

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD***Crl. Appeal. No. S- 119 of 2018.***

Appellants: P.C Niaz Ahmed and others through Mr. Noor-ul-Haq Qureshi, Advocate.

Complainant: Allah Rakhio through Mr. Salahuddin Panhwar, Advocate.

The State: Through Ms. Rameshan Oad, APG.

Date of hearing: **24.09.2024.**
Date of Order: **24.09.2024.**

J U D G M E N T

Zulfiqar Ali Sangi, J.- This appeal is directed against the judgment dated 26-4-2018, passed by Additional Sessions Judge-III, Dadu, whereby the appellants were convicted and sentenced under section 302(b) r/w section 34, 324 r/w section 337-F(iii), 34 and section 114 P.P.C. The appellant Niaz, Muhammad Bux and Faki Muhammad were sentenced to R.I. for life imprisonment and were directed to pay 50,000/ each to be paid to the Legal heirs of the deceased and in default thereof were further to undergo S.I. for six months. They were also sentenced to R.I. for five years and to pay Daman amounting to Rs. 30,000/ each to be paid to the injured Pir Bux and were further sentenced to R.I. for three years and to pay a fine of Rs. 500/ each. The appellant Gul Muhammad was sentenced to R.I for three years and to pay a fine of Rs.10,000/ and in default thereof further undergo S.I for three months.

2. At the outset, it has been pointed out by learned counsel for the appellants that the charge in the case was defective since it did not contain the correct name of the deceased, as it was Muhammad Hassan who was murdered and not Muhammad Hussain as mentioned in the charge. Besides, the role mentioned in the FIR against each accused is not mentioned in the charge.

Even the facts in respect of motorcycles are missing from the charge. The particulars in respect of causing injuries as mentioned in the FIR are also missing and a combined charge was framed for causing death and injuries to the deceased and the injured Pir Bux. The next strong contention of learned counsel for the appellants is that though in the present case, 10 empties of SMG and two empties of 7 mm rifle were recovered from the place of the incident and the deceased was examined by the doctor, postmortem was conducted but all this evidence was not put to accused while recording their statement under section 342, Cr. P.C. to explain the same and it was relied upon for awarding conviction. Relying upon certain authorities of this Court, learned counsel submits that the charge violates section 222, Cr. P.C. and there appears violation of S.342 Cr.P.C. He, therefore, contends that the impugned judgment is not sustainable and liable to be set aside.

3. Learned Counsel for the Complainant and Learned A.P.G. have not rebutted the above facts. They have further pointed out that the judgment itself is defective having not been recorded following the law. Therefore, they frankly conceded that the judgment be set aside and the matter be remanded for re-trial.

4. I have heard learned counsel for the parties and have gone through the material available on record with their able assistance.

5. The charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the early stage. The whole object of framing a charge is to enable the accused to concentrate his attention on the case that he has to meet. Therefore, the charge must contain all material particulars as to time, and place as well as the specific name of the alleged offence, the manner in which the offence was committed and the particulars of the accusation so as to allow the accused to explain the matter with which he is charged. The purpose behind giving such particulars is that the accused should prepare his case accordingly and may not be misled in preparing his defence. It needs no emphasis to state that a defective and misleading charge causes serious prejudice to the accused and vitiates the whole

trial. On examination of the charge in the case in hand, it clarified that it was not framed correctly and is defective inasmuch as that it did not contain the correct name of the deceased, as it was in fact Muhammad Hassan who was murdered and not Muhammad Hussain. Besides, the role mentioned in the FIR against each accused is not mentioned in the charge. The accused persons as per FIR were alleged to have separately used firearm injuries to the deceased and the victim but they were charged with combined accusation. Even the fact concerning motorcycles is missing from the charge. It is misleading besides lacking in material particulars. It has certainly vitiated the trial and has resulted in a miscarriage of justice. The Division bench of this Court under the above circumstances in the case of ***Mubeen alias Haji Muhammad Mubeen vs. The State (2006 YLR 359)***, has also remanded the case for de novo trial.

