

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 906 of 2019

Appellant: Muhammad Qasim through Shabir Ahmed Kumbhar, advocate

The State: Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Date of hearing: 08.08.2023

Date of judgment: 08.08.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is alleged that the appellant with rest of the culprits in furtherance of their common intention committed murder of Idrees by causing him injuries with hard blunt and sharp cutting substance and then went away by insulting the complainant party, for that the present case was registered. The appellant, co-accused Hanif, Rahib and Ahmed were charged for the said offence which they denied and prosecution to prove the same examined complainant Ghulam Mustafa and his witnesses and then closed its side. On conclusion of trial co accused Hanif, Rahib and Ahmed were acquitted while the appellant was convicted u/s. 302(b) PPC and sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.100,000/- to the legal heirs to the deceased and in default whereof to undergo simple imprisonment for 06 months with benefit of Section 382(b) Cr.P.C by learned 1<sup>st</sup> Additional Sessions Judged/MCEC Thatta vide judgment dated 26.11.2019 which he has impugned before this Court by preferring the instant Jail Appeal.

2. At the very outset, it is pointed by learned counsel for the appellant and learned Addl. PG for the State that examination in chief of PWs Muhammad Ramzan and Ali Asghar was reserved for want of production of 164 Cr.PC statement of PW Mumtaz, it was never subjected to them and without completing their examination in chief, the accused were called upon to cross examine them which they did, besides this, I.O/ SIP Amjad Ali Malkani who has

conducted the entire investigation of the present case was never called to be examined, by such omissions not only the appellant but the State too has been prejudiced in its defense seriously, which is against the mandate contained by Article 10-A of the Constitution of the Islamic Republic of Pakistan, which prescribes right of a fair trial to everyone. By pointing out so, they suggested for remand of the case for its further proceedings against the appellant in accordance with law.

3. Heard arguments and perused the record.

4. The omissions which have been pointed out by learned counsel for the parties take support from the record, those being incurable in terms of Section 537 Cr.P.C have occasioned in failure of justice; consequently, the impugned judgment only to the extent of the appellant is set-aside with direction to the learned trial Court to recall the above-named witnesses for providing chance to the prosecution to complete their examination in chief and also to call and examine the Investigating Officer of the case and then to make disposal of the case afresh against the appellant in accordance with law, without being influenced by earlier findings; such exercise to be completed within 03 months after receipt of copy of this judgment.

5. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE