

## IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.D-108 of 2024  
Confirmation Case No.13 of 2024

Appellant: Muhammad Faisal through Mr. Riaz  
Ali Panhwar, Advocate.

Respondent: The State through Mr. Shawak Rathore,  
Deputy Prosecutor General Sindh.

Date of hearing: 17.09.2025  
Date of decision: 17.09.2025

### J U D G M E N T

**JAN ALI JUNEJO, J:** Through this Criminal Jail Appeal, appellant has impugned judgment dated 18.12.2024 passed by the learned Model Criminal Trial Court-I/1<sup>st</sup> Additional Sessions Judge, Hyderabad in S.C. No.903/2022, whereby he has convicted the appellant under section 265-H(ii) for an offence punishable under section 302(b) PPC and awarded him death penalty on two counts by way of Ta'zir for committing qatl-i-amd of the boys Aliyan Qureshi and Moiz Arain and to pay compensation of Rs.1,000,000/- (One Million) to the legal heirs of each deceased under section 544-A, Cr.P.C. and in case of non-payment of compensation to suffer S.I for six months more. Learned trial Court has also made a reference for confirmation of death sentence.

2. Briefly stated, the prosecution case is that accused Muhammad Faisal was running a fritters (pakora) stall at Domanwah Road near Nishat Lassi Shop. On 06.05.2022, at about 1700 hours, the accused quarreled with some customers over the sale and purchase of pakoras. On hearing the commotion, prosecution witnesses Muhammad Ali, Muhammad Amjad, Shahmeer Baloch, Waqar Baloch, along with other members of the public,

gathered at the spot and attempted to pacify the quarrel. In the meantime, a number of people, including minors Moiz Arain (aged about 10 years) and Alyan Qureshi (aged about 11 years), had also assembled near the stall. The accused, in a fit of rage, went to his nearby house, fetched a pistol, and indiscriminately opened fire upon the gathered witnesses. The fire struck minor Moiz on the chest, passing through and through, and also hit minor Alyan on the head. After committing the offence, the accused fled from the scene. Both injured minors were immediately shifted to Liaquat University Hospital, Hyderabad, where Moiz was declared dead on arrival, while Alyan succumbed to his firearm injury within a few hours. The concerned police reached the hospital, initiated legal proceedings, and the postmortem examinations of both deceased minors were conducted by the Medical Officers. On the same date, Muhammad Ali, father of deceased Moiz, appeared at Police Station Phuleli and lodged FIR No. 60 of 2022 under Section 302, 34 PPC. The investigation of the case was entrusted to SIP Ayaz Hayat, who visited the place of incident and secured one empty cartridge from the spot. On 07.05.2022, the father of deceased Alyan lodged a second FIR of the incident bearing Crime No. 61 of 2022 under Section 302, 34 PPC at the same police station, which was subsequently amalgamated with the earlier case.

3. During investigation, sufficient incriminating evidence came on record against accused Muhammad Faisal, who was found prima facie guilty, whereas co-accused Younus and Ahmed (brothers of the principal accused) were let off. Consequently, challan/charge-sheet was submitted before the competent Court against accused Faisal.

4. The prosecution, in order to prove its case, examined as many as 14 witnesses and produced various documents. Thereafter, the statement of the accused/appellant was recorded under section 342 Cr.P.C. and upon

hearing the learned ADPP for the State and learned counsel for the accused, the learned trial Court pronounced the impugned judgment.

5. At the very outset, learned counsel for the appellant argued that the learned trial Court has not appended the certificate in the statement recorded under section 342 Cr.P.C. in compliance of section 364 Cr.P.C. which is mandatory requirement; hence, he prayed that the case may be remanded back to the trial Court for recording statement of the accused under section 342 Cr.P.C. afresh in accordance with section 364 Cr.P.C.

6. On the other hand, learned D.P.G. Sindh for the State conceded the contention of the learned counsel for the appellant.

