

ORDER SHEET  
IN THE HIGH COURT OF SINDH, AT KARACHI.

**Spl. CrI. A.T.A. No.24 of 2021**  
**Spl. CrI. A.T.A. No.25 of 2021 and**  
**Spl. CrI. A.T.J.A. No.30 of 2021**

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Date	Order with signature of Judge
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For hearing of main case.

**25.03.2022.**

Mr. Mamoon A.K. Sherwani, Advocate for the appellants in  
Spl. CrI. A.T.A. Nos.24 and 25 of 2021.  
Mr. Qadir Hussain Khan, Advocate for the appellant in Spl.  
CrI. A.T.J.A. No.30 of 2021.  
Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

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**Mohammad Karim Khan Agha, J;-** Appellants Imran Khan and Kamran @ Bangali were tried by the Anti-Terrorism Court No.IV, Karachi Division in Special Case No.1628 of 2016 (old number), 37 (XIV)/2019 (New Number) in FIR No.119 of 2016 U/S.302/324/392/397/34-PPC r/w 7 A.T.A. 1997, in Special Case No.1629 of 2016 (old number), 38 (XIV)/2017 (New Number) in FIR No.120 of 2016 U/S. 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. Artillery Maidan, Karachi and in Special Case No.1630 of 2016 (old number), 39 (XIV)/2017 (New Number) in FIR No.214 of 2016 U/S. 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. Frere, Karachi and vide Judgment dated 30.01.2021 the appellants after trial were convicted and sentenced as under:-

- a) Accused Imran Khan S/o. Jamal Nasir and Kamran @ Bangali S/o. Asghar Khan found guilty for the charged offence u/s. 302(b)/34 PPC, award imprisonment for life to each, and to pay sum of Rs.100,000/- (Rupees one hundred thousand) each, as compensation u/s. 544-A Cr.P.C. to the legal heir of the deceased soldier Amjad Ali



which shall be recovered by way of arrear of land revenue and in default of payment/recovery, they shall further suffer imprisonment for six months.

- b) Accused Imran Khan S/o. Jamal Nasir and Kamran @ Bangali S/o. Asghar Khan found guilty of offence u/s 6(1)(b) of ATA 1997 and convicted u/s 7(1)(a) of ATA 1997, for life imprisonment each, and fine of Rs.50,000/- (Rupees Fifty Thousand) each, in case of default in payment of the fine, they shall further suffer for six month imprisonment.
- c) Accused Imran Khan S/o. Jamal Nasir and Kamran @ Bangali S/o. Asghar Khan found guilty of charged offence punishable u/s 324/34 PPC and hereby convicted and sentenced to suffer for five year imprisonment, each.
- d) Accused Imran Khan S/o. Jamal Nasir and Kamran @ Bangali S/o. Asghar Khan found guilty for the charged offence punishable u/s. 392/397-PPC and hereby convicted and sentenced to suffer for seven years imprisonment, each.
- e) Accused Imran Khan S/o. Jamal Nasir and Kamran @ Bangali S/o. Asghar Khan found guilty for the charged offence u/s. 23(1)(a) of Sindh Arms Act 2013. They are convicted and sentenced to suffer for three years and fine of Rs.10,000/- (Rupees Ten Thousand) each, in case of default they shall further suffer imprisonment for three months, each.

All the sentences were ordered to run concurrently and the appellants were both were given the benefit of section 382-B Cr.P.C.

2. Prior to reading out of the evidence, learned counsel for both the appellants submitted that this was a case which justified remand to the concerned trial court on the following grounds:-

- 1) That the PW-1 Mahash Kumar who was an injured eye witness, his evidence-in-chief was not recorded in presence of his defence counsel.
- 2) That the PW-2 Pawan Kuman who was also an injured eye witness did not have his evidence-in-chief recorded in presence of the defence counsel of appellant Kamran.
- 3) That the PW-3 Nadeemuddin Sheikh who carried out section 174 Cr.P.C. report did not have his evidence-in-chief recorded in the presence of either of the defence counsel of the appellants.



- 4) That the PW-5 Badshah Khan who was mashir of arrest of appellant Kamran his evidence-in-chief was not recorded in presence of defence counsel of the appellants.

3. They have submitted that this legal defect justifies the remand of the case back to the learned trial court. When the learned Additional Prosecutor General was confronted with this position, he was also in agreement with learned counsel for the appellants.

4. We find that based on the above contentions made by learned counsel for the appellants and the no objection given by the learned Additional Prosecutor General, this is a case which warrants remand back to the concerned trial court. This is because under section 353 of the Cr.P.C. the evidence of all the witnesses (evidence-in-chief, cross-examination and re-cross-examination) must be recorded in the presence of the accused and his defence counsel especially in a capital case. The idea behind this is that the appellants shall have fair trial as guaranteed by Article 10-A of the Constitution. For example, if the counsel of the defence had been present when the aforesaid important witnesses were giving evidence in chief, they may have objected certain questions being put and certain documents being exhibited, as such the fact that the appellants defence counsel was not present during this process has caused prejudice to the appellants in their defence case. We note that this Court has already in such like cases for example reported in SBLR 2021 Sindh 112 and 2019 MLD 1713 adopted the following approach of remand. As such we set-aside the impugned judgment and remand the case back to the ATC Court

No.IV for limited purposes of recording evidence and all the aforesaid PWs mentioned in this order afresh in the presence of the counsel of both the appellants who shall also be present during the cross-examination and examination-in-chief. Thereafter the trial court shall record afresh section 342 Cr.P.C. statements of the appellants and after hearing render a fresh Judgment. This process shall be completed within three months of the date of this order. This order along with the R&PS shall be sent by the office forth with to the ATC Court No.IV for compliance.

5. The above appeals stand disposed of accordingly.

*Muhammad Arif*