

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No.55 of 2023

Appellant: Asghar Ali through Mr. Mr. Qadir Hussain Khan and Ms. Shehla Anjum, advocates

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General for the State

Date of hearing: 27.09.2023

Date of judgment: 27.09.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellant and co-accused Muhammad Khalid during course of robbery caused but blow to complainant Muhammad Usman on his head, for that they were booked and reported upon. On conclusion of trial, co-accused Muhammad Khalid was acquitted while the appellant was convicted u/s. 397 PPC and sentenced to undergo rigorous imprisonment for 07 years and to pay fine of Rs.20,000/- and in default whereof to undergo simple imprisonment for six months; he was further convicted under Section 337-A(i) PPC and sentenced to pay *Daman* of Rs.30,000/- to complainant Muhammad Usman and in default whereof to undergo simple imprisonment till its payment in lump sum with benefit of Section 382(b) Cr.P.C by learned XI-Additional Sessions Judge, Karachi South vide judgment dated 07.01.2023, which he has impugned before this Court by way of the instant Criminal Appeal from jail.

2. At the very outset, it is stated by learned counsel for the appellant that as per jail roll, inclusive of remission, the appellant has already undergone 05 years, 02 months and 15 days of the sentence, therefore, under instructions he would not press the disposal of the instant Crl. Jail Appeal 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 u/s. 392 PPC, which obviously is made out, which is opposed by learned Addl. PG for the State by contending that the offence alleged against the appellant is affecting the society at large.

3. Heard arguments and perused record.

4. The FIR of the incident has been lodged with delay of about 2 ½ hours; it is against the unknown culprits. On the basis of same evidence, co-accused Muhammad Khalid has already been acquitted by the learned trial court. The simple butt blow to the complainant by the appellant could hardly put the same within ambit of use of the pistol; the circumstances prima facie suggest that it was a case which constitutes an offence punishable under Section 392 PPC, consequently, the appellant for the said offence is convicted and sentenced to undergo rigorous imprisonment for three years with fine of Rs.10,000/- and in default whereof to undergo simple imprisonment for one month with benefit of Section 382(b) Cr.PC. Needless to say that the punishment awarded to the appellant for offence punishable under Section 337-A(i)PPC would remain same.

5. The instant Crl. Jail Appeal is disposed of subject to above modification.

JUDGE