7. We have heard learned Counsel as well as learned D.P.G. and our conclusions are as follows.

8. It is a well-settled proposition of law that the purpose of recording the statement of an accused under Section 342, Cr.P.C. is to put before him the prosecution case in its entirety, thereby affording him an opportunity to explain each incriminating circumstance appearing in the evidence and to enable him to prepare his defence. Such statement must be recorded strictly in the form of questions and answers in terms of Section 364, Cr.P.C., which further mandates that it shall be reduced into writing in the English language, and where the accused does not understand English, the contents must be explained to him in a language he comprehends. Upon completion, the statement must bear the signatures of both the Presiding Judge and the accused, and the Judge is required to append a "Certificate" affirming that the statement represents a full and true account of what transpired during the examination. However, in the present case, although the statement of the accused bears his signature, it merely reflects the typed word 'Certificate' followed by the name and designation of the Presiding Officer. It does not bear the handwritten signature of the trial Judge, nor

does it contain the mandatory certification in the terms envisaged under Section 364, Cr.P.C. Such omission strikes at the very root of the legality and sanctity of the accused's statement, rendering it non-compliant with the statutory scheme and vulnerable to challenge. For ready reference, the text of Section 364, Cr.P.C. is reproduced below: –

***“364. Examination how recorded:*** (1) *Whenever the accused is examined, by any Magistrate or by any Court other than a High Court, the whole of such examination including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read, to him, or if he does not understand the language in which it is written shall be interpreted to him in language which he understands, and he shall be at liberty to explain or add to his answers.*

(2) *When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.*

(3) *In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.*

(4) *Nothing in this section shall be deemed to apply to the examination of an accused person under Section 263.”*

9. In the case of *KHADIM HUSSAIN v. The STATE* (2022 MLD 95), this Court categorically held that in trials involving capital punishment or life imprisonment, it is incumbent upon the trial Court to put every incriminating circumstance to the accused under Section 342, Cr.P.C. Failure to do so deprives the accused of a fair opportunity to explain the prosecution's case. The ratio is fully attracted in the present appeal, where the statement of appellant Muhammad Faisal was recorded without the mandatory certification required under Section 364, Cr.P.C. The omission is not a mere irregularity but an illegality not curable under Section 537,

Cr.P.C. The concession made by the learned D.P.G. Sindh, therefore, is legally justified, since the lapse on the part of the trial Court amounts to a fatal illegality. The present case reveals that at the bottom of the accused's statement **only** the word "**Certificate**" was typed along with the name and designation of the Presiding Officer, but it neither bears his signature nor the certification in the manner prescribed by law. Hence, the principle that "Courts are under obligation to comply with Section 364 in its strict sense" squarely applies.

10. Likewise, in GUL JEHAN v. The STATE (1998 MLD 288), the Honourable Federal Shariat Court emphasized that the provisions of Section 364, Cr.P.C. are mandatory in nature, and non-compliance is not a curable irregularity. The Court further observed that absence of the mandatory certification under Section 364(2), Cr.P.C. vitiates the trial and necessitates remand. The Court also cautioned against the "casual approach" of trial Courts in recording the statements of accused, noting that such negligence adds to appellate workload and delays the dispensation of justice. The present case is a glaring example of the same lapse, where the trial Court merely typed the word "**Certificate**" without appending the required signature or certification, thereby committing the same illegality as condemned in the above judgment. We also derive support from the decisions reported in 1991 PCr.LJ 617, 2001 PCr.LJ 1959, 1990 PCr.LJ 396, 2006 PCr.LJ 182 and 2017 PCr.LJ 703, which consistently reiterate the mandatory character of Section 364, Cr.P.C.

11. In view of the foregoing discussion, we are of the considered opinion that compliance with Section 364(2), Cr.P.C. is mandatory and failure to adhere to the same amounts to a fatal illegality. Such failure warrants that the matter be remanded to the trial Court for recording afresh

the statement of the accused under Section 342, Cr.P.C. strictly in accordance with law.

**12.** Consequently, in the interest of justice, the impugned judgment dated 18.12.2024 is hereby set aside. The matter is remanded to the learned trial Court, which shall proceed from the stage of recording the statement of the appellant under Section 342, Cr.P.C., ensuring that each and every incriminating piece of evidence relied upon by the prosecution is distinctly put to him for his explanation. For the avoidance of doubt, it is clarified that the evidence already recorded shall remain intact and need not be re-recorded. Thereafter, the trial Court shall decide the case afresh, strictly on merits and in accordance with law, after affording due opportunity of hearing to the parties, within a period of thirty (30) days from the receipt of this judgment. On the very first date fixed, the trial Court shall issue production orders for the accused, who shall, upon appearance, be confronted with the prosecution evidence in terms of Section 342, Cr.P.C. The office is directed to transmit a copy of this judgment along with the record and proceedings forthwith to the learned trial Court for compliance. The parties shall appear before the trial Court on 27.09.2025.

**13.** The instant jail appeal, along with the connected confirmation case, stands disposed of in the above terms.

**14.** These are the reasons for our short order dated 17.09.2025.

JUDGE

JUDGE