

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CR. APPEAL NO.339 OF 2024

Appellant	Muhammd Khalid through Mr. Jam Shahid Iqbal, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh and Mr. Mumtaz Ali Shah, Assistant Prosecutor General.
Date of Hearing	09.10.2024

J U D G M E N T

Muhammad Karim Khan Agha, J. Appellant Muhammad Khalid was tried in the Court of 13th Additional Sessions Judge (East) Karachi in Session Case No.2342/2019 arising out of FIR No.315/2019 under Section 302/322 PPC registered at P.S. Jamshed Quarters, Karachi and after a full-fledged trial vide judgment dated 17.04.2019 he was convicted to suffer 05 years R.I. He was also directed to pay diyat amount to the legal heirs of deceased in accordance with diyat amount fixed as notified at the relevant time when the occurrence took place viz 23.08.2019 as per government notification. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the case as per FIR that on 23.08.2019 at about 2000 hours, at opposite Iqbal Hotel, near Nishtar Road, Karachi he while driving the motorcycle bearing registration No. KMR-2710, Maker Unique 70, rash and negligent hit Zain-ul-Abideen S/o Gul Rehman (father of complainant) with the result he received injuries which resulted in his death. It is further alleged that deceased Zain-ul-Abideen who was admitted at SMBB Trauma Centre was examined by the MLO Dr. Noor Ahmed of Civil Hospital Karachi and at the time of examination two injuries viz. injure No. 01. Defused swelling over occipital region and injury NO.02. Defused swelling over right parietal region were found on

his body. Accused caused the above said injuries to deceased which resulted in his death. Complainant Mst. Part Khan D/o Zainul Abideen lodged such F.I.R at P.S Jamshed Quarters.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove their cases, the prosecution examined 06-PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he denied all the allegations leveled against him. However, he did not give evidence on oath or call any witness in support of his defence.

5. At the very out set learned counsel for the appellant and learned Addl. P.G. drew my attention to the fact that PW4 PC Sultan was not subjected to cross examination and PW-6 Noor Ahmed was examined by the accused in absence of defence counsel and under these circumstances the defence of the applicant has been prejudiced and this made this a case of remand.

6. I find that based on the above contentions made by learned counsel for the appellant including 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. The idea behind this is that the appellant 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 defence counsel was not present during this process has caused prejudice to the appellant in his defence case. As such I set-aside the impugned judgment and remand the case back to the 13th Additional Sessions Judge (East) Karachi for limited purposes of recording evidence of aforesaid PW-4 PC Sultan and PW-6 Noor Ahmed mentioned in this judgment afresh in the presence of the counsel of the appellant 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. statement of the appellant and after hearing the parties render a fresh Judgment. This process shall be completed within three months of the date of this judgment. This judgment along with the R&PS shall be sent by the office forth with to the 13th Additional Sessions Judge (East) Karachi for compliance.

7. This criminal appeal stands disposed of in the above terms.

JUDGE