

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D- 95 of 2019.  
[Confirmation case No.14 of 2019]

Present.  
Mr. Justice Naimatullah Phulpoto.  
Justice Mrs. Kausar Sultana Hussain.

Date of hearing: 13.04.2021.  
Date of judgment: 22.04.2021.

Appellant: Zahid Ali son of Gul Hassan Khaskheli  
through Mr. Muhammad Yousif Leghari,  
Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon,  
D.P.G.

## J U D G M E N T

**NAIMATULLAH PHULPOTO, J:-** Appellants Zahid Ali and Zulfiqar Ali both sons of Gul Hassan Khaskheli were tried by learned 1<sup>st</sup> Additional Sessions Judge (MCTC), Sanghar in Sessions Case No.382 of 2013 for offences under Section 302, 324, 449, 337-A(i), F(i), 337-F(ii), 114, 34 PPC vide crime No.94 of 2013 registered at P.S Sinjhoru. On conclusion of the trial vide its` judgment dated 27.05.2019, the appellant Zahid Ali was convicted u/s 302(b) PPC for committing Qatl-e-Amd of Ghulam Muhammad @ Yateem and Sikandar Ali and sentenced to death. He was directed to pay Rs.300,000/- (Three lac) as compensation in terms of section 544-A Cr.P.C. for each murder to be paid to the legal heirs of deceased. He was also convicted under the other sections for which he was charged as mentioned in the impugned judgment. Accused Zulfiqar Ali was acquitted by the trial court for want of evidence and case of

absconding accused Riaz was kept on dormant file. By this single judgment we intend to decide the aforesaid appeal filed by appellant Zahid Ali and confirmation reference made by the trial court.

2. Brief facts of the prosecution case as mentioned by the trial court in para No.1 and 2 of the impugned judgment are as follows:-

**“1. At the outset, it may be mentioned that this is a case where unfortunately one elderly man and a teenage boy have lost their lives. Not only these, but two females of the family of deceased have also received injuries and now the life of two accused present before the Court can be taken away in case of their conviction. The case is vital in terms of doing justice to the parties an endeavour has been made under the expeditious justice initiative program to decide the instant case expeditiously and to do prompt justice.**

**2. Messer Zahid Ali and Zulfiqar Ali, the accused, have been charge sheeted by Police Station Sinjhoru for the offences under sections 302, 324, 449, 337-A (i), F (i), 337-F (ii), 114, 34 PPC, of the Pakistan Penal Code (hereinafter referred to as the PPC) wherein the allegations that; on 25.07.2013, at 1630 hours, Complainant Iqbal Ahmed Khaskheli lodged F.I.R., at P.S Sinjhoru, stating therein that he is a married person having two sons and two daughters, his elder son Sikander was aged about 12/13 years. He used to reside with his father Ghulam Muhammad @ Yateem. About two years ago, Mst. Aisha sister of the Complainant got married to Zahid Ali S/o Gul Hassan Khaskheli, R/o Shahdadpur from the said wedlock she had a two months old daughter. Due to a dispute between them, Mst. Aisha obtained Khulla which annoyed Zahid Ali. On 23.07.2013, in the night, Complainant, his father, son, sister and mother had slept after taking the meal. On 24.07.2013, in Sehri time after having Sehri they were sitting in the house and the outer door was ajar. At about 0630 hours, accused Zahid Ali having dagger (Kaati) entered into the house, his brother Zulfiqar Ali was having a pistol and Riaz S/o Muhammad Haroon Khaskheli having hatchet, both of them were standing inside the door, they instigated him (Zahid Ali) to commit murder of Ghulam Muhammad and his family. On their instigation, Zahid Ali caused dagger (Kaati) blows to elderly Ghulam Muhammad on right side of his waist (kukh) and on other parts of his body, due to which he fell down, the boy Sikandar running in, came in front of accused and accused Zahid Ali also caused dagger (Kaati) blows to him and he fell down. Females of the family Mst. Hawa and Mst. Aisha came for rescuing, accused also caused them dagger (Kaati) blows. He caused dagger (Kaati) blows to Mst. Hawa on her left abdomen while Mst. Aisha received serious injuries. On cries, Ghulam Shabbir and Muhammad Ramzan Khaskheli maternal uncles, who happened to be the neighbours of the Complainant came running and tried to apprehend accused. On seeing them, accused Zahid Ali, Zulfiqar Ali and Riaz escaped outside. After that, they saw that elderly Ghulam Muhammad and teenage boy Sikander Ali had succumbed to their wounds at the spot. Mst. Hawa and Mst. Aisha were brought and admitted into Civil Hospital, Sanghar, Police also reached the hospital with dead bodies and police after**

