

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Revision No.D-17 of 2024

Before:

Mr. Justice Shamsuddin Abbasi.

Mr. Justice Ali Haider 'Ada'.

Appellant/Applicant : Hajan son of Wahid Bux, Bullo, *through* Mr. Farhat Ali Bugti, Advocate.

The State : *through* Mr. Aitbar Ali Bullo,
Deputy Prosecutor General, Sindh

Date of Hearing : 13.08.2025.

Date of Decision : 20.08.2025.

JUDGMENT

Ali Haider 'Ada'.J:- The appellant has assailed the judgment Dated 14.03.2024, passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for CNS, Shikarpur, in Special Case No. 109/2023, whereby the appellant was convicted and sentenced to undergo imprisonment for a period of fourteen (14) years and to pay a fine of Rs. 400,000/-. In default of payment of fine, he shall undergo simple imprisonment for a further period of three (03) years. The benefit of Section 382-B, Cr.P.C. has been extended to the appellant.

2. Brief facts of the prosecution case are that the complainant, ASI Nazir Hussain Chandio, accompanied by subordinate staff, apprehended the accused while he was transporting Charas in a Mehran car bearing registration No. BFX-021 at Rustam Bypass Road, Shikarpur. Upon search, 08 kilograms of Charas were recovered from the said vehicle. After completion of necessary formalities, an FIR was registered. Subsequent to the registration of the FIR, investigation was conducted and the appellant was sent up for trial.

3. Thereafter, the charge was framed on 04.05.2023, after supplying the requisite documents to the accused. The accused pleaded not guilty and claimed trial, whereupon the prosecution led its evidence.

4. The prosecution examined ASI Nazir Hussain, the complainant, who produced and exhibited the FIR, memo of arrest and recovery, and the report of the Chemical Examiner. The second prosecution witness,

Imran Ali, who acted as mashir of the recovery, exhibited the memo of the place of incident. The prosecution further examined Fateh Muhammad, who introduced himself as the Incharge of Malkhana; he exhibited the relevant entry from Register No. 19 and also produced the road certificate.

5. Thereafter, the learned State Counsel filed a statement closing the prosecution's side of evidence. Subsequently, on 14.03.2024, the accused filed an application before the learned trial Court and pleaded guilty. On the same day, the statement of the accused under Section 342, Cr.P.C was recorded, wherein he did not opt to lead evidence or examine himself on oath but admitted his guilt and prayed for a lenient view. On the same day, i.e., 14.03.2024, the learned trial Court passed the impugned judgment, whereby the appellant was convicted, which is now under challenge before this Court.

6. Initially, the appellant filed a Criminal Jail Appeal, which was allotted Criminal Jail Appeal No. D-13 of 2024. However, on 09.07.2024, this Court passed an order wherein it was observed that, since the appellant had pleaded guilty, the appeal was not maintainable and only a Criminal Revision could be filed. Accordingly, on the request of the learned counsel for the appellant, the matter was converted into a criminal revision, and the office was directed to allot a new number. Thereafter, the matter was treated as a Criminal Revision. Even otherwise, there is no absolute bar under Section 412, Cr.P.C, which provides that no appeal shall lie in cases where the accused has pleaded guilty. However, the law permits an appeal to the extent of examining the legality of the sentence passed by the Trial Court. Furthermore, Section 412, Cr.P.C, does not curtail or restrict the powers of the High Court to examine the legality or propriety of the conviction or sentence while exercising its revisional or inherent jurisdiction.

7. Learned counsel for the appellant submits that the learned trial Court on single day recorded the evidence of the prosecution witnesses on 14.03.2024, and the matter was finalized on the very same day. Such haste in conducting the trial reflects a clear denial of fair trial rights. The learned Trial Court convicted and sentenced the appellant solely on the basis of his plea of guilt, which was neither voluntary nor unequivocal, and the

same was not recorded in accordance with the procedural safeguards mandated by law. Therefore, the appellant was wrongly convicted by the learned Trial Court. Learned counsel for the appellant also argued on merits, submitting that the appellant has a good case and that the impugned judgment is suffering from illegality, impropriety, and irregularity.

