

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No. 227 of 2012

Appellants : 1. Naeem-ur-Rehman Niazi  
2. Tanzeer-ur-Rehman  
through Mr. Irshad Ali Jatoy, Advocate

Respondent : The State  
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 28<sup>th</sup> September, 2022

**JUDGMENT**

**Omar Sial, J:** Ikram-ul-Islam on 17.07.2009 lodged F.I.R. No. 409 of 2009 at the Aziz Bhatti police station under sections 392 and 34 P.P.C.. He recorded that on 16.07.2009 while he was at his computers shop 2 men came and introduced themselves as Naeem-ur-Rehman Niazi and Sharjeel respectively. Niazi said that he was an official of the Pakistan Customs and further said that he had laptops which he could sell to Ikram for a low price. On 17.07.2009, Islam along with his friend Raheel went to Niazi's house to conclude the deal. According to Ikram, once inside the house, Niazi along with his wife and son and some guards took out pistols and forcibly took the money from Ikram but did not give him the laptops. Niazi then sat in a car and drove away whereas his wife and son and the guards went back inside the house.

2. The accused pleaded not guilty and claimed trial. The prosecution examined 4 witnesses in order to prove its case. The accused in their section 342 Cr.P.C. statements professed innocence. Samina further stated that she was estranged from her husband Niazi and that she and her sons had been living separately even before the incident is said to have occurred. Tanzeel also reflected what Samina said.

3. The learned 4<sup>th</sup> Additional Sessions Judge, Karachi East on 11.07.2012 sentenced Niazi and Tanzil to 5 years in prison and a fine of Rs. 50,000 each (or an additional 6 months in prison) for an offence under section 419 P.P.C. Both the accused, except Samina, were sentenced to 7 years in prison and a fine of Rs. 10,000 each (or an additional 3 months in prison) for an offence under section 392 P.P.C. Samina was acquitted.

4. Learned counsel for the appellants at the outset submitted that he does not press the appeal filed by Niazi but that his wife and children were innocent. The learned APG half heartedly supported the judgment as far as Samina and Tanzeel were concerned.

5. I have heard the counsels. The complaint was issued several notices but no body effected an appearance on his behalf. I have reappraised the evidence and my observations and findings are as follows.

6. **Ikram-ul-Islam (PW-1)** at trial basically repeated what was recorded in the F.I.R. He acknowledged that he had not known Samina or Tanzeel earlier and that he was also not asked to come and identify the 2 by the investigating officer of the case after they were arrested. No identification parade was held. He recorded at trial that Rs. 200,000 was snatched from him by Niazi and that the other people, except Samina, were standing holding pistols. He admitted that in the F.I.R. and his section 161 Cr.P.C. statement he had not mentioned that the other persons were holding pistols. What appears to be unfair, the learned trial judge aborted the cross examination of this witness as according to her, the counsel of the accused was wasting time. This was not proper.

7. **Raheel Maqsood (PW-2)** was allegedly an eye witness. At trial he only implicated Niazi as pulling out a weapon and forcibly snatching Rs.200,000 from Ikram. He admitted that he had given no description of either Samina or Tanzeel to the police nor was an identification parade held for him to identify them after arrest.

8. **A.S.I. Shakeel Ahmed (PW-3)** was the investigating officer of the case. He confirmed that neither the allegedly robbed money or any of the

pistols were recovered. He also confirmed that he had not arranged an identification parade.

9. A bare reading of the evidence shows that all overt acts and snatching money was attributed to Niazi. His wife and son were said to be present on the spot. In view of the foregoing, on the same set of evidence Samina, with a similar role of presence attributed to her was acquitted. No reason was given by the learned trial judge as to how Tanzeel's role was distinguishable from that of Samina. Tanzeel too should have been given the same concession. Apart from that, the evidence led at trial was certainly not sufficient to convict Samina and her son. In no manner was the prosecution successful in proving its case against Samina and Tanzeel.

10. In view of the above, apart from the fact that in my view the prosecution failed to prove its case beyond reasonable doubt, Tanzeel too is entitled, on the ground of consistency, to get the same relief as his mother Samina. The appeal to the extent of Tanzeel is allowed. He is on bail. His bail bonds stand cancelled and surety discharged. The surety may be returned to its depositors upon identification.

11. As far as the appeal to the extent of Naeem-ur-Reman Niazi is concerned the same is dismissed as not being pressed. The sentence however awarded to him in the cases arising out of Crl App No. 226 of 2012, Crl App No. 227 of 2012 and Crl App No. 228 of 2012 shall run concurrently.

JUDGE