

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

PRESENT:

Mr. Justice Naimatullah Phulpoto,

Mr. Justice Zulfiqar Ali Sangi,

**(1) CrI. Appeal No.D-60 of 2017**

**(2) Cr. Reference No.D-09 of 2017**

Appellants : Bashir Bughio & another,

Respondent : The State.

**(3) Cr. Jail Appeal No.D-10 of 2019**

Appellants : Bashir & others,

Respondent : The State.

**(4) Cr. Appeal No.S-105 of 2017**

Appellants : Mohammad Mureed Bughio & another.

Respondent : The State.

Mr. Athar Abbas Solangi, advocate for the appellants in all three appeals.

Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Mr. Ahmed Hussain Khoso, advocate for the complainant.

Date of hearing : 03-11-2020.

Date of Judgment : 11-11-2020.

J U D G M E N T.

**NAIMATULLAH PHULPOTO, J.-**

Appellants Mohammad Mureed son

of Sultan Ahmed, Noat son of Khalique Dino, Bashir son of Mohammad Uris and

Aijaz son of Mohammad Ashraf, all by caste Bughio, were tried by learned

Additional Sessions Judge-IV, Dadu, in Sessions Case No.640 of 2012, arising

out of Crime No.47 of 2012, registered at Police Station Sita Road. On the

conclusion of the trial, vide judgment dated 14.11.2017 appellants Bashir and

Aijaz were convicted for offence under Section 302(b), PPC and sentenced to

death and remaining two appellants, namely, Mohammad Mureed and Noat were also convicted under Section 302(b) r/w 149, PPC and sentenced to imprisonment for life. All the four appellants were directed to pay compensation of Rs.100,000/- (Rupees one lac) each, to be paid to legal heirs of deceased Zaffar Ali; in case of default in payment of compensation, they were directed to suffer S.I. for six months more. Trial Court made reference to this Court for confirmation of death sentence awarded to appellants Bashir and Aijaz.

2. Captioned appeals are outcome of same judgment, as such same are being decided by this common judgment along with Confirmation Reference No.D-09/2017.

3. Brief facts of the prosecution case as mentioned by the trial Court in paragraph No.2 of the impugned judgment are as under:-

“Brief facts of the prosecution case are that on 30.08.2012 complainant Sattar Bughio lodged FIR at P.S Sita Road, alleging therein that accused Bashir Bughio had created dispute with his brother Zaffar Ali Bughio, aged 42/43 years, on a piece of land and had issued threats that he will fight with the complainant party. On 29.8.2012 complainant and his brother Zaffar Ali left on motorcycle, while his nephew Ghulam Abbas and Marot Ghulam Hyder were on another motorcycle and they were going towards Sita Road and when reached at Johi barrage mori, it was about 9.30 a.m. saw accused Bashir son of Urs Bughio armed with pistol, Aijaz son of Ashraf Bughio armed with pistol, Noat son of Hakan Bughio, resident of Noat Bughio, Mureed son of Sultan Bughio armed with gun, residents of Dhani Bux Bughio, Taluka K.N. Shah, were standing there, they got stopped motorcycle of the complainant party and accused Noat Bughio instigated other accused to kill the complainant party, accused Bashir on instigation, fired from his pistol at Zaffar Ali, which hit on his left eye, he again fired at Zaffar Ali, which hit him on his left thigh of the leg, he raised cries and fell down, accused Aijaz Bughio fired from his pistol at Zaffar Ali, which hit him on his back, due to fear of the weapons the complainant party did not go near to accused, then accused persons went away. After departure of the accused, the complainant saw his brother had sustained firearm injuries and was

lying dead. After that he informed incident to police and police after getting conducted postmortem handed over the dead body to him and then he went at P.S and registered FIR of incident, as stated above.”

4. After usual investigation challan was submitted against the accused under Sections 302, 337-H(ii), 114, 504, 34, PPC.

5. Trial Court framed the charge against the appellants at Ex.2. Accused met the charge with denial. Prosecution examined 07 PWs. Thereafter, prosecution side was closed.

6. Trial Court recorded statements of accused under Section 342, Cr.P.C at Ex.12 to 15. Accused claimed false implication in this case and denied the prosecution allegations. Trial Court after hearing the learned advocates for parties and assessment of the evidence, vide judgment dated 14.11.2017 convicted and sentenced the appellants, as stated above. Hence, these appeals have been filed.

7. Mr. Athar Abbas Solangi, learned advocate for the appellants, at the very outset submitted that the charge framed by the trial Court was defective; it caused prejudice to the accused; that particulars regarding the offence were not mentioned in the charge, so also part assigned to the accused in the commission of the offence. Learned advocate for appellants prayed for remand of case from the stage of framing of charge. In support of his submissions, he relied upon the cases reported as *Saeed Ullah v. Asfandiyar* (2017 P.Cr. L.J. Note 5), *Nawab Liaquat Ali v. The State* (2014 P.Cr.L.J. 527), *Asif Iqbal v. The State* (2012 P.Cr.L.J. 91), *Nisar Akhtar v. The State* (2002 MLD 372) and *Mubeen v. The State* (2006 YLR 359).

8. Learned Additional Prosecutor General assisted by learned advocate for the complainant, conceded to the contentions raised by learned advocate for the appellants and argued that trial Court failed to frame the charge in accordance with law and recorded no objection for remand of the case.

