

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Appeal No.S-17 of 2020**

<b>Appellants</b>	Haji Jameel @ Jameel Ahmed and Zaffar Hussain Saeedi, <b>through</b> M/s Rukhsar Ahmed Juneo and Syed Israr Ahmed Shah, advocates.
<b>The complainant</b>	<b>Through</b> Mr. Abdul Ahad Buriro, advocate.
<b>The State</b>	<b>Through</b> Mr. Shafi Muhammad Mahar, Deputy Prosecutor General for the State.
<b>Date of hearing</b>	<b>24-11-2023</b>
<b>Date of decision</b>	<b>24-11-2023.</b>

**JUDGMENT**

**IRSHAD ALI SHAH, J-** It is the case of the prosecution that deceased Abid Ali was taken away by the appellants and others and then was killed under cover of police encounter, for that the present case was registered. At trial accused Nazeer alias Nazeer Hussain and Ali Gul were acquitted by way of compromise. Accused Abdul Hakeem and Abdul Latif died during/after trial. Accused Usman Panhwar remained absconder. While the appellants on conclusion of trial were convicted u/s 452 PPC and sentenced to undergo R.I for four years with fine of Rs. 100,000/- each and in default whereof to undergo simple imprisonment for three months; they were further convicted u/s 342 PPC and sentenced to undergo R.I for one year with fine of Rs. 30,000/- each and in default whereof to undergo simple imprisonment for 15 days; both the sentences were directed to run concurrently without passing any order u/s 382 (b) Cr.P.C by learned IIIrd Additional Sessions Judge/(MCTC-II), Sukkur vide judgment dated 20-02-2020, which they have impugned before this Court by preferring the instant appeal.

2. At the very outset, it is pointed out by learned counsel for the parties that when the case was at the verge of its disposal on filing of an application 540 Cr.P.C, PWs Javed Hussain, Qayyum Raza, Riaz Ali and

Khalid Raza were called and examined, but no fresh statements of the appellants u/s 342 Cr.P.C was recorded, which was mandatory in the circumstances. By pointing so, they suggested for remand of the case with direction to learned trial Court to make fresh disposal of the case after recording fresh statements of the appellants u/s 342 Cr.P.C.

3. Heard arguments and perused the record.

4. The omission which is pointed out by learned counsel for the parties takes support from the record, same being incurable in terms of section 537 Cr.PC has occasioned in failure of justice; consequently the conviction and sentence awarded to the appellants under impugned judgment are set aside with direction to learned trial Court to record statements of the appellants u/s 342 Cr.P.C confronting them all/entire the circumstances/evidence brought on record by the prosecution to have their explanation on it and then to make disposal of the case against them afresh in accordance with law, preferably within two months after receipt of copy of this judgment.

5. Appellants are on bail, they to enjoy the same concession subject to their furnishing fresh surety in sum of Rs.100,000/- each and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeal is disposed of accordingly.

**J U D G E**