

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Appeal No.751 of 2022

Appellant: Waseem Faraz through M/s. Mahmood A. Qureshi and Jamshed Iqbal, advocates

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

Complainant: Rao Muhammad Arshraf present in person

Date of hearing: 05.10.2023

Date of judgment: 05.10.2023

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of prosecution that the appellant with one more culprit during course of robbery not only committed murder of Muhammad Akram by causing him fire shot injuries but also caused butt blows to PWs Muhammad Tahseen Ahmed and Asif, for that he was booked and reported upon by the police. On conclusion of trial, in first round of litigation, he was convicted and sentenced to various terms of imprisonment including death penalty by learned 1st Additional Sessions Judge Karachi East vide judgment dated 13.05.2019, which on filing of an appeal by the appellant was set aside by this Court vide judgment dated 24.8.2021 with a direction to the learned trial Court to re-call/re-examine I.O/SIP Muhammad Aslam in presence of the counsel for the appellant as per the requirement of law. On remand the direction so issued by this Court was complied with and the appellant was again convicted and sentenced to various terms of imprisonment spreading over life by learned trial Court vide judgment dated 28.11.2022 which he has impugned before this Court by preferring the instant Criminal Appeal.

2. At the very outset, it is pointed out by learned counsel for the appellant that the property of the case was secured by ASI Hussain Bux, same as per I.O/SIP Muhammad Aslam was not handed over to him to be produced before the Court. In such situation, examination

of ASI Hussain Bux was essential to prove such recovery or its misappropriation/destruction as the case may be. By stating so, he suggested for remand of the case for examination of ASI Hussain Bux and one of the mashir to such recovery, which is not opposed by learned Addl. PG for the State who is assisted by the complainant.

3. Heard arguments and perused the record.

4. The omission pointed out by learned counsel for the appellant takes support from the record, which has prejudiced not only the appellant but the *State* too in its defence seriously, it is contrary to the mandate contained by Article 10-A of the Constitution of the Islamic Republic of Pakistan which prescribes right of fair trial to everyone; consequently, the impugned judgment is set aside with direction to the learned trial Court to call and examine ASI Hussain Bux or any other witness which the prosecution may intend to examine in support of its case and then to make disposal of the case afresh/independently in accordance with law, without being influenced by earlier findings possibly within three months, after receipt of copy of this judgment.

5. As per jail roll, inclusive of remission, the appellant has been in custody for more than eight years; he at the time when was awarded death sentence, in the first round of litigation was enjoying concession of bail at trial, therefore, he is allowed to enjoy such concession of bail subject to his furnishing fresh surety in sum of Rs.200,000/- and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeal is disposed of accordingly.

JUDGE