6. All the incriminating pieces of evidence available on record in the shape of examination-in-chief, cross-examination or re-examination of witnesses are required to be put to the accused if the same is against him while recording his statement under section 342 Cr. P.C in which the words used ***“For the purpose of enabling the accused to explain any circumstances appearing in evidence against him.”*** which demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. From the careful perusal of the statements of the appellants, under section 342 Cr.P.C. it reveals that 10 empties of SMG and two empties of 7 mm rifle were recovered from the place of incident and the deceased was examined by the doctor, postmortem was conducted and thereafter a report was issued by the MLO but all this evidence was not put to accused while recording their statements under section 342 Cr. P.C. to explain the same and it was relied upon by the trial court for awarding conviction. ***The Supreme Court of Pakistan vide order dated: 04-03-2021 in the case of Jan Muhammad***

vs. The State and others (Crl. Appeal No. 77 of 2020) while remanding the case to the trial court has observed as under:-

“5. It has been observed by us with concern that none of the afore-mentioned pieces of evidence has been put to the appellant while examining him under section 342, Code of Criminal Procedure. It has been laid down many a time by this Court that a piece of evidence produced by the prosecution against an accused if not put to accused while examining him under section 342, Code of Criminal Procedure cannot be used against him. The rationale behind it is that the accused must know and then respond to the evidence brought against him by the prosecution. He (accused) must have firsthand knowledge of all the aspects of the prosecution case being brought against him. It appears that even the learned Judge in chambers of High Court while reappraising evidence available on record did not consider this aspect of the matter. Keeping in view the peculiar circumstances of the case, learned counsel for the appellant and learned Additional Prosecutor General, Sindh assisted by widow of deceased are in agreement that the matter needs to be remanded to the learned trial Court for re-recording statement of appellant under section 342, Code of Criminal Procedure while putting all pieces of prosecution evidence produced during trial to him, giving him an opportunity to know and respond to the same.

6. For the foregoing, the instant criminal appeal is allowed. The impugned judgments of the learned High Court and that of the learned trial Court are set aside. Resultantly, the conviction and sentence of the appellant is also set aside. He shall be treated as an under-trial prisoner. The learned trial Court shall record the statement of appellant under section 342, Code of Criminal Procedure afresh by putting him all pieces of prosecution evidence, enabling him to know and respond to the same and shall decide the case after hearing the parties, within one month of the receipt of this order. In case of conviction of appellant by the trial Court and in the event of filing a criminal appeal by him before the learned High Court, the same shall be decided within one month of its filing. A copy of this order shall be sent to the Registrar, High Court of Sindh, Karachi for its circulation among all the Judges of trial Courts in the Province of Sindh for perusal and strict compliance.

7. For the above reasons, the appeal is allowed to the extent that the impugned judgment is set aside. The case is remanded to

the trial Court for de novo trial after framing a fresh charge containing full material particulars of the offence committed to making it in consonance with the provisions of section 222, Cr. P.C. coupled with recording evidence of the prosecution witnesses and examination of the accused afresh alongwith an opportunity of hearing to the parties. The case pertains to the year 2010, therefore, the trial court is directed to complete the entire exercise within a period of three months without granting any adjournment to the parties by fixing the matter on a day-to-day basis. The trial court if feels that the witnesses are not appearing for recording their evidence may issue a coercive process against them.

8. It is pointed out on behalf of the appellants that the appellant Gul Muhammad during the pendency of this appeal had expired due to natural death and his appeal was abated vide order dated: 28-02-2020 and appellant Muhammad s/o Pir Bux was granted bail by this Court while suspending the sentence vide order dated: 27-05-2019, however, the appellants PC Niaz Ahmed and PC Fakir Muhammad are in custody. The appellants who are on bail shall remain on bail on the same surety furnished before this Court. The trial court is at liberty to cancel the same if they do not cooperate in the trial and avoid proceedings. Further, if under any circumstances the trial has not concluded within the stipulated time the accused who are in custody may apply for bail before the trial court and the trial court shall decide it without taking any influence on the past verdict against the accused.

9. The appeal is, therefore, disposed of in the above terms.

J U D G E

