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

***Criminal Jail Appeal No. D-23 of 2024***
***Criminal Confirmation No. D-09 of 2024***

***Before*:**

***Mr. Justice Shamsuddin Abbasi,***
***Mr. Justice Ali Haider 'Ada'***

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| Appellant | : | Rasool Bux son of Muharram Gorshani,<br>*through* M/S. Zahid Hussain Thaheem & Mehboob Ali, Advocates. |
| Complainant | : | Liaquat Ali son of Raza Muhammad Gorshani,<br>*through* Mr. Zafar Ali Malghani, Advocate |
| Respondent | : | The State<br>*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General |

***Criminal Jail Appeal No. S-15 of 2024***

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| Appellant | : | Muharram son of Moula Bux Gorshani,<br>*through* M/S. Zahid Hussain Thaheem & Mehboob Ali, Advocates. |
| Complainant | : | Liaquat Ali son of Raza Muhammad Gorshani<br>*through* Mr. Zafar Ali Malghani, Advocate |
| Respondent | : | The State<br>*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General |

***Criminal Jail Appeal No. S-16 of 2024***

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| Appellant | : | Rasool Bux son of Muharram Gorshani<br>*through* M/S. Zahid Hussain Thaheem & Mehboob Ali, Advocates. |
| Respondent | : | The State<br>*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General |
| Date of Hearing | : | 20.08.2025. |
| Date of Decision | : | 20.08.2025. |

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

***Ali Haider 'Ada':J .*** **–** By this single judgment, We, intend to decide the fate of the captioned appeals preferred by the above-named appellants, whereby they have assailed the judgment dated 06.04.2024, passed by the learned 1st Additional Sessions Judge/MCTC, Shikarpur, in Sessions Case

No.460 of 2021, arising out of FIR No.25 of 2021, registered at Police Station Jaggan @ Humayun, for the offences punishable under Sections 302, 114, 148, 149, PPC. Through the impugned judgment, appellants Rasool Bux was convicted and sentenced to death as *Tazir* for the offence under Section 302(b), PPC, with a further direction to pay compensation in the sum of Rs.500,000/- (five lacs) to the legal heirs of the deceased, in terms of Section 544-A, Cr.P.C. In case of default in payment of compensation, he was directed to undergo simple imprisonment for six (06) months, and his sentence of death was ordered to be executed by hanging till death. While dealing with the case of appellant Muharram, it is observed that he was convicted and sentenced to suffer imprisonment for life, and further directed to pay compensation of Rs.1,500,000/- (Rupees fifteen lacs only) to the legal heirs of deceased, as envisaged under Section 544-A Cr.P.C.; in case of default in payment of such compensation, he shall undergo simple imprisonment for a further period of six months. So far as FIR No.27 of 2021 is concerned, which arose out of the recovery of weapon from appellant Rasool Bux, he was further convicted and sentenced to undergo rigorous imprisonment for a period of eight (08) years and to pay fine of Rs.50,000/- (Rupees fifty thousand only) under Section 25 of the Sindh Arms Act, 2013; and in case of default in payment of fine, he was directed to suffer simple imprisonment for a further period of two (02) years. However, the benefit of Section 382-B, Cr.P.C. was extended to him. The appellants, being aggrieved and dissatisfied with the impugned judgments, have preferred the instant appeals, mainly challenging their conviction and sentence on grounds of non-fulfillment of legal requirements, and denial of fair trial.

2. As per the case of the prosecution in the main FIR No.25 of 2021, the complainant, in a nutshell, narrated that on 01.06.2021, he along with his brother Amanullah (deceased) and other family members were present at their house. On 02.06.2021, at about 12:15 am. (midnight), upon hearing some noise, they came out and saw and identified the accused persons, namely Rasool Bux armed with a pistol, Muharram armed with a lathi, and four others including co-accused Mulla @ Umed Ali. It is alleged that on account of a matrimonial dispute, and on the instigation of accused Muharram, co-accused Mulla @ Umed Ali and appellant Rasool Bux

caused firearm injuries to his brother Amanullah, who, after sustaining the said injuries, succumbed to death. After completing the funeral ceremonies, the FIR was lodged. So far as Crime No.27 of 2021 is concerned, which is an offshoot case for the offence punishable under Section 25 of the Sindh Arms Act, 2013, it is the prosecution's case that subsequent to the registration of the main FIR, appellant Rasool Bux was arrested on 06.06.2021, and upon his arrest, a T.T. pistol was allegedly recovered from his possession. Accordingly, a separate FIR was registered against him under the Arms Act.

