

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi

**Cr. Appeal No.D-17 of 2017**  
[Confirmation Case No.07 of 2017]

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**Cr. Jail Appeal No.D-18 of 2017**  
[Confirmation Case No.07 of 2017]

Appellant : Raz Muhammad @ Razoo	Through Mr. Abdul Hameed Bajwa, Advocate
Respondent : The State	Through Ms. Rameshan Oad, Asst. Prosecutor General, Sindh
Complainant: Muhammad Amin	In Person
Date of hearing & judgment	17.06.2021

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

**MOHAMMAD KARIM KHAN AGHA, J.-** Initially the above Cr. Jail Appeal No.D-18 of 2017 has been filed by appellant Raz Muhammad @ Razoo through Jail Superintendent, and thereafter Cr. Appeal No.D-17 of 2017 has been filed on his behalf through his counsel, against the judgment dated 28.02.2017, passed by learned 2<sup>nd</sup> Additional Sessions Judge, Badin, in Sessions Case No.04 of 2014, emanating from Crime No.307 of 2013, registered at Police Station Badin, under sections 302, 504 PPC, whereby the appellant has been convicted and sentenced to death along with fine.

2- At the very outset of the case, when the learned counsel for appellant was reading the evidence it came to our attention that PW-2 / Abdul Aziz, who was the mashir in this case, had not given his evidence in chief in the presence of his counsel in this capital case.



We checked from the diary sheet of 25.05.2016 which is the date on which PW-2 / Abdul Aziz gave his evidence in chief which clearly shows that his counsel Mr. Muhammad Ishaque Khoso, Advocate was present, who had filed an adjournment application which was granted. As such the learned trial Judge was well aware that the counsel for the accused would not be present and should not have proceeded to record PW-2 / Abdul Aziz's examination in chief in his absence. Despite this fact, learned trial Judge recorded the evidence in chief of PW-2 / Abdul Aziz in the absence of learned counsel for the accused. On completion of his evidence in chief, the trial Judge noted that "*learned counsel for accused called absent without any intimation. In the interest of justice the cross examination of witness is reserved*". Such note is in clear contradiction of the adjournment which the same Judge had already granted to learned counsel for the accused on the same date. Hence, the evidence of PW-2 / Abdul Aziz was recorded in the absence of his counsel. The evidence of PW-2 / Abdul Aziz, who was the only mashir which the prosecution called to give evidence is very important witness as he is the mashir of injuries over the dead body of deceased, the recovered blood stained on earth, the recovered empties, the recovered clothes of the deceased, the arrest of the appellant and the recovery of gun / weapon on the pointation of the appellant.

3- When PW-2 / Abdul Aziz gave his evidence in chief only the accused who is the lay man with no legal training was present and he had no counsel on his behalf. It was important that the appellant's counsel was present at the time of recording the evidence in chief of PW-2 / Abdul Aziz as this was an important witness and if the learned counsel for appellant had been present, he may have objected to exhibiting of each and every mashirnama and even some of the questions which may have been put by the prosecution to the witness. Under these circumstances, we find that the appellant has been prejudiced especially as he was ultimately convicted for murder and sentenced to death through the impugned judgment.

4- We brought this matter to the attention of both learned counsel for the appellant and learned A.P.G who opined that based on the facts and circumstances of the case that this was a fit case for remand back to the trial Court.

5- Based on the particular facts and circumstances mentioned above, we agree with the learned counsel for the appellant and learned A.P.G. that this case should be remanded to the trial Court, as such, we set-aside the impugned judgment dated 28.02.2017 and answer the confirmation reference No.07 of 2017 in negative. This matter shall be remanded back to learned 2<sup>nd</sup> Additional Sessions Judge, Badin along with R&Ps for the limited purpose of only the re-recording the evidence of PW-2 / Abdul Aziz in the presence of his counsel and for his cross-examination and then re-examination in the presence of his counsel. Thereafter, the Section 342 Cr.P.C statement of the appellant shall be recorded afresh and the learned trial Court shall write a fresh judgment based on the other evidence already on record within thirty (30) days of the date of this order. In re-writing the judgment, the learned trial Judge shall individually re-assess the evidence on record before making his own independent decision and shall not be influenced by judgment dated 28.02.2017. The appellant shall remain in jail custody.

6- The above appeal(s) and confirmation reference are disposed of in the above terms.

**JUDGE**

**JUDGE**

**\*Hafiz Fahad\***