

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

(1) Crl. Jail Appeal No.S-115 of 2022

Appellant : Pervaiz S/o Mir Muhammad alias Miral Suhag
through Mr. Qurban Ali Malano, Advocate.

Complainant : Abdul Qadir, through Mr. Pervaiz Ali Siyal,
Advocate

Respondent : The State through Mr. Zulfiqar Ali Jatoi,
Additional
Prosecutor General

(2) Crl. Jail Appeal No.S-116 of 2022

Appellant : Pervaiz alias Darvesh S/o Miral alias Allah
Wadhayo Suhag, Through Mr. Qurban Ali
Malano, Advocate.

Respondent : The State through Mr. Zulfiqar Ali Jatoi,
Additional
Prosecutor General

Date of hearing : 21-11-2024.
Date of Judgment : 21 -11-2024.

J U D G M E N T.

Zulfiqar Ali Sangi, J.- By this common judgment, I intend to dispose of these two Criminal Jail Appeal Nos.S-115 and 116 of 2022, whereby the appellant was tried separately by the learned Additional Sessions Judge-I/MCTC, Khairpur in the main case viz. Sessions Case No.922 of 2013 (*Re- The State vs. Parvez*) arose out of FIR No.55 of 2013 under Sections 302, 337-H(2), 148 and 149 PPC registered at Police Station, Baharo at Phuloo and offshoot case vide Sessions Case No.233 of 2014 (*Re-The State vs. Parvez alias Darvesh Suhag*) arose out of FIR No.07 of 2014 under Section 23(i)(a) Sindh Arms Act, 2013 registered at Police Station, Baharo at Phuloo, whereby on conclusion of the trials the appellant has been convicted and sentenced in the main case under Section 302(b) PPC to suffer imprisonment for life as *Ta'zir* and to pay compensation of Rs.200,000/- (Rupees two lac) as required u/s 544-A, CrPC. The compensation, if paid by the accused be given to the legal heirs of deceased Shah Nawaz and in case of non-payment of compensation

amount, the accused shall suffer S.I for 06 months more; and in the offshoot case the appellant was also convicted and sentenced u/s 23(i)(a) of Sindh Arms Act, 2013 to suffer R.I for 14 years and to pay fine of Rs.100,000/- (Rupees one lac) and in default in payment of fine, he shall suffer S.I for 06 months more. The benefit of Section 382-B, CrPC was also extended to the appellant in both cases.

02. At the very outset, learned counsel for the appellant submits that though the trial Court recorded evidence in both the cases separately, evidence of PWs ASI Muhammad Akil Narejo and PC Gulzar Ali recorded in the main case was copied ditto in the offshoot case, which is against the spirit/requirement of the law; therefore, the conviction and sentence awarded to the appellant cannot be sustained. He has prayed that the cases may be remanded back to the trial Court for the recording of evidence of both witnesses separately.

03. Learned Counsel for the complainant as well as learned Additional Prosecutor General for the State after going through the evidence of witnesses conceded the above position and recorded their no objection, if the cases may be remanded to the trial Court for recording their evidence.

04. Heard learned counsel for the respective parties and perused the record. A perusal of the record reflects that the evidence of prosecution witnesses, namely ASI Muhammad Akil Narejo and PC-Mashir Gulzar Ali was recorded either in the main case was copied ditto typed in the offshoot case or was recorded in the offshoot case was copied ditto typed in the main case. The only change was the exhibit number of the documents so exhibited by the witnesses. Non-recording of evidence separately and just copying and pasting the evidence of one witness into the evidence of another witness is also a violation of section 353 Cr.P.C, which provides that all the evidence under [Chapters XX, XXI, XXII, and XXII-A] shall be taken in presence of the accused, or, when his attendance is dispensed with, in presence of his pleader. Further in section 354 Cr.P.C word "shall" has been used for recording the evidence of witness in the manners prescribed in sections 355 and 356 Cr.P.C, herein the present case section 356 Cr.P.C is applicable which provides that in

trials before Courts of Session and inquiries under chapter XXII the **evidence of each witness shall be taken down in writing** in the language of the court by the Magistrate or Sessions Judge, or in his presence and hearing and under his direction and superintendence and shall be signed by the Magistrate or Sessions Judge. This provision also indicates that evidence of each witness is recorded separately by following other formalities not by copy and paste. The object of these provisions is to secure as faithful and accurate record of what each witness says in court as it is possible to make and that object would be served by the preparation of a record to the dictation in open court by the trial Judge. This court in the case **Nakeef Nindwani vs. The State (2022 P.Cr.L.J Note 10)**, has observed as under:-

“The entire evidence of the prosecution witnesses was carefully examined and it is observed that the trial judge has committed illegality while keeping the evidence of prosecution witnesses recorded in the main case by way of copy and paste in this case and only few lines from the examination-in-chief of Muhammad Sharif were deleted. It is further observed that only change was at the head of the page of the deposition where only the case number and other particulars were changed by the trial court otherwise the examination-in-chief and the cross-examination are same word by word including the commas and full stops. It is settled by now that this practice of copy from the evidence of main case and paste it in the evidence of offshoot case is illegal, unlawful and the same may be stooped. In view of the considering facts and circumstances of the case the trial courts are directed to record the evidence of each witness separately in all the separate cases if not amalgamated in accordance with law.”

5. The procedure adopted by the trial court by not recording evidence of both the witnesses separately and after the recording of evidence in one case, it was copied and pasted in another case with some minor changes is also in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which provides as “For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.” Under these circumstances, it can be said that the oral evidence of the witness that he saw the recovery and arrest of the appellant had not been recorded and the requirement of Article 71 of the Qanun-e-Shahadat Order, 1984 is violated which provides that “All facts, except the contents of documents, may be proved by oral evidence.” “If it refers to a fact, which could be seen, it must be the evidence of a witness who says he saw it:”

When the evidence as observed above was found to be a copy and paste in both cases was kept on record then it can safely be said that there is no evidence of witness that he saw the alleged recovery of arms and arrest.

6. Thus, based upon the above findings, I am of the view that serious prejudice was caused to the appellant at the time of recording evidence of the above witnesses and therefore by avoiding to discuss further evidence and the merits of the case which may prejudice either party deemed it appropriate to set-aside the impugned judgment dated: 18-10-2022 passed by the court of Additional Session Judge-1/Model Criminal Trial Court, Khairpur Sessions Case No.922 of 2013 (*Re- The State vs. Parvez*) arisen out of FIR No.55 of 2013 under Sections 302, 337-H(2), 148 and 149 PPC registered at Police Station, Baharo at Phuloo and offshoot case vide Sessions Case No.233 of 2014 (*Re-The State vs. Parvez alias Darvesh Suhag*) arisen out of FIR No.07 of 2014 under Section 23(i)(a) Sindh Arms Act, 2013 registered at Police Station, Baharo at Phuloo, and remand both the case to the trial court for a limited purpose of re-recording of the evidence of PWs ASI Muhammad Akil Narejo and PC Gulzar Ali separately in each case and thereafter record statement under section 342 Cr.P.C of the appellant afresh and by providing him an opportunity of hearing pass a Judgment in accordance with law.

7. The above Criminal Appeal No.S-115 of 2022 and Criminal Jail Appeal No.S-116 of 2022 are disposed of in the above terms.

JUDGE