IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.S-363 of 2019

Date of hearing	:	21.04.2022
Date of Judgment	:	21.04.2022
Appellant	:	Ahsan @ Kesso Through Mr. Abdul Rahim Dahri, Advocate
The State	:	Through Mr. Fayaz Hussain Saabki, A.P.G Sindh

JUDGMENT

SALAHUDDIN PANHWAR, J.-Through the captioned criminal jail appeal, appellant Ahsan @ Kesso has impugned the judgment dated 26.10.2019, passed by learned Additional Sessions Judge-IV, Dadu, in Sessions Case No.153 of 2019, emanating from Crime No.43/2019, registered at Police Station B-Section Dadu, under sections 412, 34 PPC, whereby the learned trial Court convicted and sentenced the appellant to suffer R.I for 10 years, besides to pay fine of Rs.10,000/-, in case of default whereof the appellant was ordered to undergo further S.I for 05 months. Benefit of section 382-B was extended to appellant.

2. Briefly, on 09.04.2019, complainant ASI Ghulam Shabir Soomro, lodged FIR at P.S B Section Dadu, alleging therein that he is posted as ASI at P.S B Section Dadu and on 09.4.2019, he alongwith his sub ordinate staff PC Muhammad Soomar Chandio, PC Ali Abbas Kabooro and driver Ali Nawaz armed with arms and ammunition vide entry No. 15 at 1415 hours, for search of offender of crime No. 42/2019 u/s 353,324,399.402 PPC, having searched village Landhi, village Tajpur, and village Pipri police party were going through Bye pass road, it was 1540 hours, reached near

Shaikh Daro road received spy information that four persons were going to graveyard of Shaikh Haran in suspicious manner. Police party proceeded towards pointed place and saw and identified accused Ahsan @ Kesso son of Muhammad Hassan Panhwar, Pervaiz son of Mumtaz by caste Mastoi, Sarfaraz @ Mehtab son of Mashooque Ali Jatoi, and one unidentified accused whose face was open, all persons. Accused persons were moving hidden motorcycles in to bushes of graveyard, meantime, police party apprehended accused Ahsan @ Kesso Panhwar along with motorbike, while remaining accused leaving motorcycles made their escape good towards western side. From personal search of accused recovered Rs.230/- prepared such memo of arrest and recovery of four motorcycles and then brought accused and case property at P.S where FIR was registered.

3. At the very outset, the learned Counsel for the appellant contends that he would be satisfied and shall not press this appeal on merits, if the sentence awarded to the appellant i.e. R.I for 10 years is reduced to one already undergone by him including the conviction in lieu of fine. He further submits that the appellant is poor person and is the only surviving bread earner of his family hence prayed for lenient view.

4. Learned A.P.G appearing for the State has conceded to the proposition of appellant's counsel that sentence awarded to the appellant may be reduced to already undergone.

5. ***Quantum of punishment*** is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of ***punishment*** in view.

6. In order to ascertain the period the appellant has already served, jail roll was called, which has been received. Per jail roll, appellant has already served 03 years and 03 days as on 18.04.2022, whereas period of remissions

earned is 02 years, 03 months and 18 days. Since, appellant is not pressing captioned appeal on merits but seeking reduction of sentence, therefore, I would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase "**not less than**" while there are other which are with phrase "**may extend upto**". Thus, it is quite obvious and clear that the law itself has categorized the offences in *two* categories regarding quantum of punishment. For one category the Courts are empowered to award *any* sentence while in *other* category the discretion has been limited by use of the phrase **'not less than'.** Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in *first* category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "**reformation**" by awarding less punishment which how low-soever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents.

7. Since the co-accused namely Sarfraz @ Mehtab and Pervaiz have been acquitted by the learned trial Court through impugned judgment, therefore, keeping in view, the phrase "**may extend upto**" and the circumstances explained herein above and also by taking lenient view against appellant as, per counsel, he is the only bread earner of his family, and hold that the appellant has made out his case where he deserves leniency being proposed by the learned counsel. Hence, I find it appropriate to reduce the sentence of the appellant from ten years to the

one already undergone.

8. In view of the above, the appeal is dismissed and conviction and sentence awarded to the appellant by the learned trial Court vide judgment dated 26.10.2019 are maintained, however, reduce the sentence awarded to the appellant to one already undergone by him. With regard to the conviction period in lieu of non-payment of fine of Rs.10,000/- is concerned, the same shall also include into the sentence already undergone by him. Accordingly, the appellant who is in custody shall be released forthwith if not required in any other custody case.

JUDGE

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