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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Special Criminal A.T.A. No.199 of 2022

Appellants

1. Adnan S/o. Hassan Khan,
2. Munir Hussain S/o. Muhammad Ibraheem
through Mr. Intikhab Ahmed, Advocate.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Special Criminal A.T.A. No.214 of 2022

Appellant

Muhammad Imran S/o. Abu Bakar
through M/s. Iftikhar Ahmed Shah and
Umair Usman, Advocates.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Special Criminal A.T.J.A. No.223 of 2022

Appellant

Muhammad Sadat Khan S/o. Muhammad
Sadiq through Mr. Khaliq Dino Sangi,
Advocate.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Date of hearing

08.09.2023.

Date of Order

08.09.2023.

ORDER

Mohammad Karim Khan Agha, J:- The appellants Muhammad Imran S/o. Abu Bakar, Adnan S/o. Hassan Khan, Munir Hussain S/o. Muhammad Ibrahim, Muhammad Sadat Khan @ Shazad Niazi S/o. Muhammad Sadiq

Khan and Noor Muhammad @ Rago S/o. Abu Bakar were tried before the Anti-Terrorism Court No.IV, Karachi Division in Special Case No.337 of 2015 arising out of FIR No.252/2015 U/s. 365-A/34 PPC r/w section 7 ATA 1997 registered at P.S. Docks, Karachi and Special Case No.337-A of 2015 arising out of FIR No.84/2015 U/s. 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. AVCC/CIA, Darakhshan, Karachi and vide Judgment dated 19.11.2022 all the appellants except Noor Muhammad @ Rago who was acquitted were convicted and sentenced as under:-

Accused (1) Muhammad Imran S/o. Abu Bakar (2) Adnan S/o. Hassan Khan, (3) Munir Hussain S/o. Muhammad Ibrahim and (4) Saadat Khan @ Shahzad Niazi S/o. Muhammad Sadiq Khan are found guilty for the charge of the offence u/s. 365-A/34 PPC, r/s section 7(1)(e) of Anti-Terrorism Act, 1997 are convicted and sentenced to life imprisonment. Their properties are ordered to be forfeited u/s 7(2) of Anti-Terrorism Act, 1997."

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

2. The facts of the prosecution case are that on 20.06.2015, an FIR was lodged by the complainant Muhammad Siraj at P.S. Docks, Karachi, stating therein that his son namely Yousif 13-years-old, did not return home on 16.06.2015, in the afternoon. On 17.06.2015 at about 05:50 am he received a call from cell phone No.0323-2195280 and ransom of Rs.50,00,000/- was demanded by the caller. On 19.06.2015, at about 01:00 pm complainant received a miss call and called back on the same number it was attended by his son Yousif and asked the complainant for payment of ransom against his release. Complainant negotiated with the kidnappers on ransom amount and agreed to pay to the tune of Rs.200,000/- against release of his son, hence this FIR was lodged.

3. After usual investigation, the case was challaned and charge was framed against the appellants as well as Noor Muhammad all of whom plead not guilty and claimed trial.

4. In order to prove its case the prosecution prior the charge being amended examined 10 PWs and thereafter after the charge was amended

when Noor Muhammad was brought before the court to face the trial, the prosecution then examined 12 PWs and exhibited various documents and other items. All the appellants denied the allegations against them in section 342 Cr.P.C. statements and gave evidence on oath and 3 DWs were called in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellants as set out earlier in this judgment, however, Noor Muhammad was acquitted of the charge. No appeal against acquittal of Noor Muhammad has been filed. The appellants however, have appealed against their convictions and sentences.

6. At the very outset of the case learned counsels for the appellants contended that this was a case of remand as 06 PWs who were examined before the charge was amended although when called to give evidence again after the amended charge, it became apparent that their evidence had in fact been copied and pasted from their evidence given prior to the amendment of the charge and had not actually given evidence again and on this count the matter was subject to remand for recalling of these PWs for recording of their evidence afresh. In addition they mentioned that 02 PWs from the first round namely Muhammad Nizamuddin and Aijaz Ali Abro had not been examined after the amended charge and as such their evidence ought to have been recorded. They have emphasized that this procedure was not only contrary to law namely the copy and pasting of evidence but also that the accused had been prejudiced in this matter and as such they prayed for remand of the case back to the concerned trial court.

7. When confronted by this Court Additional Prosecutor General Sindh conceded that after examining the evidence of PW-1 to 6 their evidence had been copied and pasted when they firstly gave evidence and when they later gave evidence after the amended charge and this was an illegality and based on this illegality he agreed that the case be remanded to the concerned trial court.

8. We have considered the contentions of learned counsel for the appellants and learned Additional Prosecutor General Sindh. We have also studied the evidence of PW-1 to 6 before the charge was amended and the evidence which they allegedly gave after the charge was amended. All the evidence given before the amended charge including the cross-examination of 06 witnesses is identical to that which was placed on record after the charge was amended. We find that this is impossible and clearly shows that evidence of the 06 PWs prior to the amendment of the charge was copied and pasted which is contrary to the law. We also note that 02 PWs prior to the amendment of the charge were also not examined. Accordingly we set-aside the impugned judgment and remand the case to the Anti-Terrorism Court No.IV, Karachi for the limited purpose of re-recording the evidence afresh of PW-1 Muhammad Siraj, PW-2 Muhammad Yousif, PW-3 Muhammad Ibrahim, PW-4 Muhammad Farooq, PW-5 Abdullah, PW-6 Gulab Khan in presence of the defence counsel and for recording the evidence of Muhammad Nizamuddin and Aijaz Ali Abro before the presence of the defence counsel and thereafter record afresh section 342 Cr.P.C. statement of each of the appellants and then re-write the judgment. This exercise shall be completed by the concerned trial court within 03 months of the date of this order. It is noted that the acquitted accused Noor Muhammad shall remain acquitted of the charge and shall not again face trial in this case. A copy of this order along with R&PS shall be sent to Anti-Terrorism Court No.IV, Karachi for compliance.

9. The appeals are disposed of in the above terms.