8. Conversely, learned counsel for the State submitted that even a show-cause notice was not issued to the appellant before conviction. He fairly conceded that the matter may be remanded to the trial Court to afford a fair and proper opportunity to the appellant in accordance with law.

9. Heard the learned counsel for the appellant as well as the learned counsel for the State at length and also carefully perused the record available on the record.

10. Upon perusal of the entire record, it transpires that on 14.03.2024, the learned trial Court recorded the evidence of all prosecution witnesses. The prosecution evidence was duly cross-examined by the defense counsel on the same day. Thereafter, the statement of the accused under Section 342, Cr.P.C was also recorded, in which the accused, while admitting his guilt, prayed for leniency. In addition, a written statement was filed by the accused, wherein he reiterated his plea of guilty. Relying upon this plea, the learned trial Court proceeded to pass the impugned judgment on the very same day, i.e., 14.03.2024, thereby convicting and sentencing the appellant. It is evident from the record that the entire trial proceedings from the recording of prosecution evidence, cross-examination, recording of the accused's statement under Section 342, Cr.P.C., filing of the plea of guilt, and pronouncement of the judgment were completed within the span of a single day. Such an expedited process, though procedurally convenient, raises serious concerns regarding the fairness of the trial. It is a settled principle of law that a plea of guilty must be voluntary, unequivocal, and recorded with due regard to procedural safeguards. The trial Court was under a legal obligation to satisfy itself that the plea of guilt was made without coercion or undue influence and that the accused fully understood the nature and

consequences of such plea. The absence of any such determination on record renders the proceedings questionable. Moreover, the manner in which the trial was conducted with undue haste indicates a violation of the accused's fundamental right to a fair trial as guaranteed under the Constitution and the criminal justice system. The right to a free and fair trial is a fundamental right guaranteed to every accused person under Article 10-A of the Constitution of the Islamic Republic of Pakistan. For ready reference, the same is reproduced as under:-

Article 10-A. Right to fair trial.---For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

11. In the said Context, it is difficult to comprehend how the defense, after fully cross-examining the prosecution witnesses, would on the same day voluntarily plead guilty without any pause or reflection. This sequence of events raises serious doubts about the voluntariness, unequivocal, and procedural correctness of the plea of guilt. The trial Court, instead of mechanically acting upon the plea of guilt, ought to have decided the case on the basis of the evidence available on record, especially when the trial had already proceeded to the stage of cross-examination. The course adopted by the trial Court was not only irregular but also contrary to the settled principles of fair trial and due process.

12. The discretion to convict an accused solely on the basis of a plea of guilt must be exercised with the utmost care and caution. Ordinarily, especially in cases involving capital punishment, the safe administration of justice requires that the guilt of the accused be established by recording the evidence of the complainant and prosecution witnesses. In this regard, the Honourable Supreme Court of Pakistan, in the case of *Muhammad Ismail v. The State* (2017 SCMR 713), held as follows:

"...12. True, that under section 265-E, Cr.P.C. the Trial Court in a session case, has a discretion to record the plea of the accused and if he pleads guilty to the charge, it may convict him in its discretion. Nevertheless, it is also provided in section 265-F, Cr.P.C. that if the Trial Court does not convict him on his plea of guilt, it shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. This discretion is to be exercised with extra care and caution, and ordinarily on such admission, awarding capital sentence of death

shall be avoided and to prove the guilt of an accused, evidence of the complainant or the prosecution has to be recorded, in the interest of safe administration of justice.

The most important factors and required standards of confession may be cited below:-

"It should be ensured,

(i) that the accused is in full senses and understands the consequences of making a confession;

(ii) that, the confession was not a result of any duress, coercion or any promise by the prosecution, to be made an approver;

(iii) that, during transit of the accused by the police from and to the Trial Court from the prison, on each "Paishi" no threat or pressure was applied by the escorting police guard or incharge thereof;

(iv) what were the actual facts, which induced the accused to confess after facing trial, during which he pleaded innocence all the way;

(v) the court recording the confession has to ensure that the mental capacity of the accused is not diminished due to any illness and if some indication of abnormality is suspected by the Court, it is better to refer the accused to the Standing Medical Board to ascertain the true cause thereof;

