IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Before
Mr. Justice Shamsuddin Abbasi.
Mr. Justice Muhammad Hasan (Akber)

Criminal Appeal No.D-23 of 2024
[Confirmation Case No.20 of 2024]
[*Ikram and Ghulam Mustafa vs. The State*]

Criminal Acquittal Appeal No.D-12 of 2024
[*Muhammad Sardar vs. Shahzad Ahmad*]

Criminal Appeal No.S-148 of 2024
[*Ghulam Mustafa vs. The State*]

Criminal Appeal No.S-157 of 2024
[Muhammad Ikram vs. The State]

Appellants/Accused:	Ikram and Ghulam Mustafa in Criminal Appeal No.D-23/2024, Criminal Appeals No.S-148 & 157 of 2024, through Mr. Muhammad Yousuf Laghari, Advocate.
Appellant/Complainant:	Muhammad Sardar in Criminal Acquittal Appeal No.D-12 of 2024, as Appellant, and in Criminal Appeal No.D-23 of 2024, through Mr. Afzal Karim Virk Advocate.
Respondent/Accused:	Shahzad Ahmed in Criminal Acquittal Appeal No.D-12 of 2024.
The State:	Through Mr. Neel Parkash, D.P.G.
Date of hearing:	08.12.2025
Date of Judgment:	22.12.2025

J U D G M E N T

Muhammad Hasan (Akber), J-. Assailed in Criminal Appeal No.D-23 of 2024, is the Judgment dated 21.07.2023, passed by learned 1st Additional Sessions Judge/MCTC, Mirpurkhas, in Sessions Case No.347/2022, 'The State v. Ikram and others' arising out of F.I.R No.19/2022 of PS Jhudo for the offences under sections 302, 114, 337-H(ii) and 34 PPC., whereby appellants/accused Ikram and Ghulam Mustafa have been convicted and sentenced to death as Tazir u/s 302(b) r/w Section 34 PPC, subject to confirmation by this Court in terms of Section 374 CrPC, and to compensate LRs of the deceased to the tune of Rs.50,00,000/- in terms of Section 544-A CrPC in equal share and in default thereof to undergo

imprisonment for six months as well as to pay fine of Rs.50,000/- each total Rs.1,00,000/- for offence u/s 337-H(2) PPC and in default thereof to undergo SI for a month, whereas, co-accused Shahzad Ahmed has been acquitted on a benefit of doubt vide same judgment.

2. Similarly, assailed in the Criminal Appeals No.S-148 & 157 of 2024, are the Judgments dated 21.07.2023, respectively, passed by same learned Judge in Sessions Cases No.185 & 186 of 2022, arising out of F.I.Rs No.22 & 21 of 2022 of same PS for the offences under section 25 Sindh Arms Act, 2013, whereby both the appellants Ghulam Mustafa and Muhammad Akram have been separately convicted and sentenced to R.I for 10 years and to pay fine of Rs.2,00,000/-, in case of default thereof to undergo S.I for two years more, and benefit of section 382-B Cr.P.C. was also extended to them.

3. In Criminal Acquittal Appeal No.D-12 of 2024, the appellant/complainant has challenged the Judgment dated 21.07.2023 to the extent of acquittal of respondent/accused Shahzad Ahmed.

4. The case of prosecution is that on 09-03-2021 at 11:30 a.m. beside Aqsa mosque Kachhi colony Jhudo, the appellants / accused Ikram and Ghulam Mustafa being armed with pistols in furtherance of their common intention on the instigation of co-accused / respondent Shahzad Ahmed due to an old enmity committed murder of complainant's brother namely Muhammad Iqbal Jatt by causing him firearm injuries.

5. In the main case bearing Sessions Case No.347/2022, the challan was submitted after due investigation in the Court for the purpose of trial, and in the trial, a formal charge Exhibit-02 was framed against the appellants/accused to which they pleaded not guilty and claimed trial. To prove its case, the prosecution examined as many as 11 witnesses, including PW-01 Complainant Muhammad Sardar, PW-2 Hafiz Muhammad Umer, PW-3 Hussain Bakhsh Khaskhely, PW-4 Dr. Mir Imran Ahmed Talpur, PW-5 Muhammad Sulleman Rahimoo, PW-6 Tapedar Niaz Muhammad Chandio, PW-7 Dispatch official H.C Salahuddin Rajput, PW-8 Dispatch official PC Faheem Bhurgri, PW-9 Author-cum-I.O SIP Hassan Baksh, PW-10 Malkhana in charge WHC Allah Dino Khoso and PW-11 I.O ASI Imdad Illahi (off-shoot crimes), who all have produced relevant documents

i.e. FIR, Judgment, 164 Cr.P.C statements of witnesses, postmortem report, memos of site inspection, inspection of dead body of deceased, lash chakas form, danishtnama, memo of arrest etc. The Statements of the accused under section 342 Cr.P.C. were recorded, wherein they denied the prosecution's allegations and professed their innocence; however, neither did they examine themselves on oath nor led any evidence in their defence. Upon conclusion of evidence and hearing the arguments of the parties, the learned trial court convicted and sentenced the appellants/accused; whereas it acquitted the co-accused/respondent Shahzad Ahmed.

