

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No. 119 of 2003

Appellant Khurram Hussain S/O Ghulam Hussain
 through Mr. Khawaja Naveed Ahmed
 Advocate.

Respondent The State through Ms. Akhtar Rehana, APG.

Date of hearing: 18.08.2016

Date of Judgment: 31.08.2016

JUDGMENT

NAZAR AKBAR, J:- The Appellant has impugned the judgment dated 12.4.2003 whereby IVth Additional Sessions Judge, Karachi Central in Sessions Case No. 01 of 2000 has convicted him to undergo rigorous imprisonment for seven years and fine of Rs. 50,000/- and in default of payment of fine he shall suffer R.I. for six month.

2. Brief facts of the case as per 154 Cr.P.C (FIR No. 355/1999) statement of the complainant Shakeel Ahmed Khan which was recorded on 8.12.1999 are that on **8.12.1999** the complainant along with his brothers Khurram Ahmed Khan, Muhammad Ali Khan, Adeel Ahmed Khan and women folks was present in his house when at about 8:30 P.M. three young persons armed with pistol and dagger entered into his house. They while entering into the house inquired about Kashif and Mehdi. They were told that no such persons were in the house. The culprits threatened the

complainant party of dire-consequence and demanded keys of almirah and removed earrings from the ears of mother of complainant, on which the complainant and his brothers / P.Ws resisted. The culprits armed with dagger caused dagger injuries at the abdomen of PW Muhammad Ali and on the hand of PW Khurram Ali. At the cries of complainant party people from the neighborhood were attracted. One of the culprits who was wearing glasses made his escape good whereas, the other two accused were apprehended on the spot and maltreated by the people of vicinity. The accused armed with pistol disclosed his name as Naeem Sharafat whereas, the accused armed with dagger disclosed his name as Khurram Hussain. They further disclosed the name of accused who made his escape good from the place of incident was Tanveer. In the meantime police has arrived and shifted the accused to the police station. After arrest of the accused Naeem Sharafat and Khurram Hussain, statement of the complainant Shakeel Ahmed was recorded (FIR No. 355/1999) on the same day at 9:30 P.M. Place of incident was inspected and injured were referred to MLO for examination and treatment. 161 Cr.P.C statement of the P.Ws were recorded. Accused **Tanveer** was arrested on **15.12.1999**. On **17.12.1999** identification parade of accused Tanveer was arranged in the Court of Magistrate and after completing investigation accused were sent up to face trial.

3. On **22.2.2001** the charge was framed against all the three accused (1) Muhammad Naeem @ Naeem Sharafat S/O Sharafat; (2) Khurram Hussain S/O Ghulam Hussain; and (3) Muhammad Tanveer S/O Muhammad Hanif, under **section 394/34 PPC** to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined the following witnesses namely:-
- i) **PW-1** the complainant Muhammad Shakeel Ahmed Khan Ex-3. He produced his 154 Cr.P.C statement as Ex. 3/A, memo of arrest and recovery as Exh. 3/B, memo of inspection of place of incident as Ex. 3/C.
 - ii) **PW-2** Saleem Ahmed Khan Ex. 4. He produced memo of identification parade of accused Tanveer as Exh. 4/A.
 - iii) **PW-3** Muhammad Ali Khan Ex. 6.
 - iv) **PW-4** Adeel Ahmed Khan Ex. 7.
 - v) **PW-5** Khurram Ahmed Khan Ex. 8.
 - vi) **PW-6** PC Muhammad Moosa Ex. 10. He produced memo of arrest of accused Tanveer as Ex. 10/A,
 - vii) **PW-7** ASI Manzoor Ali Siddiqui Ex. 12.
 - viii) **PW-8** MLO Dr. Mirza Muhammad Aslam Ex. 13. He produced medico legal certificate of Adeel Ahmed Khan as Ex. 13/A and medico legal certificate of Muhammad Ali Khan as Ex. 13/B, letter addressed to MLO as Ex. 13/C.

whereafter the side of the prosecution was closed by learned DDA vide his statement dated 27.3.2003 as Ex. 14.