(vi) While recording the confession, the same safeguards and precautions be adopted, by directing the Public Prosecutor, the complainant's counsel, the Naib Court and all other officials to leave the Court. If need be, the counsel who represents him, may be given an opportunity to be present inside the Court during the whole process, if the accused person, on asking by the Trial Judge, so demands;

(vii) the handcuffs of the accused be removed and he be provided a chair on the dais. He may be given some time to think over the making of the confession and in that regard particular questions be put to him, as to why he was making the confession when he has already pleaded innocence and claimed trial at the time, the formal charge was framed;

(viii) the Trial Judge shall explain to the accused that, in case of making confession, he has to face a capital sentence in a murder case or any offence punishable with death;

(ix) the entire record of all the questions and answers recorded, be properly maintained and thereafter, a proper certificate be appended thereto, showing the satisfaction of the Trial Judge that the accused person was not mentally sick and he was making the confession voluntarily, based on true facts and that, there was no other compelling reason behind that.

As the above procedure was not adopted, therefore, it was incorrectly construed by the Courts below as confession of the accused. Under the law, it may be treated as an admission of the appellant, however, on the basis of admission alone, accused person cannot be awarded a capital punishment because admission, as has been defined by Article 30 of the Qanun-e-Shahadat Order, 1984, is only a relevant fact and not a proof by itself, as has been envisaged in Article 43 of the Order, 1984, where a proved, voluntary and true confession alone is held to be a proof against the maker therefore, both the Courts below have fallen in error by treating this halfway admission to be a confession of guilt on the part of the appellant.

13. It is a bedrock principle of law that, once a Statute or rule directs that a particular act must be performed and shall be construed in a particular way then, acting contrary to that is impliedly prohibited. That means, doing of something contrary to the requirements of law and rules, is impliedly prohibited. Therefore, it is held that the admission of the appellant cannot be a substitute for a true and voluntary confession, recorded after adopting a due process of law and it cannot be made the sole basis of conviction on a capital charge."

13. It is pertinent to note that the learned trial Court did not issue any notice to the accused informing him of the legal consequences of his plea of guilt. Such a procedural lapse is a violation of the principles of natural justice. The mere fact that the accused filed an application and pleaded guilty cannot alone serve as a sufficient basis for conviction, especially when the case involves serious allegations and the possibility of capital punishment. In cases of such gravity, the accused must be expressly informed, through a notice, of the consequences of his admission, so that his plea is made knowingly and voluntarily. The absence of such notice undermines the fairness of the trial and the validity of the conviction. In this context, the Division Bench of this Court, in the case of *Qasim v. The State* (2007 MLD 1669), held that:

14. We have gone through the case of Rahim Bakhsh (supra), wherein the Hon'ble Federal Court had observed that "it would be most unfair to the accused and it would amount to a violation of a fundamental principle of natural justice if he is convicted solely on the basis of an admission alleged to have been made by him without calling his attention to the admission and asking for his explanation when he was examined in Court." In the present case, though the appellant besides his confessional statement had also admitted his guilt before the trial Court, but no explanation was either sought from the appellant in regard to the material contradiction referred to hereinabove, nor any justification was offered by the trial Court while passing the impugned judgment.

The other authority referred to by the learned counsel for the appellant is also on the same point of law.

14. The plea of guilt submitted by the accused in the form of a written application after the examination of prosecution witnesses runs contrary to the principles of a fair trial. Reliance is placed on the judgment of ***Waqar Ahmed v. The State (2025 MLD 1152)***

15. In view of the foregoing, this Criminal Revision is hereby disposed of with the following directions:

(a). The matter is remanded to the trial Court to follow proper procedure by issuing a notice to the appellant informing him of the legal consequences of his plea of guilt, particularly in light of the capital punishment involved.

(b). After receiving the appellant's response to such notice, the trial Court shall proceed to re-examine the case on merits, considering the entire evidence on record rather than relying solely on the appellant's admission of guilt.

(c). The impugned judgment dated 14.03.2024 is hereby set aside. The learned trial Court is directed to pass a fresh judgment in accordance with law, ensuring strict compliance with the principles of fair trial and due process.

16. Accordingly, this Criminal Revision is partly allowed with the above directions.

JUDGE

JUDGE

Asghar Altaf/P.A