3. After completion of usual investigation, challan/s were submitted in both cases and the appellants were sent up to face trial. The learned trial Court took cognizance and framed charge against the appellants in Sessions Case No.460 of 2021 (arising out of FIR No.25 of 2021) on 05.11.2021. The appellants pleaded not guilty to the charge and claimed trial. So far as the offshoot case arising out of Crime No.27 of 2021 is concerned, charge was framed against appellant Rasool Bux on 08.01.2022, to which he also pleaded not guilty and claimed trial. In both cases, the prosecution was then directed to lead its evidence.

4. In the main case arising out of FIR No.25 of 2021, the prosecution examined Dr. Imran Khan (PW-01), the Medical Officer, who produced the inquest report as well as the postmortem examination report of deceased Amanullah. PW-02 Liaquat Ali, the complainant, was examined and produced the FIR. PW-03 Irshad Ali and PW-04 Waheed Ali were also examined; they exhibited the memo of the corpse of the deceased, the inquest report, the memo of the place of incident, the recovery of empties, and blood-stained earth from the spot, as well as the memo of the clothes of the deceased. The prosecution further examined PW-05 Muhammad Hassan, who produced another inquest report along with the relevant Roznamcha entry. PW-06 Abdul Qadir deposed regarding the arrest of both appellants through separate memos, and also produced the memo of arrest of appellant Rasool Bux, from whose possession a pistol along with bullets was allegedly recovered. He further exhibited the road certificate, entry in Register No.19, letter to the SSP, letter to the Mukhtiarkar, letter to Sindh Forensic Lab, road certificate of dispatch, serologist report, letter to

Forensic Laboratory Larkana, and the ballistic expert's report. PW-07 Muhammad Hashim and PW-08 Sona Khan were also examined in support of the prosecution case. It is observed that, except for the Medical Officer (examined on 19.05.2023), all the remaining witnesses were examined on 02.04.2024. Thereafter, statements were filed by the learned State Counsel as well as the complainant on 02.04.2024, whereby further evidence was given up. Consequently, on the same date, the statements of both accused were recorded under Section 342 Cr.P.C., wherein they professed innocence and prayed for acquittal. The learned trial Court, after hearing the parties, proceeded to pass the impugned judgment in the main case.

5. With regard to the offshoot case arising out of Crime No.27 of 2021 is concerned, after framing of charge, the prosecution examined PW-01 Abdul Qadir, who produced the FIR, memo of arrest and recovery, relevant Roznamcha entries, road certificate, and examination report. The prosecution also examined PW-02 Ali Baig, PW-03 Muhammad Hashim, and PW-04 Sona Khan, all of whom were examined on 02.04.2024. On the same date, the learned State Counsel filed statement closing the prosecution side. Thereafter, the statement of accused/appellant Rasool Bux was recorded under Section 342 Cr.P.C., and subsequently the learned trial Court passed the impugned judgment.

6. Learned counsel for the appellants has contended that the trial was conducted in a harsh and hasty manner. He pointed out that the defence counsel filed Vakalatnama before the learned trial Court on 02.04.2024 and sought adjournment for preparation, particularly in view of the fact that the case involved capital punishment. However, the learned trial Court declined such request and insisted upon concluding the trial proceedings. As a result, the entire prosecution evidence, as well as the statements of the accused under Section 342 Cr.P.C., were recorded in a single day, which, according to the counsel, is a serious irregularity. Further, learned counsel submitted that even on the date of judgment, a statement was filed on behalf of the accused expressing their willingness for Faisla (compromise) between the parties. Along with such statement, certain documents were produced indicating that compromise talks had been initiated before the Nekmard. Nevertheless, the learned trial Court did not

afford any meaningful opportunity to consider such compromise, despite the fact that the matter pertained to a compoundable offence under the law. It was argued that the Court ought to have made efforts to facilitate the settlement between the parties so as to prevent further enmity, but failed to do so. Learned counsel further pointed out a specific error in the recording of the statement of accused Rasool Bux. During his examination under Section 342 Cr.P.C. in the main case, Question No.4 relating to the recovery proceedings was admittedly put to him; however, his reply was never recorded in the statement. According to the counsel, this omission amounts to a serious irregularity, as it deprived the accused of placing his stance on record regarding a vital piece of evidence. On these grounds, it is submitted that the appellants were deprived of their constitutional and legal right to a fair trial, and therefore the conviction and sentence cannot be sustained.

