

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-20 of 2020

Appellants	1. Abid Ali son of Badaruddin 2. Badaruddin son of Hadi Bux. Both bycaste Pirzada. Through M/s Rukhsar Ahmed Junejo and Ms. Rizwana Jabeen Siddiqui advocates.
The complainant	Through Mr. Ghulam Murtaza Korai, advocate.
The State	Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.
Date of hearing	21-11-2023
Date of decision	21-11-2023

J U D G M E N T

IRSHAD ALI SHAH, J. It is alleged that the appellants with rest of the culprits in furtherance of their common intention committed murder of Ashraf Din by causing him dagger injuries, for that the present case was registered. On conclusion of trial, co-accused Amjad Ali and Mst. Amna were acquitted while the appellants were convicted u/s 302 (b) r/w 34 PPC and sentenced to undergo imprisonment for life as *Ta'zir* and to pay compensation of Rs. 300,000/- each to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for six months with benefit of section 382(b) Cr.P.C by learned IIIrd Additional Sessions Judge/(MCTC-II), Sukkur, vide judgment dated 21-02-2020, which the appellants have impugned before this Court by preferring the instant Crl. Jail Appeal.

2. At the very outset it is contended by learned counsel for the parties that the arguments of learned counsel for the appellants and the complainant were heard by learned trial Court on 18-12-2019, then case was postponed for arguments of learned ADPP for the State, which were heard on 21-02-2020 with delay of more than about two months and then without providing chance to the

appellants to rebut the arguments of learned ADPP for the State, the impugned judgment was passed, which has prejudiced the appellants seriously. By contending so, they suggested for remand of the case to learned trial Court for its fresh disposal after providing chance of hearing to all the concerned. In support of their contention they relied upon case of *M.K Zaman & other Vs. Matiar Rahman* (1969 P.Cr.L J 361)

3. Heard arguments and perused the record.

4. As per clause (xxii) to paragraph 7(i) to Chapter VII, Sindh Courts Criminal Circulars the judgment by Sessions Judge should be pronounced either immediately after the trial or on some future date. In the instant case the argument of learned counsel for the appellant and complainant were heard and then the case was kept for months together for pronouncement of the judgment under the deception that the argument by learned ADPP for the State are yet to be advanced those were heard and then judgment was pronounced without providing chance to learned counsel for the appellant and complainant to rebut the same. It was contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; which prescribes right of fair trial to everyone;

5. In case of *Fatima vs. Sardara* (PLD 1956 (WP) Lahore 474), it has been held by Lahore High Court that;-

"I have deliberately reopened the case so far as the arguments are concerned, because after such a long time the learned Judge cannot be expected to remember the arguments put forward and he may either not have any notes or may have destroyed the notes."

6. Consequent upon the above discussion, the impugned judgment only to the extent of appellants is set aside with direction to learned trial Court to make dispose of the case against them afresh after providing chance of hearing to all the concerned preferably within two months after receipt of copy of this judgment.

7. Appellant Badaruddin was enjoying the concession of bail at trial, he to enjoy same concession subject to his furnishing fresh surety in sum of Rs. 200,000 (Two Lacs) and P.R bond in the like amount to the satisfaction of learned trial Court.

8. The instant Crl. Jail Appeal is disposed of accordingly.

J U D G E

Nasim/P.A