9. In order to appreciate the contentions raised by learned advocate for the appellants, we have carefully gone through the charge framed by the trial Court at Ex.2. For the sake of reference, charge framed by the trial Court is reproduced as under:-

“IN THE COURT OF IIIRD. ADDITIONAL SESIONS JUDGE, DADU  
Sessions Case No: 640 of 2012  
The State  
Vs.  
Mureed & others ----- Accused  
Crime No: 47/2012 PS, Sita road.  
U/S 302, 337-H(ii),114, 504, 34, PPC.

C H A R G E

I, Munawar Ali Lodhi, IIIrd. Additional Sessions Judge Dadu, do hereby charge you:-

- 1- Noat son of Khaliquedino Bughio
- 2- Muhammad Mureed son of Sultan Ahmed Bughio,
- 3- Bashir son of Muhammad Uris Bughio,
- 4- Aijaz son of Muhammad Ashraf Bughio,

as follows:-

That on 29.08.2012, 0930 hours, on link road of Sita road near Johi Barrage Mori, Taluka, KN Shah duly armed with deadly you accused in furtherance of common intention intentionally insulted the complainant party, knowing it to be likely that such provocation will cause him to break the public peace, and thereby committed an offence punishable u/s 504, PPC, and within the cognizance of this Court.

I, hereby further charge you, that on the said date, time and place being the members of unlawful assembly in prosecution of your common object you accused made aerial firing and thereby, committed an offence punishable u/s 337-H(ii), PPC, and within the cognizance of this Court.

I, hereby further charge you, that on the said date, time and place being the members of unlawful assembly in prosecution of your common objection you accused Noat abetted other co-accused not to spare the Zaffar Ali brother and commit his murder and thereby committed an offence punishable u/s 114 PPC, and within the cognizance of this

I, hereby further charge you, that on the said date, time and place being the member of unlawful assembly in prosecution of your common object, you accused Bashir on the abetment of accused Noat fired from your Pistol upon Zaffar Ali the brother of complainant, which hit him and committed his Qatl-e-amd by means of fire arm injuries, and thereby committed an offence punishable u/s 302 R/W section 34 PPC, and within the cognizance of this Court.

And, I hereby direct that you be tried by this court on the aforesaid charges.

This 12<sup>th</sup>: day of December, 2012.

Sd/-

IIIrd.Addl: Sessions Judge Dadu.”

10. In the last head of the charge, framed by the trial Court at Ex.2 it is mentioned that “***you accused Bashir on the abetment of accused Noat fired from your pistol upon Zaffar Ali, brother of the complainant, which hit him and committed his Qatl-i-Amd by means of firearm injuries and thereby committed an offence punishable under Section 302 read with Section 34, PPC.***” It is clear from the perusal of charge that there is no mention, in the said charge that accused Aijaz, who has been sentenced to death, committed murder of the deceased. Allegations of the prosecution for the accused Noat and Mohammad Mureed have also not been specified in the charge. Particulars of offence have also not been specified. It is rightly argued that serious prejudice was caused to the accused in the preparation of the defence. It appears that trial Court framed charge in a casual manner without application of judicial mind, in disregard of Sections 221, 222 and 223, Cr.P.C. It is settled law that charge framed against the accused must contain material particulars as to time, place, specific name of the offence, manner in which the offence is committed and the particulars of the accused, in order to afford them opportunities to explain the matter with which they were charged and to prepare their defence at the commencement of the trial. It is mandatory that charge shall contain all material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed and particulars of the accused in order to afford an opportunity to him to explain the matter with which he is charged. In the case reported as **S.A.K. Rehmani v. The State (2005 SCMR 364)** Hon’ble Supreme Court has held as follows:-

*“We are conscious of the fact that where a person is convicted of an offence and the Appellate Court is of the view that he has been misled in his defence by the absence of a charge or by an error in the charge, appropriate action can be taken including remand of the case with direction for making suitable amendment in the charge.”*

It was also held in the case of **Dost Muhammad v. The State (NLR 1995 SD 585)** by the Hon’ble Federal Shariat Court that:-

*“Defect in framing of charge would cause prejudice to accused and would be a ground for setting aside conviction/sentence recorded against him with remand of case for re-trial after framing a valid charge.”*

11. Moreover, trial Court has recorded statements of the accused under Section 342, Cr.P.C in a very casual and stereotype manner. All the incriminating pieces of evidence were not put to the accused persons for their explanation, which is the requirement of the law. Deeper examination of statements of accused recorded under Section 342, Cr.P.C at Ex.12 to 15 reflects that these are copy paste of charge framed by the trial Court at Ex.2, with slight modification, which is not permissible in the law.

12. In the present case, as discussed above two appellants have been sentenced to death, they were misled in their defence by an error in the charge. It would be a ground for setting aside conviction/sentence recorded against them with remand of case for re-trial after making suitable amendment in the charge.

13. For the above stated reasons, by consent of the parties the impugned judgment dated 14.11.2017 passed by the trial Court is set aside, Confirmation Reference No.D-09/2017 is answered in negative and case is remanded back to the trial Court for framing the charge afresh, in accordance with law, to record evidence and statements of accused afresh and to decide the case within 03 months under intimation to this Court.

14. For the above stated reasons, appeals are disposed of in the above terms and Confirmation Reference is answered in NEGATIVE.

JUDGE

JUDGE