HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeal No.D-10 of 2024

Confirmation case No.D-05 of 2024

Appellant	:	Qadir Bux @ Qadu @ Ghulam Qadir S/o Budho Keerio. Through Mr. Afzal Karim Virk advocate
Respondents	:	The State Through Mr. Ghulam Abbas Dalwani, Deputy P.G.
Date of Hearing	:	12.11.2026
Date of Order	:	12.11.2026

JUDGMENT

Zulfiqar Ali Sangi, J: Through the instant Criminal Appeal, the appellant, namely Qadir Bakhsh @ Qadoo @ Ghulam Qadir son of Budho Keerio, has called in question the legality and propriety of the judgment dated 19.05.2023, passed by the learned First Additional Sessions Judge/MCTC, Mirpurkhas, in Sessions Case No.151/2023, whereby he was convicted under Section 265-H(ii), Cr.P.C. for committing Qatl-i-Amd of Qasim Baloch, aged about 25 years, nephew of the complainant, and sentenced to death as Tazir for the offence punishable under Section 302(b), P.P.C., with the direction that he be hanged by his neck until dead, subject to confirmation by this Court under Section 374, Cr.P.C. He was further directed to pay compensation amounting to Rs.500,000/- (Rupees Five Hundred Thousand only) to the legal heirs of the deceased under Section 544-A, Cr.P.C., and in default thereof, to undergo simple imprisonment for six months. The compensation amount was also ordered to be recoverable as arrears of land revenue in accordance with law. However, co-accused Ghulam Ali was acquitted of the charge under Section 265-H(i), Cr.P.C., by extending to him the benefit of doubt, whereas the case against another co-accused, namely Jameel Lashari Baloch, was kept on the dormant file. The learned trial Court has also transmitted the reference under Section 374, Cr.P.C. for confirmation of the death sentence awarded to the appellant.

2. At the very outset, learned counsel for the appellant raised certain legal objections regarding the manner in which the trial

proceedings had been conducted. He contended that the charge framed by the learned trial Court was defective and did not properly incorporate the prosecution's case or specify the individual role attributed to the appellant. He further submitted that the examination-in-chief of PW-2 Muhammad Sharif (Ex.09) and PW-3 Muhammad Yasir (Ex.10) was reproduced in identical terms, giving the impression that the depositions had been mechanically copied and pasted without independently recording the statements of the respective witnesses. Learned counsel further pointed out that the statement of the appellant under Section 342, Cr.P.C. was recorded in a perfunctory manner, as the questions put to him were lengthy, mechanically reproduced and substantially constituted a reproduction of the prosecution evidence, rather than being formulated to bring to his notice the specific incriminating circumstances appearing against him. It was also contended that the entire prosecution evidence was recorded in a single day in undue haste, thereby depriving the appellant of the safeguards guaranteed by law.

3. Conversely, learned D.P.G., after examining the charge, the F.I.R. and the depositions of PW-2 and PW-3, fairly conceded that the proceedings before the learned trial Court suffered from material procedural irregularities and that the matter required remand for a de novo trial in accordance with law.

4. We have heard learned counsel for the appellant as well as learned D.P.G. and have carefully examined the available record, including the charge, the depositions of the prosecution witnesses and the statement of the appellant recorded under Section 342, Cr.P.C.

5. Before adverting to the objections raised by learned counsel, it would be appropriate to briefly notice the prosecution case as set out in the F.I.R. It was alleged that on 23.12.2022, the complainant Muhammad Yousuf was present at his house when, at about 1500 hours, he heard a commotion outside. Upon coming out, he allegedly saw Jameel son of Dad Shah Baloch, Qadir Bakhsh alias Qadoo son of Budho Keerio and Ali son of Budho Keerio, who were allegedly selling narcotics. When the complainant asked them to leave the place, they became enraged, took out their respective pistols and started firing. Upon hearing

the gunshots, the deceased Qasim Baloch son of Younis Baloch, nephew of the complainant, along with some neighbours, arrived at the place of occurrence. It was further alleged that, in their presence, the appellant Qadir Bakhsh alias Qadoo fired a straight shot from his pistol at the deceased, which struck him on the left side of his abdomen near the urinary bladder, as a result whereof he fell to the ground and sustained bleeding injuries. On hearing cries for help, several neighbours gathered at the spot. In the meantime, the appellant allegedly attempted to escape by climbing onto the roof of an under-construction building but fell down and sustained injuries, whereafter some unidentified persons took him away. The remaining accused, namely Ali Keerio and Jameel Baloch, allegedly fled from the scene while resorting to aerial firing. The injured was thereafter shifted, with the assistance of neighbours, to Civil Hospital, Mirpurkhas, where he was provided initial medical treatment. Owing to his critical condition, he was referred to Hyderabad for further treatment; however, he succumbed to his injuries.

