

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Jail Appeal No.D-32 of 2021
Confirmation Case No.D-04 of 2021
Cr. Jail Appeal No.S-23 of 2021

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Arbab Ali Hakro

Mr. Abdul Rahman Faruq Pirzada, Advocate for appellant in Crl. Jail Appeal No.D-32 of 2021.

Mr. Rukhsar Ahmed Junejo, Advocate for pauper appellant in Crl. Jail Appeal No.S-23 of 2021.

Mr. Zulfiqar Ali Jatoy, Additional P.G for the State.

Date of Hearing & Judgment: **18-04-2024**

J U D G M E N T

Muhammad Iqbal Kalhoro, J.– With the assistance of learned counsel for appellants as well as learned Additional Prosecutor General Sindh, we have gone through evidence of prosecution witnesses. Learned counsel for the appellants after arguing the matters at some length have stated that at the time of evidence, further examination-in-chief of complainant Muhammad Hayat, PWs Sharafat Ali and Faiz Muhammad was reserved and it was reserved before stage of identifying the accused. And then without completing it, these PWs were allowed to be cross-examined on the next date. The likelihood that the witnesses might not have identified the appellants to be the culprits in the case therefore could not have been ruled out.

2. Further argued that since Wali of deceased Mst. Rabail are direct descendants of appellant Shafqat Hussain alias Jani Rajper, under the provision of section 306 read with section 308 PPC, the death penalty could not have been awarded to the said appellant. That the trial Court while relying upon the evidence of said complainant and PWs has delivered the impugned judgment and recorded conviction and sentence against the appellants, which in above facts and circumstances has seriously prejudiced them to defend their case and to offer explanation in this regard in rebuttal. This position has not been denied by learned Additional Prosecutor General. Both the parties have consented that these

matters, in view of such legal flaw, may be remitted to the learned trial Court after setting aside the impugned judgment with direction to record further examination-in-chief of complainant Muhammad Hayat, PWs Sharafat Ali and Faiz Muhammad from the point it was reserved and extend a right to appellants to cross-examine them on that point only.

3. We have considered above submissions and noted that learned trial Court has not complied with mandatory provisions governing recording evidence of prosecution witnesses and in the impugned judgment while convicting and sentencing the appellants to death and life imprisonment respectively for offence u/s 302(b) PPC has relied upon evidence of complainant, PWs Sharafat Ali and Faiz Muhammad, but without completing their further examination-in-chief and without these witnesses narrating a word about identification of the appellants. It has further failed to take note of sections 306 to 308 PPC while awarding death penalty to one of the appellants.

4. Accordingly and with consent, conviction and sentence awarded to appellants vide impugned judgment are set aside and the Reference for confirmation of death is answered in negative and their case is remanded to the trial Court with direction to record further examination-in-chief of complainant Muhammad Hayat, PWs Sharafat Ali and Faiz Muhammad from the point where it was reserved and provide a right to appellants to cross-examine them on that point only and decide the case within a period of two months thereafter after affording an opportunity of hearing to all the parties.

5. In the above terms, the captioned Appeals and Confirmation Case are **disposed of. Office to place a signed copy of this order in captioned connected matters.**

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