7. Conversely, learned counsel appearing for the State as well as for the complainant have not disputed that the reply to Question No.4 of appellant Rasool Bux was not incorporated in his recorded statement. However, they submitted that such omission is a curable irregularity and does not vitiate the trial. With regard to the plea of compromise, learned counsel for the complainant argued that the statement filed on behalf of the accused was duly placed on record and the learned trial Court directed its copy to be supplied to the learned Public Prosecutor and counsel for the complainant. On merits, both the learned State Counsel and complainant's counsel supported the impugned judgment, maintaining that the prosecution had successfully proved its case beyond reasonable doubt, and the conviction and sentence awarded by the trial Court were proper and in accordance with law.

8. Heard the respective submissions advanced by learned counsel for the parties and have carefully perused the material available on record with utmost judicial scrutiny.

9. Perusal of the record reveals that on 02.04.2024, the Vakalatnama was filed by the defence counsel. Prior to this, one counsel had already been appointed at State expense; however, once the accused opted to engage an advocate of their own choice, it became the duty of the Court to

afford them sufficient opportunity to properly instruct their counsel and to enable collection of relevant material and documents for defence. Contrary to this requirement, the learned trial Court, on a single day, examined all material witnesses (except the medical officer), recorded the statements of the appellants under Section 342 Cr.P.C., and closed the prosecution side. Such practice amounts to denial of the valuable rights of the accused, who in criminal jurisprudence are considered as the favourite child of law. It is a settled principle that under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, every person is guaranteed the right to a fair trial and due process. It is the prime responsibility of the Court to ensure that this constitutional safeguard is not violated, and that the proceedings are conducted in a manner free from prejudice to either party. For ready reference, Article 10-A is reproduced hereunder:

> ***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.*

10. No doubt, the offence is heinous in nature but under the scheme of law, the same is compoundable, therefore, if the parties took effort from even one side, then there is no harm to give a chance and opportunity to make effort in order to curtail their distance and also cut down the enemy process and also develop the well society for live without enmity, but without giving the chance on the same day when the statement was filed, on such regard, regarding the efforts of compromise being taken, the judgment was announced.

11. In respect of the off-shoot case (Crime No.27/2021) is concerned, the record also reflects that the entire proceedings, including examination of prosecution witnesses, closure of evidence, recording of statement of the accused under Section 342 Cr.P.C., were all carried out on the same day i.e. 02.04.2024. Such an approach clearly demonstrates undue haste and failure to provide the accused with adequate time and opportunity to prepare their defence. The requirement of law is not mere formality of trial but to ensure that justice is not only done but manifestly seen to be done. The manner in which the off-shoot case was concluded also amounts to

denial of the constitutional guarantee of fair trial under Article 10-A of the Constitution of Pakistan, 1973.

12. In view of the above findings, when a material question was admittedly put to the accused during his examination under Section 342 Cr.P.C., but his reply was neither recorded nor mentioned in the statement, this Court cannot overlook such a crucial lapse. It is the prime duty of the trial Court to confront the accused with every piece of incriminating material and to faithfully record his reply verbatim. Omission to do so amounts not only to irregularity but to a serious illegality, which goes to the root of the case. Failure to place the valuable material before the accused and to duly record his explanation has resulted in denial of his right of defence, thereby vitiating the trial itself. In this Context, reliance is placed upon the case of ***Tauheed Abbas vs The State and others*** **2023 PCr.LJ 805** as held that:

> *5. It is trite that evidence not put to the accused in his statement under section 342, Cr.P.C cannot be used against him for recording any observation making part of main platform which is set to erect a guilt-edifice against him. Appellate courts usually remand the case on the deficiency of questions put to accused in his statement under section 342, Cr.P.C. on the principle that trial court before relying upon any evidence should have sought explanation of accused about it, which indirectly a message that if any evidence is skipped or lost sight of putting to the accused but is essential to be relied upon, the trial court before proceeding further must put some additional questions in this respect which is in line with first part of section 342, Cr.P.C. authorizing the court to ask question at any stage of the proceedings without warning him.*
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> *6. The spirit and object of section 342, Cr.P.C. has well been explained in a case reported as "Aminul Hoque v. Crown" (PLD 1952 Federal Court 63) as follows:-*
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> > *It is not sufficient to put a general question to the accused whether he has anything to say about the charges levelled against him. When a point arises in the evidence against the accused which the Court considers vital, it is the duty of the Judge to call the attention of the accused to the point, and to ask for an explanation. The whole object of enacting section 342 of the Cr.P.C. is that the attention of the accused should be drawn to the specific points in the evidence on which the prosecution claims that the case is made out against the accused, so that he may be able to give such explanation as he desires to give.*
> >
> > *Further*
> >
> > *It is true that section 342 was not intended for the purposes of cross-examining the accused or for filling up gaps in the case for the prosecution. But it is no less serious an error to go to the opposite*

