

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR*****Crl. Appeal. No. S- 14 of 2024.***

Appellant: Muhammad Murad @ Inamullah  
Through Shamsuddin N.Kobhar, Advocate for  
appellant

Complainant: Baqar through Mr. Hamayoun Sheikh,  
Advocate.

The State: Through Mr. Zulfiqar Ali Jatoi, APG.

Date of hearing: **14.04.2025.**

Date of Judgment: **19.05.2025**

**J U D G M E N T**

**Zulfiqar Ali Sangi, J.-** This criminal appeal is directed against the judgment dated 22.02.2024, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court-I, Sukkur, whereby the appellant was convicted under section 302(b) P.P.C and sentenced to rigorous imprisonment for life. Additionally, the appellant was directed to pay compensation amounting to Rs.200,000/- to the legal heirs of deceased Deen Muhammad Shaikh under Section 544-A, Cr.P.C, and in case of default in payment, to undergo simple imprisonment for a further period of three months.

2. The brief facts of the prosecution case are that on 19.06.2021, the deceased Deen Muhammad, aged approximately 25-26 years, left his home to meet his friend, the appellant Muhammad Murad @ Inamullah Shaikh. Upon his failure to return, the complainant, Baqar (brother of the deceased), along with his cousins Khuda Bux and Ubaidullah, commenced a search. At about 11:25 PM, they allegedly witnessed the appellant assaulting Deen Muhammad with a knife (churri) at Complex Ground, Rohri. Despite efforts to intervene, the accused fled the scene. The deceased sustained multiple injuries and later succumbed to them at Civil Hospital, Sukkur. Consequently, the FIR was lodged by complainant Baqar on 23.06.2021 at 1630 hours.

3. It is noteworthy that initially the case was tried by the Court of 1<sup>st</sup> Additional Sessions Judge (MCTC-I), Sukkur, which resulted in the conviction of the appellant vide judgment dated 19-08-2022. The said judgment was challenged before this Court through Criminal Appeal No.S-58 of 2022, whereupon this Court, by Judgment dated 15-11-2023, set aside the conviction and remanded the case with direction to learned trial Court to summon and record the evidence of witnesses, namely the Tapedar and Inspector Ghulam Ali Jumani, and to decide the matter afresh in accordance with law. Pursuant thereto, the learned trial Court recorded the evidence of the aforementioned witnesses and again convicted the appellant vide judgment dated 22-02-2024, which is now impugned before this Court.

4. Learned counsel for the appellant, at the very outset, contended that the impugned conviction is vitiated due to non-compliance with the mandatory provision of Section 342, Cr.P.C, inasmuch as the alleged recovery and use of the *churri*, a pivotal piece of incriminating evidence, was not put to the appellant during the recording of his statement. This omission, it was argued, has seriously prejudiced the appellant by depriving him of the opportunity to explain a material circumstance relied upon by the prosecution. Learned counsel submitted that it is well-settled law that each piece of incriminating evidence must be specifically brought to the notice of the accused under Section 342, Cr.P.C., failing which the trial is rendered defective. He, therefore, prayed that the impugned judgment be set aside.

5. Learned Additional Prosecutor General, assisted by learned Counsel for the complainant, fairly conceded to the contention raised by the learned counsel for the appellant. They submitted that the impugned judgment suffers from a material legal defect, as the statement under Section 342, Cr.P.C did not include any reference to the alleged recovery and use of the *churri*. Therefore, they jointly and candidly agreed that the impugned judgment be set aside and the matter be remanded for trial afresh from the stage of recording statement u/s 342, Cr.P.C.

6. I have heard learned counsel for the parties and perused the available record with their assistance.

7. The record demonstrates that the prosecution placed significant reliance on the alleged recovery and use of the *churri* as a principal piece of evidence connecting the appellant with the offence under Section 302(b), PPC. However, the appellant, during his examination under Section 342, Cr.P.C, was not confronted with this incriminating evidence. It is a settled principle of criminal jurisprudence that no material or evidence can be used against an accused unless the same is specifically put to him during his examination under Section 342, Cr.P.C, affording him an opportunity to explain the circumstances appearing in the prosecution's case.

8. The Hon'ble Supreme Court of Pakistan, in the case of ***Jan Muhammad vs. The State and others (Criminal Appeal No. 77 of 2020)***, decided on 04-03-2021, held that any piece of prosecution evidence not put to the accused during his statement under Section 342, Cr.P.C, cannot be used against him. The rationale being that the accused is entitled to have full knowledge of the prosecution's case and be given an opportunity to respond thereto. In the said judgment, the Hon'ble Apex Court remanded the matter to the trial Court for re-recording statement of the accused in compliance with this requirement and directed disposal of the case thereafter.

9. It is now a firmly established rule of law that omission to confront an accused with each piece of incriminating evidence under Section 342, Cr.P.C amounts to denial of a fair opportunity of defence, thus vitiating the trial. Reference is also made to the judgment of the Hon'ble Supreme Court reported as ***Muhammad Saddique v. The State (2018 SCMR 71)***, wherein it was held that no piece of evidence not confronted under Section 342, Cr.P.C can be utilized against the accused.

10. In view of the above legal position, and the candid concession made by both the learned Additional Prosecutor General and learned counsel for the complainant, this Court is constrained to hold that the impugned judgment suffers from material legal defect. However,

since the defect is curable, the appropriate course of action is to remand the matter to the learned trial Court with a direction to re-record the statement of the accused under Section 342, Cr.P.C, confronting him with all pieces of incriminating evidence, including the recovery and alleged use of the *churri*. Thereafter, the learned trial Court shall proceed to decide the case afresh after hearing the parties in accordance with law.

11. Accordingly, the appeal is **partly allowed**. The impugned judgment dated 22.02.2024, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court-I, Sukkur is hereby **set aside**, and the case is **remanded** to the learned trial Court with directions to re-record the statement of the accused under Section 342, Cr.P.C, confronting him with all the incriminating material. The learned trial Court is further directed to conclude the proceedings and pass afresh judgment strictly in accordance with law within a period of **two months** of receipt of this order.

12. The appellant shall remain in custody and be produced before the learned trial Court as and when required.

**Judge**