

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-263 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of MA 9565/2018.
2. For hearing of main case.

01.12.2022.

Mr. Ahsan Gul Dahri, Advocate for appellants.
Mr. Muhammad Ali Noonari, D.P.G for State.

ORDER

At the very outset, learned Counsel for appellants submits that initially the charge was framed against accused Abdul Rasheed, Sadar, Haji Kaloo and Misri @ Abdul Hameed on 21.09.2016 vide Ex.09 (available at page 70 of the paper book). After framing of charge, prosecution produced PW-1 Gulzar Ahmed Ex.14, PW-2 Tapedar Dhani Bux Ex.15, PW-3 Sikandar Jamali Ex.16 and PW-4 Punhal Ex.17. Later co-accused Hanif, who was absconding, was arrested; therefore, amended charge was framed on 2nd August 2017 vide Ex.19. After framing of amended charge, the prosecution produced PW-1 Dr. Ghulam Mustafa Ex.25, PW-2 ASI Arz Muhammad, who was author of FIR and completed initial formalities of crime and PW-3 mashir Ghulam Qadir Ex.27 then the side of prosecution was closed by learned DDPP for State vide his statement dated 14.02.2018 at Ex.28. He, therefore, submits that PWs No.1 to 4 who were examined before the trial Court after framing of first charge were examined in absence of accused Hanif; therefore, accused Hanif was not given a chance to conduct cross from those PWs and without providing an opportunity of hearing to him the trial Court convicted and sentenced appellant Hanif without taking into account the prescribed law as envisaged under Article 10-A of the Constitution, which guarantees for fair trial in order to determine the civil as well as criminal rights of any person / citizen under the obligation. Reliance in this respect is placed on the case of ALLAH DINO & 02 OTHERS v. THE STATE (2018 P.Cr.L.J 200), wherein this Honourable Court has observed as under:-

“It is basic principle of administration of criminal justice that examination of the witnesses must be recorded in presence of accused or his pleader as provided under section 353, Cr.P.C, which reads as under:-

***“353. Evidence to be taken in presence of accused.
Except as otherwise expressly provided, all evidence***

taken under (Chapter XX, XXI, and XXIIA) shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.”

Therefore, it will be appropriate to remand the case by directing the trial Court to recall and re-examine the witnesses No.1 to 4 and then provide an opportunity of hearing / cross to accused Hanif.

On the other hand, learned D.P.G appearing for State while placing reliance upon the case of Abdul Ghafoor v. The State (2011 SCMR 23) and Shafique Ahmed alias Shahjee v. The State (PLD 2006 Karachi 377), records his no objection.

Accordingly Criminal Appeal No.S-263 of 2018 is partly allowed. Consequently, the impugned judgment dated 01.11.2018 is hereby set aside. The case is remanded back to the trial Court with directions to examine these four witnesses i.e. PWs Gulzar Ahmed, Tapedar Dhani Bux, Sikandar Jamali and Punhal in presence of accused Hanif within a period of six (06) months' time. The appellants shall be treated as Under Trial Prisoners. The R&Ps of Sessions Case No.211 of 2016 is also hereby directed to be sent to the trial Court. The appellant Haji Kaloo who was granted bail by this Court on 25.02.2022 is not in attendance today; therefore, is directed to remain present before the trial Court on bail on furnishing a fresh surety in the sum of Rs.200,000/- (Rupees Two Hundred Thousand) and P.R Bond in the like amount to the satisfaction of the trial Court.

JUDGE

Shahid