

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Appeal No.S-111 of 2023

Appellants 1. Ghulam Mustafa son of Muhammad Ramzan, 2. Abdul Latif son of Arbab Khan and 3. Qurban son of Ghulam Nabi all by caste Rajper **Through** M/s Qurban Ali Malano, Syed Israr Ahmed Shah and A.R Faruq Pirzada advocates.

Criminal Appeal No. S-112 of 2023

Appellants 1, Raja alias Sajid son of Qadir Bux, 2. Aziz son of Muhammad Ishaq, 3. Imtiaz alias Fateh Muhammad son of Muhammad Hayat, 4. Zahid son of Ghulam Nabi, 5. Bakhtiar Ali son of Muhammad Ishaq, 6. Khuda Bux son of Muhammad Jumman and 7. Nadir son of Qadir Bux all by caste Rajper **Through** Mr. Irshad Hussain Dharejo advocate.

The complainant **Through** Mr. Abdul Rahim Ansari, advocate.

The State **Through** Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing 15-04-2024

Date of decision 15-04-2024

JUDGMENT

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants after having formed an unlawful assembly in prosecution of its common object attacked upon the complainant party with intention to commit murder of its member, as a result of such firing, Sudheer Ahmed died, for that the present case was registered. On conclusion of trial the appellants were convicted and sentenced to undergo various terms of imprisonment spreading over life by learned Ist Additional Sessions Judge/(MCTC), Naushahro Feroze vide judgment dated 07-10-2023, which they have impugned before this Court by preferring two separate criminal appeals.

2. At the very outset, it is pointed out by learned counsel for the appellants that during course of examination of the appellants u/s 342 Cr.P.C it has been suggested to them that the deceased has died of natural death; if it was a natural death then no punishment for death of the deceased ought to have been awarded to the appellants. Learned DPG for the State and learned counsel for the complainant when were confronted with above, stated that it was human mistake which could be cured by remanding the case to learned trial Court for recording the statements of the appellants u/s 342 Cr.P.C afresh, which was consented fairly by learned counsels for the appellants.

3. Heard arguments and perused the record.

4. The omission which is pointed above being incurable in terms of section 537 Cr.P.C has occasioned in failure of justice; consequently, the impugned judgment is set aside with direction to record statements of the appellants u/s 342 Cr.P.C afresh and then to make disposal of the case afresh in accordance with law without being influenced by earlier findings by learned Sessions Judge Naushahro Feroze himself or any of the Judge of the Competent jurisdiction within his District on his nomination, other than the one who has passed the earlier judgment preferably within 60 days after receipt of copy of this judgment.

5. The appellants (excepting Bakhtiar Ali and Nadir) were enjoying the concession of bail at trial, they to enjoy the same concession subject to their furnishing fresh surety in sum of Rs.100,000/- each and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeals are disposed of accordingly.

Judge