C. was extended to the appellants.

2. In short the facts of the present case are that all the appellants had trespassed into the house of complainant PW Dr. Jamal-Nasir Memon in Sea View Township, Beach Avenue, Defence Housing Authority, Karachi and on show of force had snatched TVs, a VCP,

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a VCR, gold ornaments, cash of Rs.38000/- and 3525 US Dollars etc. from the house. The appellants had succeeded in escaping but were arrested after the complainant had lodged the F.I.R.

3. The appellants faced their trial where the prosecution had examined PWs Dr. Jamal Nasir Memon, PW Afrasiyab, the servant of the complainant, PW Amanat Ali, ASI and other formal police witnesses.

4. In their statements under section 342 Cr.P.C. the accused/appellants simply denied the prosecution case and did not show any reason why the PWs had deposed against them and as to why this case was filed against them. They neither examined any witness in defence nor deposed on oath to disprove the allegations against them. The trial court had passed the judgment and sentenced the appellants as described in the foregoing paragraphs.

5. The learned counsel appearing for the respective appellants mainly argued that the appellants were acquitted in some other case previously but after arguing to a certain extent they all made a statement not pressing their respective appeals against the conviction but requested for reduction in the sentence.

6. The learned counsel appearing on behalf of the State agreed to the request of the learned counsel for the appellants

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for reduction in the sentence and stated that the appellants were of young age and perhaps they had already suffered enough by remaining in jail for a period beyond four years and that by reducing their sentence of imprisonment to one already undergone by them will amount to giving them a chance of reforming themselves which is the purpose of convictions.

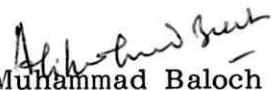
7. I have considered all the facts and circumstances of the case and considering the same I allow the request of the learned counsel for the appellants withdrawing the appeals, the appeals are, therefore, dismissed. As regards the sentence of imprisonment I agree with the request of the learned counsel for the State who after consulting the record had stated that each of the accused/ appellants had remained in jail for a period beyond four years and the benefit under section 382-B Cr.P.C. had been extended to the appellants by the trial court. Considering the sentence already undergone by the appellants to be sufficient punishment, the sentence of imprisonment of the appellants is modified to that extent. However, I consider that in place of the offence under section 397 PPC, the facts make out an offence punishable under section 395 PPC for which the sentence already undergone by the appellants is imposed, for which the minimum imprisonment required

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under the law is four years R.I. But that offence is also liable to fine. Consequently <sup>in addition</sup> I impose the sentence of fine of Rs.40,000/- against each of the appellants and in case of non-payment of the amount of fine each of the appellants shall undergo further R.I. for six months. In case of the recovery of the amount of fine half of it is ordered to be paid to the complainant/victim.

With the above modification in the sentences, the appeals stand dismissed.

  
( Ali Muhammad Baloch )  
Judge

Karachi:28-2-2002.  
M.Khalil

Approved for reporting.

  
( Ali Muhammad Baloch )  
Judge