***conducting the postmortems of deceased and completing formalities handed over the dead bodies for funeral ceremonies. Mst. Aisha was referred and admitted to Nawabshah hospital owing to her injuries. Thereafter, the Complainant went to Police Station Sinjhoru and lodged F.I.R. of the incident against accused of the offence punishable U/S 302, 324, 114, 34 PPC.”***

It was recorded vide crime No.94/2013 for offences u/s 302, 324, 449, 337-A(i), F(i), 337-F(ii), 114, 34 PPC against accused at P.S Sinjhoru.

3. After usual investigation, challan was submitted against accused Zahid while accused Zulfiqar and Riaz were shown as absconders. Both the remaining accused were declared as proclaimed offenders. Charge was framed against the accused Zahid Ali at Ex.6 to which he pleaded not guilty and claimed to be tried. After framing of charge against accused Zahid, prosecution examined complainant Iqbal Ahmed (PW-1) at Ex. 09, Mst. Aisha injured (PW-02) at Ex.10, Mst. Hawa injured (PW-03) at Ex.11. Thereafter, accused Zulfiqar Ali was arrested and amended charge was framed at Ex.13. Prosecution examined the complainant Iqbal Ahmed (PW-1) at Ex.19, Mst. Aisha (PW-02) Ex.20, Mst. Hawa (PW-03) Ex.21, Ghulam Shabir (PW-04) Ex.22 and P.C. Ghulam Rasool (PW-05) Ex.23. On 07.03.2019, the defence counsel moved an application u/s 227 Cr. P. C. at Ex.27, which was allowed by the trial court. Charge was again amended at Ex.28. On 26.04.2019 defence counsel moved an application u/s 231 Cr.P.C for re-examining the prosecution witnesses at Ex.29. which was partially allowed by the trial court.

4. In order to prove its` case, prosecution then examined Tapedar Liaquat Ali (PW-6) at Ex.30, Dr Najma Hyder (PW-07) Ex.31, Dr Arshad Ali Rajput (PW-08) Ex.32, complainant Iqbal Ahmed (PW-09) Ex.33, Mst. Aisha (PW-10) Ex.34, Mst. Hawa (PW-11) Ex.35, Ghulam Shabir Khaskheli (PW-12) Ex.36, Muhammad Ramzan mashir (PW-13) Ex.38, Ali Nawaz Khaskheli second mashir (PW-14) Ex.39, ASI Shafi Muhammad I.O. (PW-15) Ex.40, ASI Mehmood Ahmed Jat (P.W-16) Ex.41 and ASI Ashique Hussain mashir (PW-17) Ex.42. Thereafter, prosecution side was closed.

5. Statements of accused Zahid Ali and Zulfiqar Ali were recorded u/s 342 Cr.P.C at Ex.44 and 45 respectively. Accused claimed false implication in this case and denied the prosecution allegations. Accused Zahid Ali produced four news clips. Accused did not lead any evidence in

their defence and did not examine themselves on Oath in disproof of the prosecution allegations.

6. Trial Court after hearing the learned counsel for the parties and assessment of the evidence available on record vide its` judgment dated 27.05.2019, convicted and sentenced the appellant Zahid Ali to death as stated above and made Reference to this court for confirmation of death sentence of appellant Zahid Ali. However, the trial court acquitted accused Zulfiqar Ali son of Gul Hassan Khaskheli, for want of evidence while case of accused Riaz son of Haroon Khaskheli was kept on dormant file as stated above.