6. Learned counsel for the Appellants/accused at the very outset has submitted, inter alia, that the trial of the appellants/accused was conducted in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as no fair opportunity was provided to them; that all the incriminating pieces of evidence regarding postmortem, recovery of crime empties, recovery of crime weapons, ballistic examination reports, positive serology report, site sketch, motive, etc. were not put to the accused in their statements recorded u/s 342 Cr.P.C in proper manner specifically and separately to enable them to explain the same which has caused serious prejudice to them because the trial court while convicting them has relied upon such evidence; that the statements of the appellants/accused have been recorded by the learned trial court putting lengthy, incomprehensible questions wherein almost entire depositions / cross-examinations have been reproduced and it was not possible for the appellants/accused to understand such long questions and reply properly, which has caused a serious prejudice to them; that omission on the part of the trial Court amounts to denial of a fair opportunity to the accused in an offence carrying capital punishment and it has vitiated the trial. Learned Counsel in view of such facts and circumstances has submitted that this case may be remanded to the trial court to record the statements of the appellants/accused u/s 342 Cr.P.C afresh in the form as prescribed under the law, putting the specific and understandable questions so that the appellants/accused may be able to reply properly.

7. Conversely, learned counsel for the Complainant supported the Judgment impugned and contended that the impugned judgment is opposed to facts, law and material available on record and is based upon non-reading and misreading of the evidence to the extent of acquitted accused/respondent Shahzad Ahmed

and that the trial court has failed to consider that the prosecution has proved its case against him beyond shadow of reasonable doubt. Lastly, he prayed for setting aside the impugned judgment and convicting the respondent/accused Shahzad Ahmed.

8. The learned APG, on query of this Court, submits that the irregularity pointed out by the learned counsel for the appellants is supported by the record, and recorded his no objection for remand of the case for *de novo* trial.

9. We have heard learned counsel for the appellants/accused, learned counsel for the complainant, learned Deputy Prosecutor General for the State and perused the material available on record.

10. The case relates to capital punishment since the appellants have been awarded Death sentence. A bare perusal of the record reveals that despite the fact that the appellants had appointed their private counsel, the learned trial Court of its own appointed one lady Advocate sitting in the Court to render legal assistance, without even Appellants' consent. It is important to note that it was not the case that the appellant did not have the resources to appoint counsel; nor was any request for appointment of counsel at the State's expense made by the appellant. On the contrary, the privately engaged counsel for the appellant had already cross-examined some of the witnesses, whereas for rest of the witnesses, the lady Advocate was appointed by the learned Presiding Officer and rest of the prosecution witnesses were cross-examined by that lady advocate, whereafter the matter was concluded hurriedly by recording statements of the accused and the Judgment was passed, without allowing ample opportunity to the learned private counsel for the appellants for final arguments. The matter appears to have been handled by the learned Court in a cursory manner by announcing the conviction verdict of the Death Penalty, in haste. The appellants appear to have been deprived of their right to a fair trial, as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

11. The next aspect of the matter which requires consideration is the compliance of section 342 Cr.P.C. A careful examination of the record reveals that the statements of the accused under Section 342 Cr.P.C. consist of lengthy paragraphs, containing multiple facts, circumstances, and questions merged

together. Many questions span big paragraphs, contain multiple facts, and are framed as narrative summaries of evidence. Such questions are neither comprehensible nor legally acceptable under Section 342 Cr.P.C. The law requires that each incriminating circumstance be put to the accused separately, clearly, and understandably, enabling them to furnish their explanation. The Trial Court had put questions which were not specific, simple and comprehensible, reflective of the incriminating circumstances individually and in the nature of a narrative reproduction of prosecution evidence. Each statement consists of around 6 pages in single space and is awarded capital punishment of Death. This not only defeat the very object of Section 342 Cr.P.C., which mandates that the Court must put each piece of incriminating evidence separately and simply to the accused so that they may give a meaningful explanation; but seriously violates the very essence and object of Section 342 Cr.P.C.; so also the spirit of Article 10-A of the Constitution which guarantees right to a fair trial rights under the Constitution. Serious prejudice appears to have been caused to the accused, particularly in capital punishment cases, and a defect going to the root of the trial rendering the conviction unsustainable. It is a settled principle of criminal jurisprudence that recording of the statement under Section 342 Cr.P.C. is not a mere formality, but it is an essential safeguard available to the accused. Non-compliance or defective compliance of Section 342 Cr.P.C. vitiates the trial, particularly in cases carrying capital punishment. The vague, compound, or confusing questions, or questions framed in the form of lengthy summaries in the statement of the accused in terms of section 342 Cr.P.C. deny the accused the opportunity to meaningfully explain the circumstances appearing in the evidence.

