

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Jail Appeal No. S-61 of 2024

Appellant	Zulfiqar @ Bhutto son of Ghulam Mustafa Mugheri through Mr. Habibullah G. Ghouri, Advocate.
Respondent	The State through Mr. Sardar Ali Solangi, Deputy Prosecutor General [Sindh].
Date of hearing	<u>28-08-2025</u>
Date of Judgment	<u>04-09-2025</u>

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JUDGMENT

SHAMSUDDIN ABBASI, J. Zulfiqar @ Bhutto son of Ghulam Mustafa Mugheri, appellant, has challenged the validity of the judgment dated 16.11.2024, penned down by the learned Additional Sessions Judge-II Kamber, in Sessions Case No.138 of 2024 [FIR No.63 of 2023] registered at Police Station Waggan, P.P. Lalu Raunk, for offences under Sections 324, 337-A(vi), 504 and 34, PPC, through which he was convicted and sentenced as under:-

*“31(i). Accused for offence under section 324 PPC is sentenced to R.I. for seven years with fine of Rs.100,000/- [One Lac Rupee]. In case of default in payment of fine amount accused shall further undergo S.I. for six months.*

*ii. Accused for offence under section 337-A(vi) is sentenced to R.I. for ten years as Tazir with direction to pay Arsh [one half of Diyat amount]. In case of default to payment of Arsh amount accused shall be kept in jail and dealt in the same manner as if sentenced to simple imprisonment until Arsh is paid in full in terms of Section 337-X(2) PPC.*

*iii. Accused for offence under Section 504 PPC is sentenced to R.I. for one year.*

*32. All the sentences shall run concurrently. The benefit of Section 382-(b) Cr.P.C. is extended to accused. Accused Zulfiqar @ Bhutto is present in jail custody, produced from District Prison, Larkana, he is sent back to jail to serve out above sentence.*

*33. The certified copy of this judgment be supplied free of costs to accused under proper receipt”.*

2. Short but relevant facts of the case are that on 10.06.2023 Muhammad Khan lodged FIR reporting therein an incident which took place on 02.06.2023 at 5:00 pm near the house of complainant when he

[complainant] alongwith his nephews Ali Asghar, aged about 28 years, and Abdul Nabi was standing in a street, near his house, accused Zulfiqar @ Bhutto alongwith his companions Khalid Hussain, armed with hatchets, Fahad and Altaf came there and as soon as Ali Asghar reminded Zulfiqar @ Bhutto that despite promise he [Zulfiqar @ Bhutto] failed to fulfill his commitment and did not return solar plate, which allegedly stolen by him, whereupon there was exchange of hot words and meanwhile Fahad and Altaf took out pistols from their folds and pointed at complainants' party while Zulfiqar @ Bhutto attacked upon Ali Asghar and inflicted hatched blows on right side of his head, who fell down on ground and blood started oozing and seeing him fell the complainant party raised cries and in response the villagers came running and on seeing them the accused party made their escape good. The complainant party immediately took Ali Asghar to PP Lalu Raunk and after obtaining letter for treatment proceeded to hospital for treatment and thereafter the complainant visited P.S. Waggan and lodged FIR.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

4. At the very outset, the learned counsel appearing for the appellant while referring to the depositions of prosecution witnesses, recorded in the earlier round of litigation before framing of amended charge, have been adopted and on the basis of such adopted evidence convicted the appellant, which is contrary to law, which prescribes recalling and re-examination of the witnesses already examined, on the amendment/alteration/ addition so made in the subsequent charge. By pointing out so, he suggested for setting-aside of the impugned judgment with direction to learned trial Court to proceed with the case afresh and in accordance with law.

5. The learned Deputy Prosecutor General, on query of this Court, submits that the omissions pointed out by the learned counsel for the appellant take support from the record.

6. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions, and has also scanned the entire record carefully with their able assistance.

7. Record reflects that while framing amended charge, the learned trial Court adopted the same evidence adduced by the prosecution in support of first charge and convicted the appellant relying on the same evidence, which is clear violation of Constitution, which provides right of fair trial to each accused. It is noteworthy that first charge was framed on 26.04.2024 in respect of offences under Sections 324, 504 and 34, PPC and in support of that charge, the prosecution examined all witnesses and closed its side on 19.08.2024 vide statement Ex.14 and after recording statement of appellant under Section 342, Cr.P.C. the matter ripe for judgment, meanwhile on 23.09.2024 the learned DDPP for the State filed application seeking permission to alter/amend the charge by inserting Section 337-A(vi), PPC on the ground that per medical certificate issued by Dr. Ameer Ahmed Paleejo, the injury has been declared as *Shajjah-i-Damighah* falling under Section 337-A(vi), PPC. The learned trial Court, after hearing the respective parties, allowed the application vide order dated 25.09.2024 and on the same day framed amended charge for offences under Section 324, 337-A(vi), 504 and 34, PPC, and instead of recording fresh evidence adopted the same depositions of witnesses, already recorded in support of first charge, without re-examining the said witnesses, which is clear violation of Section 231, Cr.P.C., which prescribes recalling and re-examination of the witnesses already examined, on the amendment, alteration or addition so made in the charge. Mere particularly when the learned trial court has considered the evidence of P.W-6 Ali Khan, who is mashir of place of incident, mashir of injury sustained by injured and mashir of arrest and P.W-7, Akhtiar Ali 2<sup>nd</sup> investigation officer of the case and relied on their evidence while convicting the appellant. Reliance is placed on the case reported as **Zubair Ahmed versus The State (PLD 2023 Sindh 151)**, which reads as under:-

“The procedure adopted by learned trial Court being incurable, have not only occasioned in failure of justice, as is defined under Sub-Section (b) to Section 537, Cr.P.C. but have prejudiced the appellant in his defence seriously, which is against the mandate contained by *Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973*, which guarantees chance of fair trial and due process to every citizen for determination of his civil/criminal rights and obligations.”

8. I am, thus, of the view that the learned trial Court without realizing the legal position not only adopted the same evidence

recorded in the first round of litigation but also used the same while convicting the appellant on the basis of second charge, which cannot be sustained. In the circumstances, without touching the merits of the case, the convictions and sentences awarded to the appellant through impugned judgment dated 16.11.2024 are set aside and the matter is remanded back to learned trial Court with direction to recall and re-examine the prosecution witnesses and provide opportunity of cross-examination to the defence as well record statement of appellant under Section 342, Cr.P.C. as prescribed by law and then make disposal of the case afresh and in accordance with law.

9. The Criminal Jail Appeal No. S-61 of 2024 stand disposed of in the foregoing terms.

JUDGE

NAK/PA