IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Crl. Appeal. No. S- 158 of 2016.

Appellant:	Arbab Through Syed Tariq Ahmed Shah, Advocate.
Complainant:	Mahmood Through Mian Taj Muhammad Keerio, Advocate.
The State:	Through Mr. Siraj Ahmed Bijarani, APG.
Date of hearing:	**01.10.2024**.
Date of Order:	**01.10.2024**.

J U D G M E N T

Zulfiqar Ali Sangi, J.- This appeal is directed against the judgment dated 02.08.2016, passed by Additional Sessions Judge Matiari, whereby the appellant was convicted and sentenced under section 302(b) P.P.C to R.I. for life imprisonment and was directed to pay Rs.800,000/- to be paid to the legal heirs of deceased Muhammad Usman as compensation and in default thereof was further to undergo imprisonment for six months.

2. At the very outset, learned counsel for the appellant submits that the charge was framed that accused in furtherance of common intention kidnapped father of complainant namely Muhammad Usman and committed his murder whereas there is no material or indication in FIR, 161 Cr.P.C. statements or during investigation it has come on record that the father of complainant was kidnapped and there is no material as to where from trial court has come to the conclusion that it is a case of kidnapping and framed charge u/s 365 PPC against appellant. Furthermore, in the case Dr. Asghar Ali Shah was examined, who conducted postmortem, and exhibited certain documents. His evidence was not confronted to the appellant in his statement u/s 342 Cr.P.C. to explain the same and careful perusal of the impugned judgment reflects that it was used against appellant for awarding conviction. Relying upon

certain authorities of this Court, learned counsel submits that the charge violates section 222, Cr. P.C. and there appears violation of S.342 Cr.P.C. He, therefore, contends that the impugned judgment is not sustainable and liable to be set aside.

3. Learned Counsel for the Complainant and learned A.P.G. have not rebutted the above facts. They have further pointed out that the judgment itself is defective having not been recorded following the law. Therefore, they 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 the charge was framed that accused in furtherance of common intention kidnapped father of complainant namely Muhammad Usman and committed his murder whereas there is no material or indication in FIR, 161 Cr.P.C. statements or during investigation it has come on record that the father of complainant was kidnapped and there is no maerial as to where from trial court has come to the conclusion that it is a case of kidnapping. 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. All the incriminating pieces of evidence available on record in the shape of examination-in-chief, cross-examination or re-examination of witnesses are required to be put to the accused if the same is against him while recording his statement under section 342 Cr. P.C in which the words used ***"For the purpose of enabling the accused to explain any circumstances appearing in evidence against him."*** which demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but circumstances appearing in cross-examination or re-examination are also required to be put to the accused, if they are against him because the evidence means examination-in-chief, cross-examination and re-examination, as provided under Article 132 read with Articles 2(c) and 71 of Qanun-e-Shahadat Order, 1984. From the careful perusal of the statement of the appellant, under section 342 Cr.P.C. it reveals that evidence of Dr. Asghar Ali Shah who conducted postmortem and exhibited certain documents was not confronted to the appellant in his statement u/s 342 Cr.P.C. to explain the same and careful perusal of the impugned judgment reflects that it was relied upon by the trial court for awarding conviction. ***The Supreme Court of Pakistan vide order dated: 04-03-2021 in the case of Jan Muhammad vs. The State and others (Crl. Appeal No. 77 of 2020)*** while remanding the case to the trial court has observed as under:-

> *"5. It has been observed by us with concern that none of the afore-mentioned pieces of evidence has been put to the appellant while examining him under section 342, Code of Criminal Procedure. It has been laid down many a time by this Court that a piece of evidence produced by the prosecution against an accused if not put to accused while examining him under section 342, Code of Criminal Procedure cannot be used against him. The rationale behind it is that the accused must know and then respond to the evidence brought against him by the prosecution. He (accused) must have firsthand knowledge of all the aspects of the prosecution case being brought against him. It appears that even the learned Judge in chambers of High Court while reappraising evidence available on record did not consider this aspect of the matter. Keeping in view the peculiar circumstances of the case, learned counsel for the appellant and learned Additional Prosecutor General, Sindh assisted by widow of deceased are in agreement that the matter needs to be remanded to the learned trial Court for re-recording statement of appellant under section 342, Code of Criminal Procedure while putting all pieces of prosecution evidence produced during trial to him, giving him an*

> *opportunity to know and respond to the same.*
>
> *6. For the foregoing, the instant criminal appeal is allowed. The impugned judgments of the learned High Court and that of the learned trial Court are set aside. Resultantly, the conviction and sentence of the appellant is also set aside. He shall be treated as an under-trial prisoner. The learned trial Court shall record the statement of appellant under section 342, Code of Criminal Procedure afresh by putting him all pieces of prosecution evidence, enabling him to know and respond to the same and shall decide the case after hearing the parties, within one month of the receipt of this order. In case of conviction of appellant by the trial Court and in the event of filing a criminal appeal by him before the learned High Court, the same shall be decided within one month of its filing. A copy of this order shall be sent to the Registrar, High Court of Sindh, Karachi for its circulation among all the Judges of trial Courts in the Province of Sindh for perusal and strict compliance.*

7. For the above reasons, 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 and an opportunity of hearing to the parties. The case pertains to the year 2016, and the appellant is in custody since long, therefore, the trial court is directed to conclude the trial 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. The accused Baboo was acquitted by the trial court and no appeal against his acquittal was filed by the complainant or the State therefore, the judgment in respect of Baboo attained finalty and the acquittal is maintained.

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

J U D G E

Ali Haider