14. Learned DPG appearing for the State also pointed out that the trial court has not properly recorded statements of appellants/accused u/s 342 Cr.P.C. and has used such evidence against them which was not specifically and separately put to them in terms of Section 342 Cr.P.C. to enable them to explain the same. Hence, such statements cannot be treated as lawful statements under Section 342 Cr.P.C.

15. We have also noted in the impugned judgment that learned trial court while convicting the appellants/accused has relied upon medical evidence, positive serology report, recovery of crime empties and weapons, motive, ballistic

examination reports, besides sketch of place of incident as supporting evidence and other incriminating pieces of evidence, but such evidence specifically, separately and understandably has not been put to them in their statement u/s 342 Cr.P.C. to enable them to explain the same as required under the said provision of law. Even they were not confronted with the motive part of the story in such a statement. It is an established law that provisions of section 342 Cr.P.C. are mandatory in nature, and if any piece of evidence is not put to an accused in his statement u/s 342 Cr.P.C., the same cannot be used against him for conviction. In support of such a view reliance can be placed on the case law reported as 2010 SCMR 1009, 2016 SCMR 267 and 2017 SCMR 148. In the case of *Allah Jurio alias Jurio & others Vs. The State (SBLR 2018 Sindh 1987),* when the divisional bench of this court was faced with a similar situation, it decided to remand the case to the trial court by observing that *"… the learned trial Court, while passing the judgment, has committed illegality and violated the provisions of Section 342 Cr.P.C. as well as Article 132 of Qanun-e-Shahadat Order, 1984. Consequently, the judgment dated 14.07.2010 passed by the learned trial Court is hereby set aside and Reference for confirmation of death sentence is declined. Case is remanded back to the learned trial Court with direction to record statement of the accused under Section 342 Cr.P.C. afresh by putting all incriminating pieces of evidence, including the reports of the chemical examiner as well as evidence of Tapedar".*

16. Some of the principles settled by the superior Court of Pakistan in this regard are that in '***Muhammad Zia v. The State'*** (2007 P.Cr.L.J 359) it was held that, Examination of the accused under 342 is not a mere formality. In '***Ashiq Ali v. The State'*** (2005 P.Cr.L.J 48), it was held that the object of examination of accused is to give him an opportunity of explaining the circumstances which are likely to influence the mind of the judge in arriving at a conclusion adverse to him. Attention of the accused must have been invited to the inculpatory pieces of evidence or circumstances surfaced on record. Examination of the accused under section 342 CRPC is not a mere formality but a necessity so that principles contained in the judicial maxim *audi alteram partem* is fully complied with. Use of the word shall in the latter part of section 342(1) Cr.P.C suggests that the Court, while examining the accused, is not only bound to question him on material points of the case, but is under a legal obligation to confront him with all those pieces of

evidence, which could tend to incriminate him. In ***'Rehmat Khan v. Khalid Mehmood'*** [2009 P.Cr.L.J 1114 (AJ&K)] it was declared that the object of this section is to see whether the accused can explain the evidence put against him. Its object is to allow the accused to explain the evidence against him and not the allegations made in the FIR. In ***'Atta Muhammad v. The State'*** (1994 P.Cr.L.J 181) it was held that section 342 Cr.P.C is based upon the principle evolved in the maxim *audi alteram partem* that no one should be condemned unheard, and the accused should be heard not only what is proved against him but on every circumstance appearing in evidence against him. In ***'Sikandar v. The State'*** (1990 PCRLJ 396) it was held that material evidence should be brought to notice of the accused to enable him to give an explanation. The object of this provision cannot be achieved by putting a composite question to the accused. In ***'Jehandad v. The State'*** (PLD 1994 Peshawar 279) it was observed that the Statement under section 342 Cr.P.C. is an integral part of the legal system for enabling the Court to discover the truth, and it often happens that the accused's explanation, or his failure to explain, constitutes an incriminatory circumstance against him. The result of the examination may certainly benefit the accused if a reasonable explanation is offered by him. It may, however, be injurious to him if no explanation or an untrue or illogical explanation is provided. Non-compliance or failure to observe this essential part of the scheme can cause prejudice to either of the parties, and grievances can be made by any of the parties whose interests are affected as a result of the proceedings. In ***'Muhammad Aslam v. The State'*** (2005 YLR 2155) it was declared that the object of the statement under section 342 was to enable the accused to explain his conduct in respect of such incriminating evidence. In '***Muhammad Ayub v. The State'*** (2006 P.Cr.L.J 257) it was held that the object of the provision is to give the accused an opportunity of explaining the circumstances which could tend to incriminate him or would likely influence the mind of the judge in arriving at a conclusion adverse to him. Lastly, in 2009 PSC Criminal 707, it was held that once an accused chooses to surrender any explanation under section 342 Cr.P.C., it becomes the duty of the court to consider the same objectively. It is in this way that the provisions of law are given full meaning. An outright rejection of his explanation without giving due consideration will render such provision as redundant and defeating the object and purpose of the law. The court is obliged to have regard for such purposive

provision of law. Thus, consistent with the legislative intendment, the answers given by the accused in the court of justice put to him under a set section, wherever warranted by the factual circumstances of the case, should be given due consideration and effect.

