

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No.259 of 2023

Appellant : Adnan Khan s/o. Ghulam Farooq, through
Mr. Jamroz Khan Afridi, Advocate.

Respondent : The State through Mr. Muhammad Iqbal Awan,
Addl. P. G. Sindh and Mr. Mumtaz Ali Shah,
A.P.G.

Date of Hearing : 16.10.2024

Date of Order : 16.10.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J:- The Appellant Adnan Khan was tried by the learned Additional Sessions Judge-X, Karachi-South in Sessions Case No. 1201 of 2019 arising out of Crime No. 433/2018 registered under section 394, 397, 337-F(6), 337-F(3) P.P.C. at P.S. Preedy, Karachi and vide judgment dated 28.04.2023 he was convicted and sentenced as under:-

- (i) For offence punishable under section 394 P.P.C. and awarded Life Imprisonment.
- (ii) For offence punishable under section 397 P.P.C. and sentenced to under R.I. for seven years.
- (iii) For offences punishable under sections 337-F(vi) and 337-F(iii) and awarded sentence of Daman (compensation) of Rs.10,000/- only for each offence to be paid to the injured. In case of failure in payment of said Daman amount, he shall remain in jail until payment thereof.
- (iv) For offences punishable under sections 337-F(iii) and 337-F(vi) and sentenced to undergo one year as Tazir. However, all the sentences shall run concurrently in accordance with law and the appellant was given the benefit of S. 382 (B) Cr.P.C.

2. The brief facts of the case are that on 06.09.2018 the complainant was available at cash counter of M/s. Sujawal Restaurant, situated at opposite Harri Masjiod, Shahrah-e-Liaquat, Karachi. In the meantime, at about 2140 hours, accused duly armed with weapon came over there by a motorcycle who had

asked him to hand him over whatever he possessed. He (complainant) became so afraid and handed over him (dacoit) the sale amount of Rs.1500/- to Rs.2000/- and cell phone Galaxy Samsung having SIM No. 0301-3344515. It has further been alleged that the dacoit had also snatched/robbed another mobile phone from one Kamran. It has further been alleged that the dacoit after having robbed the complainant and his friend had further demanded from them more money but the complainant had told him that he had no money, thus accused made 3 fires upon him (complainant) who had sustained bullet injuries and then the accused succeeded in escaping by riding on the motorcycle while Seth Adnan Khan got shifted the complainant being injured to hospital by rickshaw; hence, the F.I.R.

3. After usual investigation the matter was challaned and charge was framed to which the appellant pleaded not guilty and claimed trial.

4. In order to prove these cases, the prosecution examined 7-PWs and exhibited various items and other documents. The appellant in his statement recorded under Section 342 Cr.P.C. denied the allegations against him; however, he did not give evidence on oath or call any witness in support of his defence.

5. After hearing the learned counsel for the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier; hence, the appellant has filed this appeal against his convictions and sentences.

6. At the very outset, learned counsel for the appellant under instructions states that the appellant does not wish to press this case on merits and only seeks some reduction in sentence in respect of offence under section 394 P.P.C. based on the following mitigating circumstances.

- i) That the appellant is a first time offender.
- ii) That the appellant is relatively young man and is capable of reformation.
- iii) That he is the sole breadwinner of his family, who relies on his income.
- iv) By accepting his guilt he had shown genuine remorse and saved the time of this Court.
- v) That he has already served out reasonable portion of his sentence in jail.

7. Based on the above mitigating circumstances learned Addl. P. G. had no objection to the reduction in sentence of the appellant to some reasonable extent in respect of offence under section 394 P.P.C. wherein the appellant has been sentenced to life imprisonment

8. I have gone through the record and find that the complainant was available at his restaurant when the appellant robbed Rs. 1500/- Rs. 2000/- and a cell phone from him and cell phone from his friend Kamran. On failure of complainant to pay more money, the appellant fired three fire shots upon the complainant, who sustained bullet injury and then the appellant escaped. The complainant had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case; hence, I find his evidence to be reliable, trustworthy and confidence inspiring and believe the same. The appellant was recognized by the complainant when he was arrested in another case and his CCTV footage was shown to the complainant; as such, I find that the prosecution has proved its case against the appellant in respect of charges for which he was convicted and uphold his conviction.

9. With regard to sentences the learned counsel for the appellant under instructions only sought reduction in sentence in respect of his conviction under

section 394 P.P.C. based on mitigating circumstances mentioned by himself. Under section 394 P.P.C. the punishment can be life imprisonment or R.I. for a term which shall not be less than four years and more than ten years and shall be liable to fine. The learned Addl. P. G. has not objected to the reduction in sentence in respect of offence under section 394 P.P.C. I find the life sentence given to the appellant under section 394 P.P.C. to be on the harsh side considering that even in the cases of attempt to murder under section 324 P.P.C. the punishment shall not be less than five years and not more than 10 years; as such, I hereby reduce the sentence in respect of offence under section 394 P.P.C. to seven years R.I. with fine of Rs.10,000/- for each of the injury. Apart from above modification in the sentence under section 394 P.P.C. all the other convictions and sentences in the impugned judgment shall remain intact including payment of Daman.

10. The instant Criminal Appeal is disposed in the above terms.

JUDGE

Athar Zai