6. A perusal of the record reveals that the charge framed by the learned trial Court does not appear to have been formulated in conformity with the specific allegations contained in the F.I.R. The charge is couched in general terms and fails to clearly identify and articulate the specific overt act attributed to the appellant, particularly the allegation that he fired a pistol shot at the deceased, resulting in the fatal injury. The distinction between the respective roles attributed to the accused persons, as disclosed in the prosecution case, was also required to be reflected in the charge. It is a fundamental principle of criminal jurisprudence that the charge is not a mere formality; rather, it constitutes the foundation upon which the accused is called upon to meet the prosecution case. The object of framing a charge is to give the accused clear, precise and unambiguous notice of the nature of the accusation, the offence alleged to have been committed and the particular role attributed to him, so that he may adequately prepare his defence. The provisions relating to the framing of charge under Chapter XIX of the Code of Criminal Procedure are intended to ensure that an accused is not taken by surprise or prejudiced in the conduct of his defence. Although every defect or omission in a charge does not, by itself, vitiate the trial, the decisive consideration is whether such defect has

occasioned a failure of justice or caused prejudice to the accused. In the present case, however, the defect cannot be treated as a mere technical irregularity, particularly when the appellant has been convicted of a capital offence and sentenced to death. The charge was required to set out the accusation with sufficient clarity to enable the appellant to understand and effectively answer the specific allegation of murder attributed to him.

7. Another aspect which has attracted our attention is the manner in which the depositions of PW-2 Muhammad Sharif (Ex.09) and PW-3 Muhammad Yasir (Ex.10) were recorded. A comparison of their respective examination-in-chief reveals that the depositions are reproduced in identical language and sequence, giving rise to a serious apprehension that the same were not independently and separately recorded after eliciting the respective accounts of the witnesses. The evidence of each witness is required to be recorded independently, reflecting his own recollection, perception and knowledge of the occurrence. Merely reproducing an identical version in the depositions of two different witnesses, without demonstrating that their respective testimonies were independently recorded, undermines the sanctity of the evidentiary process and raises legitimate concerns regarding the manner in which the evidence was brought on record. It is settled that the testimony of every prosecution witness must be recorded in accordance with law and must represent the statement actually made by that witness before the Court. The Court is required to assess the evidence of each witness independently, keeping in view his opportunity to observe the occurrence, his relationship with the parties, the consistency of his account and its compatibility with the other evidence available on record. The mere fact that two witnesses support the same prosecution version does not justify mechanical reproduction of their statements. Although similarity in their accounts may, in appropriate circumstances, be natural, the Court must remain satisfied that their statements have been recorded separately and that each witness has deposed from his own knowledge.

8. We have also examined the statement of the appellant recorded under Section 342, Cr.P.C. The provision is not an empty formality; rather, it embodies an important safeguard of a

fair criminal trial. Its underlying object is to provide the accused an opportunity to personally explain each material and incriminating circumstance appearing against him in the prosecution evidence. The questions put to the accused must, therefore, be clear, specific, intelligible and confined to the material circumstances which are sought to be used against him. The accused must be afforded a meaningful opportunity to furnish his explanation before the Court proceeds to determine his guilt. In the present case, the statement under Section 342, Cr.P.C. appears to have been recorded in a mechanical manner. The questions are lengthy and substantially reproduce the prosecution evidence in a composite form, instead of isolating and putting to the appellant the individual incriminating circumstances appearing against him. Such a mode of examination defeats the very purpose of Section 342, Cr.P.C., as an accused cannot be expected to furnish an effective explanation to a mass of evidence reproduced in lengthy and composite questions. It is a well-recognized principle that any material circumstance appearing in the prosecution evidence, which is intended to be relied upon against an accused, must specifically be put to him during his examination under Section 342, Cr.P.C. A circumstance not put to the accused cannot ordinarily be used against him to his prejudice. The provision is designed to ensure that the accused is not condemned unheard and is afforded a fair opportunity to explain the evidence brought against him. The examination must not be reduced to a mechanical exercise or a mere reproduction of the prosecution record.

9. The manner in which the entire prosecution evidence was recorded also requires serious consideration. The record indicates that the statements of the prosecution witnesses were recorded on a single day and the proceedings appear to have been conducted in undue haste. We are conscious of the fact that recording evidence on a single day, by itself, does not constitute an illegality, nor does the mere expeditious conclusion of a trial render the proceedings invalid. However, when such haste is considered cumulatively with the defective framing of the charge, identical reproduction of the examination-in-chief of two prosecution witnesses and the mechanical recording of the appellant's statement under Section 342, Cr.P.C., it gives rise to serious concerns regarding the fairness and regularity of the

proceedings. A criminal trial is not merely a procedural exercise aimed at securing a conviction; it is a judicial process intended to ascertain the truth through a fair, impartial and lawful assessment of evidence. The trial Court is under an obligation to conduct proceedings in a manner that ensures compliance with the procedural safeguards available to the accused, while simultaneously protecting the legitimate interests of the prosecution and the victim's family. Expediency cannot be allowed to override the requirements of a fair trial.

