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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No.D-69 of 2018

Cr. Reference No.D-10 of 2018

PRESENT:

Mr. Justice Mohammad Saleem Jessar,
Mr. Justice Zulfiqar Ali Sangi,

Appellant : Ghulam Sarwar Khokhar, through Mr. Habibullah G. Ghouri, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing : 09.02.2021.

Date of Judgment : 09.02.2021.

JUDGMENT

Mohammad Saleem Jessar, J.- Appellant Ghulam Sarwar Khokhar through instant appeal has challenged the judgment dated 22.11.2018, passed by the learned II-Additional Sessions Judge, Larkana, in Sessions Case No.695/2014 re-The State v. Ghulam Sarwar & another, being outcome of Crime No.41/2014 of Police Station Bakrani, whereby the appellant was convicted for offence under Section 302(b), PPC and sentenced to death, to be hanged from his neck till he is death, subject to confirmation by this Court; in addition, he was directed to pay Rs.100,000/- as compensation u/s 544-A, Cr.P.C to the legal heirs of deceased Mohammad Yaqoob. The trial Court also moved reference under Section 374, Cr.P.C being Cr. Reference No.D-10/2018 for confirmation of death sentence by this Court.

2. Learned Counsel for the appellant submits that first charge against appellant Ghulam Sarwar Khokhar was framed on 03.10.2014 and later due to arrest of co-accused Mohammad Bux charge was amended on 19.11.2014 and both charges were framed against the appellant in the

absence of his Counsel. In support of his contentions he has focused upon case diaries dated 02.03.2015 as well as 19.08.2015 and submits that the appellant was tried for the charge entailing capital punishment; however, it was mandatory for the trial Court to have provided a Counsel to the appellant and the Counsel was given to him after framing of charges as well as after recording of examination-in-chief of the PWs; that on this legal ground the trial of the accused was vitiated, hence prays for remand of the case for *de novo* trial against the appellant.

3. Learned Additional Prosecutor General after going through the record concedes to the remand of the case for *de novo* trial. Accordingly, the impugned judgment dated 22.11.2018 passed by learned II-Additional Sessions Judge, Larkana, in Sessions Case No.695/2014, is set aside to the extent of conviction and sentence of appellant only, and the case is remanded to the learned trial Court, with direction to hold the trial against him *de novo* and conclude the same expeditiously, preferably within a period of three months from the date of receipt of this order.

4. It may be needless to mention here that on conclusion of trial the trial Court shall pass judgment strictly in accordance with the material brought on record, without being influenced by the previous judgment.

5. The appeal is disposed of in above terms. Consequently, Cr. Reference No.D-10/2018 filed by trial Court u/s 374, Cr.P.C is also answered in negative and disposed of accordingly.


JUDGE


JUDGE