

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-48 of 2021

Appellants	1. Sher son of Sohbat Lakhan. 2. Shahid son of Bhagiyal Lakhan. 3. Gulsher son of Sohbat Lakhan. Through Mr. Rukhsar Ahmed Junejo advocate.
The Complainant.	Through Mr. Qurban Ali Malano, advocate.
The State	Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.
Date of hearing	15-11-2023
Date of decision	15-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants with rest of the culprits after having formed an unlawful assembly in prosecution of its common object caused hatchet and fire shot injuries to PWs Mst. Shamma, Mst. Arbeli, Sohail and Ghulam Abbas with intention to commit their murder and then went away by committing mischief in house of complainant Mst. Pathani, for that they were booked and reported upon by the police. On conclusion of trial the appellants were found guilty for the said offence and were convicted and sentenced to various terms of imprisonment by learned IInd Assistant Sessions Judge, Sukkur vide judgment dated 08-06-2021 which they have impugned before this Court by preferring the instant CrI. Appeal.

2. At the very outset, it is stated by learned counsel for the appellants that after final amendment of the charge, Dr. Mushtaque Ahmed and ASI Altaf Ahmed were not recalled and re-examined, while the evidence of

ASI Mehboob Al has been adopted, which could never be adopted under scheme of law on amendment of the charge; such omission have prejudiced the appellants in their defence. By pointing out so, he suggested for remand of the case with direction to learned trial Court to call and examine the above said witnesses in order to meet with ends of justice, which is not opposed by learned DPG for the State and learned counsel for the complainant.

3. Heard arguments and perused the record.

4. The re-examination of the above said witnesses in terms of section 231 Cr.P.C after final amendment of the charge was essential; their non-examination obviously has prejudiced the appellants in their defence, which is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes right of fair trial; consequently the impugned judgment only to the extent of appellants is set aside with direction to learned trial Court to call and examine the above said witnesses and then to make disposal of the case against the appellants afresh independently in accordance with law, without being influenced by earlier findings; such exercise to be completed within three months after receipt of copy of this judgment.

5. The appellants are enjoying the concession of bail, they to enjoy the said concession subject to furnishing their fresh surety in sum of rupees fifty thousand each and P.R bond in the like amount to the satisfaction of learned trial Court.

6. The instant Criminal Appeal is disposed of accordingly.

Nasim/P.A