

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Crl Jail Appeal No D-77 of 2013

Date of
Hearing
17.08.2018.

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objections.
2. For orders on M. A. 2055/17.
3. For orders on M. A. 3958/16.
4. For hearing of case.

Mr. Asif Ali Abdul Razak Soomro, advocate for the appellants.

Mr. Khadim Hussain Khooharo, Addl. P.G.

Through instant criminal jail appeal, appellants, namely,

1. Khadim Hussain son of Mohammad, 2. Mushtaque son of Ali Akbar,
3. Nayar Hussain son of Juman, and 4. Anwar Ali alias And alias
Ashique Ali son of Sher Ali alias Sher, all by caste Choliyani Chandio,
have challenged the judgment dated 31.10.2013 passed by the learned
Judge, Anti-Terrorism Court, Larkana in Special Case No.14 of 2007 re-
State v. Khadim Hussain & others, arisen out of Crime No.104 of 2007
registered at Police Station Nasirabad, District Kamber-Shahdadkot for
offence under Sections 365-A, 395, 148, 149, PPC read with section 6/7
of Anti-Terrorism Act, 1997, whereby the appellants were convicted and
sentenced, *inter alia*, to undergo imprisonment for life.

At the very outset, learned Counsel for the appellants points
out that the cross-examination of PW-3 Complainant Mohammad Khan
was reserved on 26.5.2013 by the learned trial Court at the request of
advocate for the appellants/accused that the appellants had lost trust in
the Presiding Officer of the trial Court, hence they wanted to file
application for transfer of the case from the board of trial Court to any
other Court. Such request was allowed by the learned Presiding Officer
of the trial Court and in consequence thereof further cross-examination
of the complainant was reserved. Thereafter, transfer application was



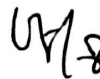
filed on behalf of the appellants before this Court, however, the same was subsequently withdrawn, but before examining other P.Ws opportunity of further cross-examination was not given to the Counsel for the appellants, therefore, the impugned judgment suffers from material illegality, as fair opportunity of defence was not provided to the appellants and on this score it is a fit case for remand.

The learned Addl. P.G, conceding to the facts as narrated by learned Counsel for the appellants, records his no objection for remand of the case to the learned trial Court.

Considering the contention of learned Counsel for the appellants and no objection recorded by the learned Addl. P.G. for the State, we allow this criminal jail appeal, set aside the impugned judgment of conviction dated 31.10.2013 and remand the case to the learned trial Court with directions to decide it afresh after giving opportunity to the appellants/accused of cross-examining the complainant. The appellants were on bail at the time when they were convicted vide impugned judgment; therefore, the appellants shall be at liberty to file application for grant of bail, which shall be decided by the learned trial Court in accordance with law.

Instant criminal jail appeal stands disposed of along with listed applications.


JUDGE




JUDGE