> *extreme and," by excess of restraint, to defeat the primary object of the section which is to assist the accused in explaining the circumstances which are relied upon by the prosecution as establishing the case against him.*

*Honourable Superior Court has regretted the practice of subordinate court for not adhering to the section 342, Cr.P.C. in its true spirit; a case reported as "Muhammad Yakub v. The Crown" (PLD 1956 Federal Court 143) is cited in this respect wherein court has expressed reservations in following words:-*

> *"Before we conclude, we must express our regret at the perfunctory manner in which accused persons are being questioned by the presiding officers of original Courts in this Province under section 342 of the Criminal P. C. The law on this point has been explained in several decisions of this Court which are either not being studied by the subordinate judiciary or, what is more serious, are being ignored in this particular case"*

*7. The allegation of filling lacune is usually attributed to the litigating parties on whose applications court sometimes misread the situation but it cannot be levelled against the court which always looks for doing complete justice and in this respect is authorized to use its inquisitorial pocket in an adversarial system like in our system enumerated in sections 94, 265-F, 540, 539-B of Cr.P.C. and Articles 158 and 161 of Qanun-e-Shahadat Order, 1984. So is the case of power under first part of section 342, Cr.P.C.*

*8. In the recent judgment of Hon'ble Superior Court passed in a case reported as "Raza and another v. The State and 2 others" (PLD 2020 Supreme Court 523) importance of statement under section 342, Cr.P.C. has been highlighted in the following terms:-*

> *39. It is important to underline that the statement of the accused under section 342, Cr.P.C. is not evidence, it is only the stand or version of the accused by way of an explanation when incriminating material against him is brought to his notice. The statement is not made on oath, and cannot be tested by cross-examination, and is made under the protection of immunity of the maker of the statement from punishment for making false statement. Such statement cannot be placed on the same footing as statements made by witness in court on oath, which are tested by cross-examination. Such statement thus does not strictly constitute evidence, but in view of the presumption of innocence in favour of the accused, the statement may provide valuable material to the courts for appraising the prosecution evidence in arriving at its findings. The version given in such statement if found by the court to be reasonable and in accord with the probabilities of the established facts: and circumstances, the same may be accepted by the court even without requiring defence evidence, unless the version is falsified by the prosecution evidence.*

*9. In the light of above discussion, we conclude that the trial court is authorized to dilate upon all pieces of evidence for a reply of accused to be considered later in order to appreciate the evidence of prosecution, yet recording of statement under section 342, Cr.P.C. afresh in this case is not desirable rather court can put additional questions encompassing the evidence appearing against him and is intended to be used by the court for recording any observation relating to guilt or otherwise of the accused and this arrangement is in consonance with the spirit of first part of section 342,*

*Cr.P.C. Therefore, petition in hand is dismissed having no merits; however, learned trial court shall put additional questions to the accused as per available evidence and shall treat it part of statement earlier recorded under section 342, Cr.P.C. for realizing any point of determination in the final judgment.*

13. For the foregoing reasons and in view of the discussion made hereinabove, the captioned Criminal Jail Appeals are partly allowed. Consequently, the matters are remanded to the learned trial Court with directions to decide afresh the Sessions Case No.460 of 2021 arising out of Crime No.25 of 2021 (main case), as well as Sessions Case No.228 of 2021 arising out of Crime No.27 of 2021 (off-shoot case), strictly in accordance with law. The trial Court shall ensure that fair opportunity of hearing is provided to all concerned, and that the reply of accused Rasool Bux to Question No.4, which was admittedly put to him, is properly recorded and incorporated in his statement under Section 342 Cr.P.C. Moreover, if any effort is made by the parties for amicable settlement of their differences, the learned trial Court shall also afford them a fair and reasonable opportunity in that regard. The above exercise shall be completed within a period of three months from the date of receipt of this judgment. Accordingly, the impugned judgments passed in both the main and the off-shoot cases are hereby set aside to the extent indicated above. Needless to observe that while deciding the matter afresh, the learned trial Court shall not be influenced in any manner by the findings recorded in the earlier judgment.

14. The reference made for confirmation of death sentence awarded to the appellant is answered in the Negative.

***JUDGE***

***JUDGE***