

Thus you have committed an offence punishable u/s 302/34 PPC within the cognizance of this court, and you here by tried by this court on the aforesaid charges.”

Sections 222 and 223 of CrPC provide manner wherein the charge is to be framed but framed charged does not satisfy requirement thereof. She added that examination in chief of material witness was recorded by the trial court but cross examination was not conducted due to statement of the counsel on 09.02.2017 whereas as per diary sheet of that date such witness was not present, his statement was recorded on 09.02.2016 one year before, merely on the application side was closed and matter was adjourned for final arguments. This is a case of capital punishment; it was the duty of the court to examine the witness even by court. She has relied upon 2014 PCRLJ 527, 2000 PCRLJ 367, 2014 PCRLJ 865 and 2015 MLD 339.

3. With regard to plea of non-examination of PW Muhammad Nazeer learned DPG contends that this case may be remanded back for examination of Muhammad Nazeer from the stage of cross examination of Muhammad Nazeer however, as regard to the plea of defective charge, he contends that same is with regard to commission of murder and states that both caused fire hence no prejudice would be caused to the appellant as penalty is same with regard to commission of murder.

4. As regard the plea of *defective charge*, it would suffice to say that perusal of the charge shows that it gives sufficient notice to the accused persons of what the prosecution case is. Further, no such *plea* was taken during course of trial hence this *plea* at such stage is not impressive one. However, I would add that trial Court (s), while framing the charge, must adhere to requirement of law and should not hesitate in parting the allegations in details, if so require

as to achieve the ultimate objective of **framing of charge** i.e to give a full notice / knowledge to accused of what he is to be tried.

5. While attending to the plea regarding non-cross examination of witness Muhammad Nazeer, it appears from the record that Muhammad Nazeer witness was examined by the trial court but cross examination was not conducted and after one year application filed by counsel for appellant was taken on record; on statement examination in chief learned trial judge endorsed that **“Counsel is not ready to cross examine the witness.”** However, the perusal of the record shows that at such time the witness was not present hence question of readiness or *otherwise* of counsel to cross-examine the witness does not arise.

6. The above position has forced me to say that the **trial Court (s)**, in particular, must always appreciate that a *speedy* trial alone shall never satisfy the lust of **‘fair-trial’** nor a *hasty* conclusion of trial would be worth appreciating because an *haste* is always likely to cause prejudice to rights of parties which (*rights*), being creation of *procedural* law, needs to be adhered. The trial Court must always appreciate that term evidence could only find its complete meaning when both of its parts i.e examination-in-chief & cross-examination co-exists. Needful to add that truthfulness and credibility of a witness is always tested through cross-examination therefore, cross-examination is not only considered as *integral* part of evidence rather more important than examination-in-chief. Reference is made to the case of Mukhtar Ahmed v. State 2003 SCMR 1374 wherein this legal position was affirmed as:-

16. Both the courts have failed to appreciate that cross examination is a continuing part of the whole statement, rather, more important than the examination-in-chief....”

I shall further add that it shall always be the *undeniable* duty of a **‘judge’** that justice is not only done but should be shown to have been done. Such duty becomes double when the charge, under trial, is one of **‘capital punishments’**. I would further add that it is the duty of the **‘trial court judge’** to record **complete** evidence which, as already stated, shall not find satisfaction without testing credibility and truthfulness of the witness i.e cross-examination, reexamination through **representation** or *even* by the Court itself. The thirst to do complete justice should not be dependant upon acts and omissions of the counsels; the Courts must not stamp the truthfulness and credibility of a witness as **granted** merely by saying **‘opportunity was granted’** rather should exercise power, vested with a judge, by Article 161 of the Qanun-e-Shahadat Order, 1984. If the things were to be left solely on wishes of the counsels then there appears no purpose for induction of provision of Article 161 whereby the Court, being *solely* responsible to do justice, has been invited to test the credibility and truthfulness of the witness who, by entering into witness-box, volunteers himself to such challenge.

7. Thus, if above legal position is put in *juxta-position* to present situation, the Safe Criminal Administration of Justice, as well Article 10-A of the Constitution, leaves me with no option but either to provide an opportunity of cross-examination or to exclude the evidence of said witness. I, while maintaining balance, would prefer to go with *former* one more particularly finding the absence of counsel

on the date when evidence of witness was taken as complete with note i.e ***“Counsel is not ready to cross examine the witness.”***

8. Accordingly, this is a fit case to be remanded back from the stage of cross examination of Muhammad Nazeer and statement under section 342 Cr.P.C. Appellant shall be at liberty to lead evidence if any, thereafter trial judge shall pass fresh judgment after hearing the parties without being influenced by the earlier judgment whereby appellant was convicted.

J U D G E

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