

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.198 OF 2024

Appellants: 1. Wajid @ Mama son of Muhammad Hanif
2. Shahid Ahmed Qureshi son of Zafar Ahmed Qureshi,
Through Mr. Maula Bux Bhutto, Advocate.

Respondent/State Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh

Date of hearing: 21.03.2024

Date of announcement: 21.03.2024

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants, Wajid @ Mama son of Muhammad Hanif and Shahid Ahmed Qureshi son of Zafar Ahmed Qureshi have preferred this appeal against the impugned judgment dated 28.02.2024 passed by the learned IXth Additional District & Sessions Judge (South) Karachi in Sessions Case No.798 of 2017 under F.I.R. No.188/2016 u/s. 395, 337-A(i) PPC registered at PS Eidgah Karachi; whereby both the appellants were convicted u/s.265-H(2) Cr.P.C and both were sentenced to undergo R.I for Seven (07) years and fine of Rs.10,000/- each. In case of default in payment of fine they shall suffer further 7 days SI more. Benefit of Section 382-B Cr.P.C. was extended to the accused.

2. Precisely the brief facts of the prosecution case as per FIR are that on 18.10.2016 complainant namely Muhammad Usman lodged FIR contending there in that on 18.10.2016 he was performing his duty as Manager Summit Bank, Ranchore Lines, Karachi and was present there, at about 0910 hours, three young boys wearing Shalwar Kamiz entered into the bank, after a while two young boys wearing pant shirt also came there, pushed security guard Nazeer Ahmed, due to which he fell down inside the bank, they pulled the security guard inside the bank, took out their weapons and aimed upon the bank staff, guard Abdul Qadeer tried to resist whereupon accused persons caused/hit pistol but on his head due to which he became injured. Out of them two aimed their pistol at complainant and took him to IT room

situated at upper floor of the bank and asked to decode the camera, complainant obeyed them and they took the DVR machine. Thereafter they asked to open the cash room, to whom he disclosed that key of cash room was not with him, they tried to open the same at their own but could not succeed. In the meantime four culprits entered into cash room, gave beating to cashier Fida Khan and Fahad Taj Din and took cash Rs.5,40,250/- from the rags and kept in their bags and while leaving snatched mobile phones Samsung Galaxy from employee Iqra Mehak and pistol from guard Nazeer alongwith five bullets. In the meanwhile security guard Abdul Qadeer made two fires from his 12 bore rifle but they succeeded to flee away. Complainant intimated the incident to bank administration and police lodged FIR.

3. After completion of usual investigation the challan was submitted and the appellants/accused were sent up to face trial. The appellants pleaded not guilty to the charge. In order to prove its case, the prosecution examined 12 PWs who exhibited various documents and other items. The statement of the appellants/accused was recorded under Section 342 Cr.P.C. wherein they denied the prosecution allegations. However, the appellants neither examined themselves on oath nor produced any witnesses in their defence.

4. After hearing the parties and appreciating the evidence on record, the learned trial court convicted and sentenced the appellants as set out earlier in this judgment, hence they have filed this appeal against their conviction and sentence.

5. At the very outset, learned counsel for the appellants submitted that both the appellants accepted their guilt and did not contest the case on merits and only sought reduction in their sentence according to the following special features/mitigating circumstances;_

- i) Both the appellants are first time offenders and capable for reformation.
- ii) Both the appellants are young men with large families to support.
- iii) That by accepting their guilt they have shown genuine remorse.
- iv) Both the appellants have served out a substantial portion of their sentence.

6. Based on the above mitigating circumstances learned Additional Prosecutor General Sindh had no objection to the appellant's sentence being reduced to some reasonable extent.

7. I have perused the evidence on record and found that the complainant identified both the appellants in the identification parade who entered into the bank and robbed them by force of arms. The complainant had no enmity or ill will against the appellants and had no reason to falsely implicate them in this case. Hence I believe the evidence of the complainant which I find to be reliable, trustworthy and confidence inspiring especially with regard to the identification of both the appellants who had committed robbery. I also find the evidence of the injured security guard who also identified the appellants as robbing the bank to be reliable and confidence inspiring and I believe the same. Based on the above discussion, I find that the prosecution has proved its case against the appellants beyond any shadow of doubt and uphold their convictions.

8. With regard to sentencing based on the mitigating circumstances raised by learned counsel for the appellants and no objection given by the learned Additional Prosecutor General Sindh for reduction in sentence to some reasonable extent since the appellants have already undergone more than five (05) years of the seven (07) years sentence as per Jail Roll, I hereby reduce the sentence of the appellants, Wajid @ mama son of Muhammad Hanif and Shahid Ahmed Qureshi son of Zafar Ahmed Qureshi to that already undergone in Jail and waive their fines. The appellants shall be released unless they are wanted in any other custody case.

9. The instant Criminal Appeal stands disposed of in the above terms.

JUDGE

Hyder/PA