7. We have careful heard the learned counsel for the parties and perused the record minutely. First formal charge was framed against accused Zahid Ali by the learned trial court on 01.04.2014, for offences u/s 302, 324, 114, 34 PPC at Ex.6. Accused Zahid pleaded not guilty and claimed to be tried. Prosecution examined complainant Iqbal Ahmed (PW-1) at Ex.9, Mst. Aisha (PW-2) at Ex.10 and Mst. Hawa (PW-10) at Ex.11). Thereafter accused Zulfiqar Ali was arrested and the amended charge was framed against accused Zahid Ali and Zulfiqar Ali at Ex.13. Both the accused pleaded not guilty and claimed to be tried. Prosecution examined after amendment of the charge, Iqbal Ahmed (PW-1), complainant of the case at Ex.19, Mst. Aisha (PW-2) at Ex.20, Mst. Hawa (PW-3) at Ex.21, Ghulam Shabir (PW-4) at Ex.22 and Ghulam Rasool (PW-5) at Ex.23. Learned trial court vide order dated 10.04.2019 allowed the application for amendment of the charge as some sections regarding injuries to the ladies were not mentioned in the charge. Amendment charge was framed against accused Zahid Ali and Zulfiqar Ali for offences u/s 302, 324, 337-A(i), F(i), 337-F(ii), 114, 34 PPC. Charge was amended according to Headwise on 26.04.20219. Trial court vide order dated 06.05.2019 allowed the application u/s 231 Cr.P.C for recalling and re-examining the witnesses for limited purpose to the extent of Sections which were subsequently added vide amended charge dated 26.04.2019. Thereafter, evidence of Liaquat Ali (PW-6) was recorded at Ex.30, Dr. Najma Hyder (PW-7) at Ex.31, Dr. Arshad Ali (PW-8) at Ex.32, complainant Iqbal Ahmed was re-called and re-examined in terms of the order dated 05.06.2019. His examination-in-chief is reproduced as under:-

***“I have come before this Court for my re-examination in compliance of the order dated 6.5.2019 and I say that on 24.7.2013 I alongwith my mother, my father, my son Sikandar, my sister Mst. Ayesha and my mother Hawa were present inside the house. At about 6:30 a.m. accused Zahid, Zulfiqar and Riaz tress passed into our house to commit an offence***

**and caused injuries to my father Ghulam Muhammad and my son Sikandar Ali and to my mother and sister. Additional, I say that my evidence has earlier been recorded before the trial court on 30.3.2016 & 27.6.2018 which is correct."**

Mst. Aisha (PW-10) has deposed that on 24.07.2013 at 6-00 a.m accused Zahid Ali, Zulfiqar Ali and Riaz tress passed into their house. Accused Zulfiqar and Riaz instigated accused Zahid to commit the murder of all family members. Accused Zahid Ali firstly inflicted dagger blows to her father, then to Sikandar, both died at spot and accused also caused dagger blows to Mst. Aisha and to her mother. She has also stated that her evidence has already been recorded before this court **and she is adopting the same evidence.**

Mst. Hawa (PW-4) has deposed that accused tress passed into their house. Accused Zulfiqar and Riaz instigated accused Zahid to kill her husband Ghulam Muhammad and Zahid Ali caused dagger blows to her husband Ghulam Muhammad and he gave blows to Sikandar both died at the spot. Thereafter, she sustained injuries. **She also adopted her earlier evidence.**

Ghulam Shabir (PW-12) was re-called and his evidence was recorded in terms of the order dated 06.05.2019. **Further stated that his evidence is same which has already been recorded.**

8. Learned trial court has committed several illegalities while conducting the trial which are not curable under the law. For example:-

(a) Trial court framed charge defective.

(b) After amendment of the charge evidence of material witnesses was recorded to some extent who adopted the evidence which was recorded in absence of one accused.

(c) The piece of motive was not put to the accused Zahid Ali during his examination u/s 342 Cr.P.C which could not be used against him for conviction and sentence.

9. A bare perusal of Section 222(1) Cr.P.C. reveals that the charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged. In this regard the

august Supreme Court of Pakistan has provided ample guidance in the case titled "S.A.K. Rehmani Vs. The State" (2005 SCMR 364) which runs as under:

"The whole object of framing a charge is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offences with which the accused is convicted is not brought out in the charge, then the charge is defective".

The apex court in the above mentioned judgment further clarifies,

"In other words it can be said that the main object of framing of charge is to ensure that the accused had sufficient notice of the nature of accusation with which he was charged and secondly to make the Court concerned conscious regarding the real points in issue so that evidence could be confined to such points".

