

Judgment sheet.
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Jail Appeal No.S-346 of 2012.

DATE ORDER WITH SIGNATURE OF JUDGE

For orders on MA 2103/2017

Date of hearing: 19 .09.2017.

Date of judgment: 19.09.2017.

Appellant: Through Mr. Shamshad Ahmed Narejo,
Advocate

The State Through Mr. Shahid Ahmed Shaikh, D.P.G.

None present for complainant.

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J U D G M E N T :-

ABDUL MAALIK GADDI, J :- Today, the matter is fixed for hearing on application under Section 426 Cr.P.C viz. (M.A.No.2103/2017), but learned counsel for the parties are ready to argue the matter on merits, therefore, they have been heard on merits.

2. By means of this criminal Jail Appeal, appellant Nazar Muhammad alias Nazro has assailed the legality and propriety of the judgment dated 15.11.2012 passed by learned Additional Sessions Judge, Umarkot in Sessions Case No.95 of 2012 (Re:State vs Nazar Muhammad), emanating from Crime No.41 of 2012 for offence under sections 399, 402 PPC, registered at P.S. Pithoro, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as stated in the findings on point No.3 of the impugned judgment, which reads as under:-

“Pursuant to the above discussion, prosecution has succeeded to prove its case beyond the shadow of

doubt, therefore accused is convicted and awarded following sentence.

01. **U/S 399 PPC** He is awarded 10 years rigorous imprisonment and fine of Rs.50,000/- (fifty thousand) in default of fine, he will suffer three years simple imprisonment.

02. **U/S 402 PPC** He is awarded 07 years rigorous imprisonment and fine of Rs.50,000/- (fifty thousand) in default of fine, he will suffer three years simple imprisonment.

03. Both punishment will run concurrently.

04. Benefit of section 382-B Cr.P.C also extended to him. He is in custody since 05.08.2012, this period be count towards his sentence. He is present in custody, remanded to Central Prison Hyderabad for execution of aforesaid sentence in accordance with law. As regards to the case of absconding accused Dost Muhammad, Uris, Murtaza and Idrees is concerned, they have already been kept in the dormant file, their file will be re-opened as and when produced before this Court.”

3. Brief facts of the case of prosecution as disclosed in the FIR are that on 05.08.2012 complainant SIP Fateh Muhammad Bhaio of police station Pithoro, got registered FIR at police station Pithoro, stating therein that he alongwith subordinate staff PC-Noor Muhammad, PC-Liaquat Ali, vide roznamcha entry No.08 at 1730 hours proceeded for patrolling in Government vehicle driven by PC-Hoat Khan, While patrolling at different place when they reached at Pithoro-Bachaband Road near Misri Shah Rasti at 2200 hours, they saw on the head light of the vehicle five persons were standing by blocking the road, they were identified as Nazar Muhammad alias Nazro with pistol, Dost Muhammad alias Doso Khaskheli with pistol, Muhammad Uris Mari with gun, Murtaza Mari with hatchet and Idrees Mari with hatchet. They signaled the police party to stop, to which they stopped the police mobile and

the accused on seeing the police vehicle tried to run away. Police party apprehended one of the culprit namely Nazar Muhammad alias Nazroo son of Soomro Shar with 30 bore pistol. The secured pistol being un-loaded was found with five live bullets. The other culprits while taking the benefit of darkness run away. On inquiry the apprehended accused disclosed the names of escaped accused to be Dost Muhammad alias Dosoo, Muhammad Uris Mari, Murtaza Mari and he further stated that they with intention to commit robbery, blocked the road. Thereafter complainant secured 30 bore pitol and five live bullets and sealed the same in presence of mashirs PC Meer Muhammad and PC Liaquat Ali and prepared such mashirnama. Accused and property were brought at police station Pithoro, where FIR of the incident was lodged by the complainant.

4. It is stated by the learned counsel for the appellant that on merit though the appellant has a good case for his acquittal on the ground that case of the prosecution is false and the evidence of the prosecution witnesses are on record, is contradictory to each other. He further submits that the appellant is facing agony of protracted trial since 2012 without his fault and since then he is in jail, therefore, according to him, he would be satisfied and shall not press this appeal on merit, if the sentences awarded to the appellant by the learned trial court are reduced to the period which he has remained in jail and the fines are remitted. Per learned counsel the appellant has remained in jail for the period of more than 05 years, since his arrest and the appellant is in young age and he has no past criminal history. The appellant is only source for earning of his family.

5. Learned D.P.G after going through the Jail Roll tenders no objection to above proposal.

6. I have thoroughly examined the record with the able assistance of learned D.P.G and Counsel for the appellant. In view of the record, I am of the opinion that the conviction of the appellant is based on cogent reasons. The appellant is first offender. No past criminal history against him is placed on record. He is young in age and remained in jail for the period of more than 05 years since his arrest, therefore, in the present scenario of the case, the appellant has been sufficiently punished. Under these circumstances, he needs to be given chance in his life to rehabilitate himself.

7. Consequently, in view of above, the appellant deserves leniency. While taking lenient view, I dismiss this appeal on merits, however, reduce the sentence to one already undergone by the appellant and fine is hereby remitted. Appellant is present on bail, his bail bonds stand cancelled and surety discharged.

JUDGE