5. On **1.4.2003** The statements of the accused under **section 342 Cr.P.C.** were recorded in which they denied the allegation of prosecution and stated that case against them is false and P.Ws have deposed falsely and they are innocent. However, none of the accused persons came forward to examine himself on Oath or to lead evidence in his defence. In fact no plea in defence was taken

by them. The trial Court convicted the three accused through the judgment impugned herein. Out of the three convicts, **Khurram Hussain** the appellant herein and co-accused **Muhammad Tanveer** who had run away from the scene and he was arrested on **15.12.1999** preferred Criminal Appeals against their convictions. **Cr. Appeal No. 119/2003** (instant appeal) and **Cr. Appeal No. 155/2003** was filed by co-accused Muhammad Tanveer. Both the criminal appeals were tagged together. Both the appellants by order dated **28.7.2003** were granted bail in the sum of Rs. 1,00,000/- to the satisfaction of the trial Court. Co-accused Tanveer had either failed to furnish surety or may be he was involved in other cases therefore, he remained in jail until he completed his term of seven years conviction. Therefore, the appeal of co-convict Muhammad Tanveer became infructuous and the same was disposed of on **12.10.2007**.

6. **Role of mother of appellant and police** in protecting the absconding appellant during twelve years from July 2003 to June 2016 when he was arrested in another case. Mother of appellant **namely Rasheeda Begum** has furnished dubious surety documents in this case for release of her son pending the appeal. On **31.07.2003** mother of the appellant offered property bearing Flat No. D-31, 4th Floor, Dawood Heights, Sector 5, North Karachi as security for release of her son. It was provisionally accepted. Then she again furnished documents of **Vehicle No. V-8087** as security on **16.08.2003**. Both the sureties were bogus as it transpired after the order of this Court dated **24.05.2013** whereby security was attached. The attachment order was challenged by one Mst. Shagufta Jameel w/o Syed Jameeluddin through **Misc.**

Application No. 3534/2013 since he was residing in the said flat after having purchased the same from **Rashida Begum** by an agreement to sell dated **1.11.2004** against the payment of **Rs. 2,75,000/-** to her and transfer of remaining loan from HBFC on the said flat. Pursuant to the application of Mst. Shagufta Begum for release of flat as security a report was called from the trial Court. It is worth reproduction as under:-

“OFFICE OF THE NAZARAT BRANCH, KARACHI CENTRAL

No. NB/C/479/2014
Karachi dated 13.11.2014

To,

The Hon'ble,
Assistant Registrar (Criminal),
Hon'ble High Court of Sindh,
Karachi.

Subject: DETAILED REPORT

Reference: No. CRL/APPEAL/119/2003, dated 30.10.2014.

Respected Sir,

I have the honour to submit that in compliance of order dated 28.07.2003, passed by Honourable High Court of Sindh, Karachi, advocate for accused Khurram Hussain, filed an application dated 31.07.2003, praying therein to accept the surety documents viz. General Power of Attorney of Flat No. D-31, 4th floor Dawood Heights FL-8, Sector No. 5, North Karachi, Karachi, already accepted by the Court in same case and kept in the safe custody of Nazir at S. No. 10774/2001. The Hon'ble trial Court, accepted the application and surety provisionally up to 06.08.2003.

Perusal of record it appears that on 06.08.2003 advocate for accused Khurram Hussain filed an application for extension of time for filing surety document, the said application was allowed and trial court granted one week time.

On 16.08.2003, one Mst. Rashida w/o Ghulam, furnished surety documents viz. Registration Book of M. Vehicle No. V-8067, for accused Khurram Hussain, which was accepted on 03.11.2003. The said surety is still kept in the safe custody of undersigned at S. No. 15981/2003, dated 03.11.2003.

Sd/-13.1.2014
N A Z I R
District & Sessions Court
Karachi Central”

The mother of the appellant has never attempted to recover or get the documents of flat mentioned in the report back, nor she has produced her son. The involvement of police in protecting the accused guilty of offence under **Section 392 and 394**, is apparent since till date the police has failed to produce the appellant's mother who had stood surety despite even NBWs issued by Court for her arrest. Police has not only failed to produce surety but the police has also failed to even produce Vehicle No. V-8067 despite repeated directions of this Court through District & Sessions Judge, Central, Karachi. Then ultimately on **1.6.2016** this Court was informed by SHO P.S. New Karachi that absconding appellant has been arrested by the police in another **Crime No. 149 of 2016** and at present he is in central jail. Even after the arrest of absconder the police has failed to produce the surety in Court who is his mother or even the motor vehicle No. V-8067. These facts about the surety namely Mst. Rasheeda Begum, mother of appellant shows that she was guilty of furnishing fake documents. Her surety has already been forfeited and she is required to deposit security of Rs. 100,000/-.