We would like to reproduce another Para of the above quoted judgment which resolves the controversy we are facing with, in the following words,

"Where a person is convicted of an offence and the Appellate Court is of the view that he has been misled in his, defence by the absence of a charge or by an error in the charge, appropriate action can be taken including remand of the case with direction for making suitable amendment in the charge."

10. We have noted with deep concern that after amendment of the charge PWs Iqbal Ahmed, Mst. Aisha, Mst. Hawa and Ghulam Shabeer were re-called and re-examined in terms of the order dated 06.05.2019 but they did not give the complete evidence and gave only evidence in 2/3 lines then **they adopted their evidence already recorded**. It may be mentioned that firstly Zahid Ali was arrested and three PWs namely Iqbal Ahmed, Mst. Aisha and Mst. Hawa were examined, thereafter accused Zulfiqar Ali was arrested and then the charge was amended. Evidence of PWs Iqbal Ahmed, Mst. Aisha and Mst. Hawa was recorded and at that time accused Zulfiqar Ali was not present before the court. It is the requirement of the law that evidence should be recorded in presence of the accused inspite of that evidence of PWs Iqbal Ahmed, Mst. Aisha, Mst. Hawa and Ghulam Shabeer which was earlier recorded was adopted. Such procedure adopted by the trial court was illegal as held by this court in Criminal Jail Appeal No.D-81 of 2019 [Zubair Ahmed v. Th e State] vide judgment dated 17.11.2020. There is also third aspect of the case as appellant Zahid has been convicted u/s 302(b) PPC and sentenced to

death. In the FIR motive was set up that appellant Zahid Ali committed offence as the marriage of his previous wife Mst. Aisha was dissolved by means of Khula which caused much annoyance to the appellant Zahid Ali. Trial court while recording the statement of accused u/s 342 Cr.P.C failed to put up question of above mentioned motive to accused. Scanned copy of the statement of appellant Zahid Ali recorded u/s 342 Cr.P.C is pasted hereunder:-

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IN THE COURT OF ADDITIONAL SESSIONS JUDGE-1 (MCTC), SANGHAR.  
Sessions Case No. 382 of 2013.  
S/V Zahid Ali and others.

**STATEMENT OF ACCUSED U/S 342 Cr.P.C.**

Name:- Zahid Ali	F/Name:- Gul Hassan
Caste:- Khaskheli	Age about:- 25 Years.
Religion:- Islam.	Occupation:- Advocate's Clerk
R/o:- Shahdapatpur	District:- Sangher
Taluka:- Shahdapatpur	
Dated:- 14/5/19.	

Q.No. 01:- You have heard the prosecution evidence, it has been brought on record that on 24.07.2013, at 0630 hours, at the house of complainant situated in Ward No.02 Sinjhor Town, Deh 37 Jamrao, Taluka Sinjhor, you accused Zahid Ali duly armed with dagger (Kaati), co-accused Zulfiqar Ali armed with hatchet along with Proclaimed Offender Riaz duly armed with hatchet in furtherance of your common intention committed house trespass by entering into the house of complainant, co-accused Zulfiqar Ali and Proclaimed Offender Riaz abetted you accused Zahid Ali to commit murder of the father of complainant Ghulam Muhammad and his family members, you accused Zahid Ali caused dagger (Kaati) blows to Ghulam Muhammad alias Yateem on his right side waist and on other parts of his body and also you accused Zahid Ali caused dagger (Kaati) blows to the son of complainant Sikander on his belly due to which they succumbed to their wounds at spot. You can see F.I.R of this case produced as Ex.09/A. What you have to say?

Ans:- No sir it is false. I have not been present into the house of complainant. Murders have been committed by Manzoor

