

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Jail Appeal No.S-125 of 2005

Appellants: Nisar alias Patasho son of Pehlwan Khaskehli,
2) Gul Muhammad alias Gulo son of Pehlwan
Khaskheli and 3) Arbab son of Pehlwan
Khaskheli, through Mr.Jawaid Leghari, advocate

The State : Through Ms. Sana Memon, A.P.G.

Date of hearing : 03.03.2021

Date of decision : 03.03.2021

J U D G M E N T

IRSHAD ALI SHAH-J; The appellants by way of instant appeal have impugned judgment dated 10.08.2005, passed by learned Sessions Judge, Nawabshah whereby they have been convicted and sentenced as under;

“I convict accused Patasho alias Nisar, Gul Mohammad alias Gulo and accused Arbab for offence under section 302, 506/2 PPC. Therefore accused Patasho alias Nisar, Gul Mohammad alias Gulo and accused Arbab are sentenced to suffer life imprisonment for offence U/S 302 PPC and also sentenced them to suffer two years R.i for offence U/S 506/2 PPC. I also convict accused Patasho alias Nisar, Gul Mohammad alias Gulo for offence under section 342 PPC sentenced them suffer one years R.I for offence U/S 342 PPC, all these sentences will run concurrently.”

2. It is alleged that the appellants in furtherance of their common intention not only committed murder of Mst. Nasreen by causing her knife injuries but kept PWs Mst. Shahnaz, Perveen and Deedar under wrongful restraint by putting them under fear of death, for that they were booked and reported upon.

3. On conclusion of trial, the appellants were convicted and sentenced as above by way of impugned judgment.

4. On perusal of record, it transpired that when the very case was at the verge of its final disposal, the *charge* against the appellants was amended; thereby certain penal sections were inserted. On amendment of the *charge* as per requirement of section 231 Cr.P.C no witness was recalled for re-examination. Surprisingly, not only the evidence, but the statements of the appellants already recorded u/s 342 Cr.P.C were brought on record and then the appellants were convicted and sentenced by learned trial Court by way of impugned judgment, which obviously is against the spirit of fair trial.

5. Learned counsel for the parties when were confronted with the legal flaws as above in the impugned judgment were fair enough to concede for remand of the matter for its fresh trial in accordance with law.

6. In view of above, the impugned judgment is set-aside with direction to learned trial Court to recall and re-examine the witnesses afresh and then to pass fresh judgment in accordance with law, preferably within three months, after receipt of copy of this judgment.

7. The appellants are present in Court on bail, they may enjoy the same concession subject to furnishing fresh surety in sum of rupees two lac each and PR bond in the like amount to the satisfaction of learned trial Court.

8. The instant appeal is disposed of accordingly.

J U D G E