7. After the arrest the learned Counsel for the appellant filed M.A. No. 6529/2016 for condonation of absence and restoration of bail application supported by the affidavit of the Counsel for the applicant Mr. Khawaja Naveed Ahmed. It is indeed very unfortunate that the learned Counsel under his own affidavit sought condonation of absence of client (the appellant) for 13 years and restoration of bail on a false story that on the day of arrest absconding accused was going to purchase blood for his wife

who was suffering from dengue fever. These facts have not been corroborated by his wife, the patient of dengue fever or any other member of the family of the applicant. It is pertinent to mention here that wife and one sister of appellant were present in Court and attempted to emotionally pressurize the court to obtain release of appellant / convict, but the two women have not sworn affidavit in support of application. Even doctor's prescription or any medical report was not filed with the said application. Learned Counsel, Barrister Khawaja Naveed Ahmed is guilty of filing a false affidavit in Court and he is liable to be prosecuted. However, since I have to dismiss this application, I am refraining from taking action, but next time if any advocate will file his personal affidavit about the facts regarding personal issues of his client he shall be cross-examined by the court and if any statement is found false he shall be prosecuted. However, when the Misc. Application having no merits was dismissed, the learned Counsel for appellant requested to argue this appeal on merits on next day **i.e. 18.08.2016**. On merits his only argument was that during the period when the appellant was absconding, the appellant got married and now he is father of two children and therefore, he may be acquitted on the ground that he has undergone imprisonment for more than **three years**. However, he has not been able to show that from where he says that the accused has been in jail for three years or more. Be that as it may, the appellant is not entitled to any mercy or concession on the ground that after obtaining bail he has absconded from the Court for more than thirteen years.

8. I have gone through the impugned order and the learned Counsel for the appellant has read out evidence of complainant

Muhammad Shakeel Ahmed who has fully corroborated the contents of FIR being witness of causing injury to his brothers by the dagger which was reported to be used by the appellant at the time of incident. The appellant was arrested on the spot and beaten up by the strangers. Repeated chances were given to all the three appellants to cross-examine the complainant but despite chances no cross-examination was done. The accused themselves did not pose any question in the cross-examination to show any element of doubt in the prosecution story. Not only the evidence of complainant but also the evidence of all the P.Ws, despite repeated chances, remained unrebutted meaning thereby the arrest of the appellant on the spot was not disputed or doubted. The injuries caused by present appellant during the course of robbery to the victims was also established as the evidence of victims was supported by the Medico Legal Officer **PW-8** who has confirmed the injuries were caused by a sharp edge weapon. The dagger, sharp edge weapon, was recovered from the present appellant and eye witnesses have seen him causing injuries. The appellant has not been able to advance a single argument to create a remotest doubt in the prosecution story or even the conclusion drawn by the trial Court in convicting the appellant for the offence under **Section 394 PPC**.

9. In view of above discussion, and the facts mentioned in para 6 above while dismissing the appeal, the **SHO P.S. New Karachi** is directed to lodge FIR in the relevant police station against the (surety) mother of appellant (Mst. Rasheeda Begum) who had furnished fake surety documents before the trial Court pursuant to the order of this Court dated **28.7.2003** and got her son

released pending the appeal. The accused is in custody, his wife and sister had appeared in Court to emotionally pressurize the Court for release of the appellant, therefore SHO New Karachi should stop protecting the appellant and the surety. It is, however, clarified that the mother of appellant Mst. Rasheeda Begum had stood surety in the sum of Rs. 100,000/- (Rupees one hundred thousand) and therefore, before lodging FIR, the SHO New Karachi should give her just seven days' time from today to deposit a sum of Rs. 100,000/- before the Nazir of this Court. In case of her failure to deposit Rs. 100,000/-, FIR may be registered as stated and she should be arrested. Compliance report of this order be placed before this Court for perusal in chamber through MIT-II. Non-compliance of this order by SHO on any pretext whatsoever would amount to contempt of Court. Therefore in case of non-compliance SHO should be present in Court on Friday i.e. **08.09.2016.**

10. The above appeal stands dismissed with the above directions.

J U D G E

ARSHAD/