Q: No.02:- It has also brought on record that on 24.07.2013, at 0630 hours, at the house of complainant situated in Ward No.02 Sinjhor Town, Deh 37 Jamrao, Taluka Sinjhor, you accused Zahid Ali duly armed with dagger (Kaati), co-accused Zulfiqar Ali armed with pistol along with Proclaimed Offender Riaz duly armed with hatchet in furtherance of your common intention, co-accused Zulfiqar Ali and Proclaimed Offender Riaz abetted you accused Zahid Ali to commit murder of the father of complainant Ghulam Muhammad and his family members, you accused Zahid Ali caused dagger (Kaati) blows to the mother of complainant Mst. Hawa on her left side of chest and back side of chest and the said injuries were declared by doctor as Ghayr-Jaifah-Dhamia Section 337-F (i) PPC and you accused Zahid Ali also caused dagger (Kaati) blows to sister of complainant Mst. Ayesha and the said injuries Nos. 1 to 05 & 7 were declared as Ghayr-Jaifah-Badiah Section 337-F (ii) PPC, while injury No. 06 was declared as Shujah Khafifah Section 337-A (i) PPC and under such circumstances that if by that act you have attempted to commit Qatl of said Mst. Hawa and Mst.

M. Z. Ali

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Ayesha, you would have been guilty attempt to commit Qatl-i-Amd. You can see F.I.R of this case produced at Ex.09/A and Medical Certificates produced at Ex.31/C and Ex.31/E. What you have to say?

Ans:- It is false. The injuries are managed caused by Manzoor. The FIR is made up, and Medical Certificates are managed.

Q: No.03:- It has also brought on record that on 24.07.2013, at 0715 hours, I.O ASI Shafi Muhammad Panhwar of P.S Sinjhor inspected the dead body of deceased Ghulam Muhammad @ Yateem in presence of Mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/A. What you have to say?

Ans:- This Memo is managed.

Q: No.04:- It has also brought on record that on 24.07.2013, at 0750 hours, I.O ASI Shafi Muhammad Panhwar of P.S Sinjhor inspected the dead body of deceased Sikander Ali in presence of mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/B. What you have to say?

Ans:- This Memo is managed one

Q: No.05:- It has also brought on record that on 24.07.2013, I.O ASI Shafi Muhammad Panhwar of P.S Sinjhor inspected the injuries of injured Mst. Aisha and Mst. Hawa in presence of mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/E. What you have to say?

Ans:- This Memo is managed one

M. Z. Ali

Q. No. 06:- It has also brought on record that on 24.07.2013, Dr. Arshad Ali SMO Taluka Hospital Sinjhor conducted the postmortem of deceased Ghulam Muhammad @ Yateem and issued such post mortem report and gave opinion that death was occurred due to excessive hemorrhage shock and damage of vital organs such as right lung and liver as a result of injury Nos. 1 to 3

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and 5 caused by sharp cutting weapon, which is sufficient to cause of death in ordinary course of life. You can see postmortem report produced at Ex.32/D. What you have to say?

Ans:- Post Mortem Report is in conflict with ocular evidence specially in respect of time of death.

Q. No. 07:- It has also brought on record that on 24.07.2013, Dr. Arshad Ali SMO Taluka Hospital Sinjhoru conducted the postmortem of deceased Sikander Ali and issued such post mortem report and gave opinion that death was occurred due to excessive hemorrhage shock and damage of vital organs such as right lung as a result of injury No. 01 caused by sharp cutting weapon, which is sufficient to cause of death in ordinary course of life. You can see postmortem report produced at Ex.32/E. What you have to say?

Ans:- Post Mortem Report is in conflict with ocular evidence specially in respect of time of death.

Q. No. 08:- It has also brought on record that on 24.07.2013, P.C Ghulam Rasool of P.S Sinjhoru handed over the dead bodies of deceased Ghulam Muhammad and Sikander Ali handed over to Muhammad Muneeb Khaskheili under the receipt. You can see the said receipt at Ex.23/A. What you have to say?

Ans:- This receipt is managed one.

Q. No. 09:- It has also brought on record that on 24.07.2013, Dr. Najma Hyder WMO Civil Hospital, Sanghar examined the injuries of injured Mst. Hawa and issued such Provisional and Final Medical Certificate and she declared the injury Nos. 1 & 2 as Ghayr Jaifah Dhamia Section 337-F (i) PPC. You can see Provisional and Final Medical Certificate of Mst. Hawa at Ex.31/B and Ex.31/C. What you have to say?

Ans:- This Medical Certificate is managed one.

Q. No. 10:- It has also brought on record that on 24.07.2013, Dr. Najma Hyder WMO Civil Hospital, Sanghar examined the injuries of injured Mst. Aisha and issued such Provisional and Final

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Medical Certificate and she declared the injury Nos. 1 to 5 and 7 as Ghayr Jaifah Badiyah Section 337-F (ii) PPC, while injury No. 06 declared as Shujah-e-Khafifah Section 337-A (i) PPC. You can see Provisional and Final Medical Certificate of Mst. Aisha at Ex.31/D and Ex.31/E. What you have to say?

