

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD***Crl. Jail Appeal. No. S- 409 of 2019.***

Appellants: Ashique Ali and another through
Mr. Ayaz Ai Gopang, Advocate.

The State: Through Mr. Siraj Ahmed Bijarani, APG.

Date of hearings: **24.09.2024 & 27.09.2024.**
Date of Decision: **27.09.2024.**

J U D G M E N T

Zulfiqar Ali Sangi, J.- This appeal is directed against the judgment dated 07.12.2019, passed by 1st Additional Sessions Judge/Model Criminal Trial Court, Shaheed Benazirabad, whereby the appellants were convicted and sentenced under section 302(b) P.P.C. They were sentenced to R.I. for life imprisonment and were directed to pay compensation to the tune of Rs.200,000/- each to the legal heirs of deceased Mst. Sabtan @ Bagi and in default thereof were further to undergo S.I. for six 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 Mst. Sabtan Khatoon @ Bagi who was murdered and not Mst. Subhan Khatoon @ Bagi as mentioned in the charge. Besides, the allegation as per FIR against appellant Ashique Ali is that he was armed with lathi and caused lathi blows to the deceased and such fact is also not mentioned in the charge. Relying upon certain authorities of this Court, learned counsel submits that the charge violates section 222, Cr. P.C. He, therefore, contends that the impugned judgment is not sustainable and liable to be set aside.

3. Learned A.P.G. has not rebutted the above facts. He has further pointed out that the judgment itself is defective having not been recorded following the law. Therefore, he 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 infact Mst. Sabtan Khatoon @ Bagi who was murdered and not Mst. Subhan Khatoon @ Bagi. Besides, the role mentioned in the FIR against appellat Ashique Ali is not mentioned in the charge. The accused persons as per FIR were alleged to have separately palyed the role but they were charged with combined accusation. 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. In view of the above, 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 2019, 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.

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

J U D G E

