

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio.

CRIMINAL APPEAL NO.123 OF 2009

Appellant	Muhammad Hanif Butt son of Lateef Ahmed Butt through Mr. Mamoor A.K. Sherwany, Advocate
Respondent	The State through Mr. Ghulam Sarwar Baloch, Assistant Attorney General, Pakistan.
Date of Hearing	: 18.04.2023
Date of Judgment	: 18.04.2023

J U D G M E N T

Muhammad Karim Khan Agha, J. Appellant Muhammad Hanif Butt was tried in the Special Court (Offences in Banks) Sindh at Karachi in Case No.17 of 1998 in Crime No.04 of 1998 under Section 409/468/471/477-A/34 PPC read with Section 5(2) PCA-II, 1947 registered at FIA, CBC, Karachi and vide Judgment dated 28.05.2009 the appellant was convicted and sentenced as under:-

"I convict the above named accused u/s.245(2) Cr.PC and award him sentence for the offence punishable u/s.409 PPC for seven years (7 years) R.I. and to pay a fine of Rs.5,00,000/- (Rupees Five Lacs), and in default of payment of fine he has to further undergo R.I. for one year. I further convict and award the sentence to accused for the offence punishable u/s.477-A PPC for five years (05 years) R.I. and to pay fine of Rs.2-lacs, and in default of payment of fine he has to further undergo R.I. for six months. I also convict him u/s.468 PPC for four years (04 years) R.I. and to pay fine of Rs.2-lacs, and in default of payment of fine he has to further undergo R.I. for six months."

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The sentences were ordered to run concurrently and the appellant was also extended the benefit of Section 382-B.

2. The brief facts of the case are that the appellant was an officer of Allied Bank Limited, Zaibunisa Street, Saddar Karachi and in connivance with other bank officials/colleagues was involved in the offences set out in the subject FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 12 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. At the very out set learned counsel for the appellant drew our attention to the fact that the charge was amended on 13.06.2005 and before that date 11 PWs evidence had already been recorded. However, after amendment of the charge none of these witnesses were recalled in order to record their evidence afresh. According to him this was a mandatory requirement of the law which was not curable and required this case be remanded to the concerned trial Court for rehearing. Learned Assistant Advocate General agreed to this proposition.

7. We also find that based on non-recalling of 11 PWs in this case that it is a case of remand. As such the impugned judgment is set aside and this case is remanded back to the Special Court (Offences in Banks) Sind at Karachi for the limited purpose of re-

recording the evidence of PW-1 to 11 in accordance with law and thereafter record afresh Section 342 Cr.PC statement of the appellant. PW-12 evidence shall remain intact. After hearing the arguments of the parties learned Special Court (Offences in Banks) Sind at Karachi shall render a fresh judgment based on the evidence on record in accordance with law. This exercise shall be carried out by the Special Court (Offences in Banks) Sind at Karachi within 03 months of the date of this order.

8. At the time of rendering the impugned judgment, the appellant was in jail. However, we note that the appellant has served out his entire sentence as such the appellant shall remain on bail until final disposal of the case on the same terms and conditions as was granted by this Court vide order dated 23.07.2009. Copy of this order shall be sent to Special Court (Offences in Banks) Sind at Karachi along with R&P for compliance.

9. The instant Criminal Appeal is disposed in the above terms.