Ans:- This Medical Certificate is managed.

Q. No.11:- It has also brought on record that on 24.07.2013, at 1000 hours, I.O. ASI Shafi Muhammad Panhwar of P.S Sinjhoru inspected the place of incident in presence of mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/F. What you have to say?

Ans:- No inspection of the place of incident is made by I.O.

Q. No.12:- It has also brought on record that on 24.07.2013, at 1300 hours, I.O ASI Shafi Muhammad Panhwar of P.S. Sinjhoru sealed blood stained clothes of deceased Ghulam Muhammad and Sikander in presence of mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/G. What you have to say?

Ans:- This memo is managed one like other memos as this was prepared 24 hours before the lodging of FIR as it contains FIR No and sections.

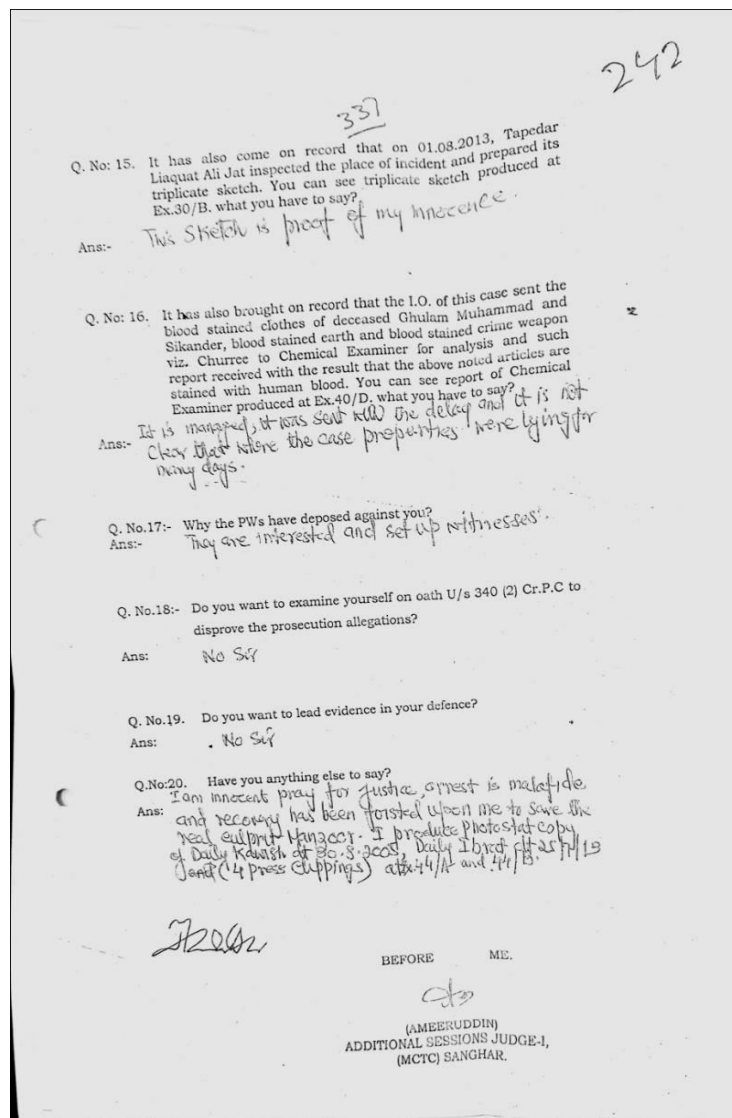
Q. No.13:- It has also brought on record that on 25.07.2013, 1800 hours, I.O ASI Shafi Muhammad Panhwar of P.S Sinjhoru arrested you accused Zahid Ali from Rukan Burira situated in Sanghar Shahdampur road in presence of mashirs Muhammad Ramzan and Ali Nawaz under the memo. You can see memo produced at Ex.38/A. What you have to say?

Ans:- It is false. In fact I was made hostage by Muneer Khaskheili who is the master mind of the incident who after the incident tortured me and handed me over to I.O. along with Kaati.

