

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 217 of 2023

Criminal Jail Appeal No. 173 of 2023

Appellants: Alam Khan and Abdul Basit through Mr. Zulfiqar Ali Langah, advocate

The State: Mr. Muhammad Anwar Mahar, DDPP

Date of hearing: 07.09.2023

Date of judgment: 07.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with one more culprit robbed complainant Tayyab-ur-Rehman and PW Adnan of their cell phones, cash and other belongings, for that they were booked and reported upon by the police. On conclusion of trial, co-accused Mushtaque Hussain was acquitted while the appellants were convicted u/s. 397 PPC and sentenced to undergo rigorous imprisonment for 07 years, with benefit of Section 382(b) Cr.P.C by learned Xth-Additional Sessions Judge, Karachi South vide judgment dated 07.03.2023, which they have impugned before this Court by preferring two separate jail appeals..

2. At the very outset, it is stated by learned counsel for the appellants that the appellants as per jail roll inclusive of remission have already undergone 06 years, 09 months and 27 days of the sentence and under instructions he would not press the disposal of the instant Crl. Jail Appeals before this Court on merits, provided the sentence awarded to the appellants is reduced to rigorous imprisonment for three years with fine by modifying the penal Section with one under Section 392 PPC, which obviously is made out, which is not opposed by learned DDPP for the State.

3. Heard arguments and perused record.

4. Apparently, no weapon was used by the appellants while committing the alleged robbery, which obviously constitutes an offence punishable under Section 392 PPC, therefore, the punishment awarded to the appellants is modified with one under Section 392 PPC; consequently, they for the said offence is sentenced to undergo rigorous imprisonment for 03 years and to pay fine of Rs.15,000/- each and in default whereof to undergo simple imprisonment for 01 month each with benefit of Section 382(b) Cr.P.C.

5. In case of *Salah-Ud-Din vs. The State* (1990 P.Cr.L.J 1221), it has been held by Lahore High Court that;

“8. Learned counsel for the appellant at the end argued that the case even on facts ~as concluded above, did not fall under section 397, P.P.C. The argument carries weight. The provisions of section 397, P.P.C. are to the effect that if at the time of committing robbery or dacoity the offender uses any deadly weapon, he shall be punished with an imprisonment of not less than 7 years. In the present case the appellant had not used their weapons. What they had done was the pointation of the weapons at the complainant and under the fear thereof he was made to surrender his rickshaw and Rs.10 he was carrying. The offence committed thus amounted to simple robbery punishable under section 392 of the Code. Conclusion accordingly.”

6. The instant Crl. Jail Appeals are disposed of subject to above modification.

JUDGE