17. As regards the provision of Section 340 Cr.P.C, it was held in ***'Muhammad Waqar v. The State'*** (1991 P.Cr.L.J 197) that this provision mandatorily requires that no trial be conducted without providing legal assistance for a capital sentence. In ***'Walidad alias Dadoo Machi v. The State'*** (1997 MLD 1697) it was held that, it is not section 340 of the Code alone but also Article 161 of the Qanun-e-Shahadat Order 1984, which ordains a trial Court to discover or obtain proper proof of relevant facts and, in doing so, authorises it to put questions to the witness. The courts in Pakistan are supposed to discharge a higher duty to do complete justice, which duty can only be performed if the courts scrutinise the testimonies by confronting and cross-examining witnesses to ascertain the truth. Such a duty exists even when the accused is represented through competent counsel, while the vigour of such duty will be appreciated in cases where the accused is unrepresented. In ***'Qalandro v. The State'*** (1997 MLD 1632) it was declared that where the accused is not able to engage a counsel, it becomes the duty of the court itself to cross-examine the witness on behalf of the accused. Lastly, in the case of '***Muhammad Hashim Raza v. The State'*** (1997 MLD 1130) it was hed that the basic principle was that justice should not only be done but manifestly be seen to have been done, and where on account of any attending circumstances a suspicion or distrust has occurred resulting in a loss of confidence in the administration of justice which was essential to social order and security, it was better that it should be done by a court who is impartial impartiality ground not be doubted and was above suspicion.

18. In light of the above, this Court finds that the statements of the accused recorded under Section 342 Cr.P.C. are legally defective, so also the provision of section 340 was also not followed in its letter and spirit where private counsel were already engaged by the said accused who had already cross-examined some of the witnesses. The accused were denied a fair and proper opportunity by not putting comprehensible and specific incriminating pieces of evidence in their statements to meaningfully explain the same. The impugned judgment based on

such defective statements cannot be sustained. Since a conviction carrying the Death Penalty demands the highest standards of procedural fairness, this Court finds no alternative but to set aside the impugned judgment. **The record reflects that the three eyewitnesses in these matters, PW-1, PW-2 and PW-3 were duly cross-examined in detail by the private advocates of the appellants; however, such opportunity of a fair cross-examination to private advocates was deprived starting from the evidence of PW-4 onwards.**

19. For what has been discussed above, the main appeal is partly allowed, the conviction and sentence recorded against appellants Muhammad Ikram and Ghulam Mustafa vide Judgment dated 21.07.2023 are set aside; the case is remanded to the learned trial Court **for recording fresh evidence of witnesses starting from PW-4 Dr. Mir Imran Ahmed onwards and other prosecution witnesses (except PWs 1, 2 and 3);** and thereafter for **r**ecording fresh statements of all the accused under Section 342 Cr.P.C. by framing specific, comprehensible and understandable questions **r**eflecting each incriminating pieces of evidence against them; where after, the Trial Court shall provide the accused an opportunity, if they so desire, to lead further defence evidence; thereafter for final arguments by advocates for the parties to allow them to present their submissions; and finally, for writing a fresh judgment, strictly in accordance with law.

20. Since the foundational issue pertains to the main murder trial; whereas the convictions under the Arms Act awarded to the appellants/accused vide separate judgments dated 21.07.2023 (assailed in Criminal Appeals No.S-148 & 157 of 2024) are directly consequential to the alleged recovery linked with the murder charge; hence those convictions cannot independently survive, until the main trial is lawfully concluded. Therefore, the respective impugned judgments dated 21.07.2023 are also set aside, and the cases are remanded to the learned trial court for re-writing the judgments, after the judgment in the main case is passed. Likewise, the complainant's acquittal appeal has become practically infructuous.

21. Accordingly, Criminal Appeal No.D-23 of 2024, Criminal Appeal No.S-148 of 2024, Criminal Appeal No.S-157 of 2024, and Criminal Acquittal Appeal No.D-12 of 2024 are disposed of in the above terms. In light of the above, Death References No.20 of 2024 for confirmation of death sentence to appellants /

accused is replied in Negative and are accordingly disposed of in the above terms.

JUDGE

JUDGE