

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Anti-Terrorism Jail Appeal No. D – 09 of 2023

(Rafeeq Kosh and others versus The State)

Spl. Anti-Terrorism Appeal No. D – 12 of 2023

(Rafeeq Kosh and others versus The State)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **29.05.2024**

Date of decision : **29.05.2024**

M/s Abdur Rahman Faruq Pirzada and Rukhsar Ahmed M. Junejo,
Advocates for appellants.

Mr. Zulfiqar Ali Jatui, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – At the very outset, learned Counsel for appellants do not press Spl. Anti-Terrorism Appeal No. D-12 of 2023, as the appellants have already filed a jail appeal against the same impugned judgment. The appeal is therefore **dismissed as not pressed**.

2. Learned Counsel have further pointed out to 342 CrPC statements of appellants and the impugned judgment, and have raised contention that in 342 CrPC statements material questions regarding recovery of empties from place of incident: 41 empties, recovery of abductee Akbar Jan from place of incident, forensic report regarding recovered empties, recovery of robbed property: Oppo Mobile and one CNIC of abductee, and recovery of cloth: handkerchief of abductee, used for tying his hands have not been asked from the appellants rendering such statements as illegal. They have further stated that learned Judge, in the entire judgment, has simply reproduced evidence of witnesses, and in operative part of the judgment, containing his observations, he has again reproduced evidence. The entire judgment does not contain any reason in favour of findings recorded by him against the appellants. Learned Additional Prosecutor General has not been able to rebut such points. In the circumstances, learned defense Counsel have requested for setting aside the impugned judgment, and remanding the matter to the trial Court for recording

statements of appellants u/s 342 CrPC and writing the judgment afresh in terms of Section 367 CrPC.

3. We have, with the assistance of learned Counsel, gone through the record and agree with observation of learned defense Counsel that statements of the appellants u/s 342 CrPC have been recorded in a mechanical manner without putting material questions regarding incriminating evidence, which the learned trial Court has relied in the impugned judgment, to the appellants; and therefore, rendering them defenseless qua such evidence. The impugned judgment does not contain any reason either of the learned Judge in support of his findings that appellants are guilty of the alleged offence. In the entire judgment, the learned Judge has reproduced evidence, and in the part consisting his observations, he has again mentioned the evidence only. He has not discussed its evidentiary value or reasons in detail leading him to form a positive opinion qua guilt of the appellants. It is clear that the judgment has not been written as per requirement of Section 367 CrPC.

4. We, therefore, **allow** the appeal (Spl. Anti-Terrorism Jail Appeal No. D-09 of 2023), **set aside** the impugned judgment and **remand** the case back to the learned trial Court with direction to record statements of the appellants u/s 342 CrPC afresh by putting all necessary question as above, and write the judgments strictly in terms of Section 367 CrPC by recording reasons in favour of findings.

The appeal is accordingly **disposed of**.

J U D G E

J U D G E

Abdul Basit