

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Jail Appeal No.D- 362 of 2011

Cr. Rev. A. No.D- 161 of 2011

Before;

Mr. Justice Muhammad Iqbal Mahar

Mr. Justice Irshad Ali Shah

Criminal Jail Appeal No.D- 362 of 2011

Appellants: Sona Khan son of Nota Khan Khetram,
Muhammad Hussain son of Sona Khan.
Through Mr. Ashfaque Ahmed Lanjar, Advocate

State: Ms. Safa Hisbani, A.P.G

Complainant: Abdul Khalique son of Barkat Ali through
Mr. Kamran Baig, Advocate.

Cr. Rev. A. No.D- 161 of 2011

Applicant/complainant Abdul Khalique son of Barkat Ali,
Through Mr. Kamran Baig, Advocate.

State: Ms. Safa Hisbani, A.P.G

Respondents Bi,1&2: Through Mr. Ashfaque Ahmed Lanjar, Advocate.

Date of hearing: **18.09.2019**

Date of decision: **18.09.2019**

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged that the appellants with rest of the culprits in furtherance of their common intention by committing trespass into Otaq of complainant Abdul Khaliq committed Qatl-e-amd of his brother Muhammad Nawaz by causing him fire shot injuries and then went away by making fires at complainant party with intention to commit

their murder by using criminal force, for they were booked and reported upon by the police to face trial for the above said offence.

2. At trial the appellants did not plead guilty to the charge and prosecution to prove it examined complainant Abdul Khaliq and his witnesses and then closed the side.

3. The appellants in their statements recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence, they did not examine themselves on oath or anyone in their defence to prove their innocence.

4. On conclusion of the trial learned 3rd Additional Sessions Judge, Hyderabad found the appellants guilty for the above said offence, therefore, vide judgment dated 02.11.2011 convicted and sentenced the appellants as under;

“I, therefore, hereby convict both the present accused U/s 265-H(2) Cr.P.C and sentenced the accused Muhammad Hussain for life imprisonment and fine of Rs.100,000/-, in case of default he will suffer S.I for 5-years and accused Sono is sentenced R.I 10 years and fine Rs.50,000/-in case of default accused will suffer S.I for 2-years, if the fine is recovered be paid to the legal heirs of deceased, for their commission of offence U/s 302 PPC of deceased Muhammad Nawaz.”

5. Both, the appellants and the complainant impugned the above said judgment by way of filing appeal and revision, the appellants for their acquittal and complainant for enhancement of the sentence. Since, common question of facts and law is involved, therefore above said appeal and revision are being disposed of through single judgment.

6. The perusal of the record reveals that on conclusion of the trial, prosecution closed its side and the statements of the appellants u/s 342

Cr.P.C were also recorded by learned trial Court, when the case was at the verge of its disposal the prosecution by way of an application u/s 540 Cr.P.C recalled and re-examined HC Hassan Din and produced reports of Chemical Examiner and Ballistic Expert. No such reports were put to the accused for their explanation as per mandate contained by section 342 Cr.P.C. Instead the statements of the appellants already recorded were adopted. Such adoption of the statements of the appellants obviously was not fulfilling the requirement of law. No finding for conviction or acquittal of the appellants for offence punishable u/s 324 and 504 PPC is recorded by learned trial Court. The appellants have been found guilty for an offence punishable u/s 302 PPC and were accordingly convicted and sentenced. It is not defined by learned trial Court under which clause "A", "B" or "C" of section 302 PPC the appellants have been convicted and sentenced. Further, appellant Sono has been convicted and sentenced to undergo imprisonment for period of 10 years with fine. 10 years punishment is not prescribed u/s 302 PPC. Further, the appellants on account of their failure to make payment of fine have been ordered to undergo RI period for five and two years respectively. The maximum punishment which could be awarded to any person on account of his failure to make payment of fine as per sub-Section 2 to section 544-A Cr.P.C is six months.

7. The omissions and illegalities as discussed above, when were pointed to learned counsel for the parties, they without loss of time were fair enough to say in one go that the impugned judgment could not be

sustained on legal premises. By stating so, they conceded for remand of the case.

8. In view of above, the impugned judgment is set-aside with direction to learned trial Court to re-write the judgment after recording statements of the appellants u/s 342 Cr.P.C afresh within 30 days after receipt of copy of this judgment by providing chance of hearing to all the concerned.

9. Appellant Sona Khan is on bail. He to remain on same bail subject to his furnishing fresh surety in the sum of Rs.100,000/-and PR bond in the like amount to the satisfaction of learned trial Court.

10. The instant appeal and revision application stand disposed of in above terms.

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