Q. No.14:- It has also brought on record that on 27.07.2013, at 0730 hours, I.O ASI Shafi Muhammad Panhwar of P.S Sinjhoru, you accused Zahid Ali voluntarily ready to produce crime weapon viz. dagger (Kaati) and produced the same from the graveyard of Salam Faqeer towards southern side from the LAWA tress in presence of mashirs Manzoor and Ali Nawaz under the memo. You can see memo produced at Ex.39/H. What you have to say?

Ans:- It is false. Kaati has not been produced by me. It was foisted on me by I.O. at the instance of Muneer.





It is well settled by now that piece of evidence not put to an accused during his examination u/s 342 Cr.P.C could not be used against him for maintaining the conviction and sentence as held in the latest judgment of Honourable Supreme Court of Pakistan in Criminal Appeal No.77 of 2020 [Jan Muhammad v. The State] dated 04.03.2021. The relevant paras are re-produced as under:-

**“5. It has been observed by us with concern that none of the afore mentioned pieces of evidence has been put to the appellant while examining him under section 342, Code of Criminal Procedure. It has been laid down many a time by this Court that a piece of evidence produced by the prosecution against an accused if not put to accused while examining him under section 342, Code of Criminal Procedure cannot be used against him. The rationale behind it is that the accused must know and then respond to the evidence brought against him by the prosecution. He (accused) must have firsthand knowledge of all the aspects of the prosecution case being brought against him. It appears that even the learned Judge in chambers, of High Court while reappraising evidence available on record did not consider this aspect of the matter. Keeping in view the peculiar circumstances of the case, learned Counsel for the appellant and learned Additional Prosecutor General, Sindh assisted by widow of deceased are in agreement that the matter needs to be remanded to the learned trial Court for re-recording statement of appellant under section 342, Code of Criminal Procedure while putting all pieces of prosecution evidence produced during trial to**

*him, giving him an opportunity to know and respond to the same.*

**6. For the foregoing, the instant criminal appeal is allowed. The impugned judgments of the learned High Court and that of the learned trial Court are set aside. Resultantly, the conviction and sentence of the appellant is also set aside. He shall be treated as an under-trial prisoner. The learned trial Court shall record the statement of appellant under section 342, Code of Criminal Procedure afresh by putting him all pieces of prosecution evidence, enabling him to know and respond to the same and shall decide the case after hearing the parties, within one month of the receipt of this order. In case of conviction of appellant by the trial Court and in the event of filing a criminal appeal by him before the learned High Court, the same shall be decided within one month of its filing. A copy of this order shall be sent to the Registrar, High Court of Sindh, Karachi for its circulation among all the Judges of trial Courts in the Province of Sindh for perusal and strict compliance.”**

11. For the aforesaid reasons while respectfully relying upon the above stated judgment of Honourable Supreme Court, keeping in view peculiar circumstances of the case, learned Counsel for the appellant as well as learned Deputy Prosecutor General, Sindh are in agreement that the matter needs to be remanded to the trial Court for re-recording the evidence of prosecution witnesses afresh after amendment of the charge. On conclusion of the trial, learned trial court is directed to re-record the statement of appellant Zahid Ali under section 342 Cr.P.C while putting all incriminating pieces of prosecution evidence produced during trial to him, giving him an opportunity to know and respond to the same.

12. For the aforesaid reasons, the instant criminal appeal is partly allowed. Impugned judgment of the trial court to the extent of appellant Zahid Ali is set aside. Resultantly, the conviction and sentence of the appellant Zahid Ali are also set aside. Appellant Zahid Ali shall be treated as an under-trial prisoner. Learned trial Court shall record the evidence of the prosecution witnesses namely complainant Iqbal Ahmed, PWs Mst. Aisha, Mst. Hawa and Ghulam Shabeer afresh (whose evidence was earlier adopted illegally), then to record the statement of appellant Zahid Ali under section 342 Cr.P.C afresh by putting him all pieces of prosecution evidence, enabling him to know and explain the same and shall decide the case within three (03) months of the receipt of this judgment. Confirmation reference made by the trial court is answered in **NEGATIVE.**

13. In view of the above, appeal as well as confirmation reference are accordingly disposed of.

JUDGE

JUDGE