10. The right to a fair trial and due process is a constitutionally guaranteed fundamental right under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. This constitutional guarantee is not confined merely to the right of hearing but encompasses the right to a fair, transparent and impartial adjudication in accordance with law. The procedural safeguards provided under the Code of Criminal Procedure are intended to give practical effect to this constitutional guarantee. Any departure from such safeguards, particularly where it affects the ability of an accused to understand and answer the accusation against him, assumes considerable significance. It is equally well settled that a criminal trial must be conducted in accordance with the procedure prescribed by law, and a conviction cannot be sustained merely on the basis of the apparent strength or gravity of the accusation when the proceedings themselves disclose material departures from the mandatory requirements of law. The objective of criminal procedure is not simply to punish the guilty but also to ensure that no person is deprived of liberty or life except through a fair and lawful process.

11. We are mindful of the principle that every irregularity in the proceedings does not necessarily render the entire trial void. The Court, while examining procedural defects, must determine whether the irregularity is curable, whether it has occasioned a failure of justice and whether the accused has suffered prejudice. Nevertheless, where the cumulative effect of procedural irregularities goes to the root of the proceedings and creates a reasonable apprehension that the trial was not conducted in accordance with the safeguards prescribed by law, the appellate Court cannot overlook such defects merely to sustain the result

recorded by the trial Court. The present case stands on a particularly serious footing, as the appellant has been awarded the extreme penalty of death. A sentence of death entails the irreversible deprivation of human life; therefore, the Court is required to exercise the highest degree of judicial caution and ensure that the conviction has resulted from proceedings conducted strictly in accordance with law. The gravity of the charge or the seriousness of the alleged offence cannot be permitted to dilute the procedural safeguards available to the accused. Rather, the more serious the consequences of conviction, the greater the responsibility of the Court to ensure scrupulous compliance with the requirements of a fair trial.

12. In the circumstances discussed above, we are of the considered view that the defects noticed in the instant case are not isolated or inconsequential irregularities capable of being ignored. The defective framing of the charge, the identical reproduction of the examination-in-chief of two prosecution witnesses and the mechanical manner in which the appellant was examined under Section 342, Cr.P.C., when considered cumulatively, have materially affected the fairness and regularity of the trial proceedings. These defects go to the root of the matter and cannot appropriately be cured merely by making an appellate reappraisal of the evidence recorded during such proceedings. We are, therefore, of the view that the ends of justice would be better served by setting aside the impugned judgment and remanding the matter to the learned trial Court for a fresh trial in accordance with law. Such course would preserve the rights of both the prosecution and the defence and provide an opportunity for the matter to be adjudicated afresh through proceedings conducted in conformity with the procedural and constitutional requirements.

13. Consequently, the instant appeal is allowed to the extent indicated above. The impugned judgment dated 19.05.2023, passed by the learned First Additional Sessions Judge/MCTC, Mirpurkhas, in Sessions Case No.151/2023, is hereby set aside, and the case is remanded to the learned trial Court for **de novo trial from the stage of framing of charge**, in accordance with law. The learned trial Court shall frame a fresh and proper charge, clearly specifying the accusation and the individual role,

if any, attributed to each accused person, and shall thereafter proceed with the trial afresh. The prosecution witnesses shall be examined independently and their statements shall be recorded in accordance with law, ensuring that each witness deposes from his own knowledge and recollection. The appellant shall also be examined under Section 342, Cr.P.C., after conclusion of the prosecution evidence, by putting to him separately, clearly and specifically each material incriminating circumstance appearing against him. The learned trial Court shall decide the matter independently, on the basis of the evidence brought before it, without being influenced by any observation made herein, which is confined solely to the procedural defects noticed in the impugned proceedings.

14. The learned trial Court is directed to conclude the de novo trial, preferably within a period of four months from the receipt of this judgment, without granting unnecessary adjournments, while ensuring that no prejudice is caused to either side. The appellant shall be afforded all procedural safeguards available to him under the law, and the prosecution shall also be provided a fair opportunity to establish its case.

15. Since the impugned conviction and sentence have been set aside and the matter has been remanded for de novo trial, the reference under Section 374, Cr.P.C. seeking confirmation of the death sentence is **answered in the negative**. It is clarified that the observations made in this judgment shall not be construed as an expression of opinion on the merits of the prosecution case, and the learned trial Court shall decide the matter afresh, strictly in accordance with law and on the basis of the evidence recorded during the de novo trial.

JUDGE

JUDGE