

IN THE FEDERAL SHARIAT COURT
(APPELLATE JURISDICTION)

Present

MR. JUSTICE ALI MUHAMMAD BALOCH

46

CRIMINAL APPEAL NO.35/K OF 2001

1. Nadeem alias Gitta son of Iqbal Ahmed,

2. Nadeem Shah son of Sharif Shah,

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.48/K OF 2001

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

.....Appellant.

Versus

The State

.....Respondent.

For the appellant

Mr. Laeeq Ahmad Jafri,
Advocate.

For the State

Mr. Javed Akhtar, Advocate.

JAIL CRIMINAL APPEAL NO.55/K OF 2001

Muhammad Nasir son of
Muhammad Sadiq, confined in
Central Prison, Karachi.

.....Appellant.

Versus

The State

.....Respondent.

For the appellant

Miss Rifat Banó,
Advocate.

For the State

Mr. Javed Akhtar, Advocate.

No. & Date of FIR/PS

No.175/1997, 5-6-1997,
P.S. Garden, Karachi South.

Date of judgment
of trial court

24-8-2001

Date of institution
of appeals.

10-10-2001, 23-11-2001, 5-12-2001.

Date of hearing

28-2-2002

Date of decision

28-2-2002

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47

JUDGMENT

ALI MUHAMMAD BALOCH, J.- The four appellants

namely Nadeem alias Gitta, Nadeem Shah, Zareen Khan and

Muhammad Nasir had faced their trial alongwith co-accused

Muhammad Rashid Siddiqui in the court of VIth Additional Sessions

Judge, Karachi South for the offence registered through F.I.R.

No.175/97 of Police Station, Garden, Karachi South against them

and they were found guilty after the trial and were sentenced

to undergo R.I. for seven years each and to pay fine of Rs.50000/-

each, in default whereof they had to undergo further R.I. for

one and half years. In case of realization of the amount of fine

it was ordered that the same was to be paid to the victim. Benefit

under section 382-B Cr.P.C. was extended to the appellants.

Co-accused Muhammad Rashid Siddiqui was found entitled to benefit

of doubt and he was acquitted of the charge.

2. The four appellants filed their three separate appeals

which were heard together, being outcome of the common judgment

and by a short order dated 28-2-2002 the appeals were dismissed

but the sentence of imprisonment was modified to one already

undergone by them and the amount of fine was reduced to

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Rs.40000/- each, in default whereof each of the appellants had to further undergo R.I. for six months each. Now I proceed to record the detailed reasons for the above short order.

3. On 5-6-1997 when the complainant PW Zia Umar Sehgal was available in his residential flat alongwith his family members and his brother Rahat Umar, four culprits had entered into their residence who were armed with TT pistols. All the inmates of the house were made to sit in a room while the culprits by show of the arms removed gold ornaments, cash, prize bonds, wrist watches etc from the house and decamped. PW Zia Umar approached the Police Station, Garden, Karachi South where his F.I.R. was registered and the police started investigation. After about 5/6 months culprits were arrested who themselves pointed out the place wherefrom the alleged dacoity had taken place. They were put to identification test through PWs Zia Umar, and Rahat Umar who had successfully identified the present appellants. The PWs Zia Umar and Rahat Umar had also pointed out the appellants Nadeem alias Gitta, Zareen Khan, Muhammad Nasir and Nadeem Shah during the trial in the court. Some of the looted property like wrist watch, two gold bangles, a set of necklace alongwith jhumkas was produced before the court at the time of trial which was also

A9

identified by these witnesses to be their property.

4. In addition, the prosecution had examined the formal witnesses belonging to the police force who had arrested the accused, made the recoveries and produced them for identification test before the Magistrate.

5. All the prosecution witnesses were not cross examined in detail by the accused except by the counsel for one accused namely Nadeem alias Gitta but neither the accused nor even the counsel could challenge the ownership of the recovered property and the record shows that the recovered property was returned to the families/owners.

6. The Magistrate Mr. Saad Islam Ansari, PW Exh.18 who had arranged the identification test through PWs Zia Umar and others was also examined and he too was not cross examined by any of the accused persons.

7. In their statements under section 342 Cr.P.C. the accused/ appellants merely denied the prosecution allegations but did not put forward any plea as to why the PWs were deposing against them. They did not produce any evidence in defence nor any of the accused examined himself on oath to disprove the allegations against them. As a result they were found guilty and sentenced as stated in the foregoing paragraph.

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8. The learned counsel for the appellants argued the case on behalf of the appellants but each one of the learned counsel made a statement that they did not press the appeals of their respective clients on merits and each one of them requested that looking to the fact that the appellants were young and first offenders some leniency may be shown to them and their sentence of imprisonment may be reduced suitably to serve the interest of justice.

19. The learned counsel for the State had supported the impugned judgment but did not oppose the request for reduction in the sentences and he himself pointed out that each one of the appellants had remained in jail in this case for a period of more than four years and that offence was punishable under section 382 PPC read with sections 13 and 14 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, the proof under section 7 of the Ordinance was not available and that the appellants had to be punished for tazir under the provisions of PPC.


10. I have considered the facts and circumstances of the case and accepting the request of the learned counsel for the appellants, the appeals are dismissed but the sentence awarded to the appellants is reduced to one already undergone by them in jail specially in view of the fact that they had remained in jail for a period not less than

four years and the maximum punishment provided under section 382 PPC was ten years in addition to fine.

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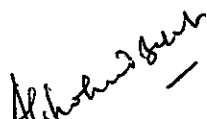
11. As a result the appeals were dismissed with modification in the sentence of imprisonment to one already undergone by them and the amount of fine of Rs.50000/- each was also reduced to Rs.40,000/- each, in default whereof each of the appellants had to undergo R.I. for six months more.

These are the detailed reasons for the short order dated 28-2-2002.


(Ali Muhammad Baloch)
Judge

Approved for reporting.

Karachi:28-2-2002.
M.Khalil


(Ali Muhammad Baloch)
Judge