

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. D-46 of 2023
Confirmation Case No. D-10 of 2023.

Before:

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Arbab Ali Hakro

Appellant : Muhammad Ashraf @ Ashraf Golo
Through Mr. Asif Ali Abdul Razzak
Soomro, Advocate

The State : Through Mr. Aitbar Ali Bullo, D.P.G for the
State

Date of hearing : 18-11-2024
Date of Judgment : 18-11-2024

J U D G M E N T

Zulfiqar Ali Sangi, J.- This appeal is directed against the judgment dated 13.06.2023, passed by 1st Additional Sessions/Model Criminal Trial Court Judge, Kandhkot, whereby the appellant was convicted and sentenced under section 302(b) P.P.C for death sentence subject to the confirmation by this court and the reference as required under section 374 Cr.P.C. was sent to this court.

2. At the very outset, learned counsel for the appellant submits that the charge was framed that he along with absconding accused Muhammad Haneef @ Popal and an unknown accused in furtherance of common intention intentionally and knowingly committed Qatl-e-Amad of Mst: Parvezan by strangulation with rope, after levelling Karap allegation. According to the learned counsel, no allegation of strangulation was against the appellant and it was against the co-accused Muhammad Haneef whereas the allegation against the present applicant as per FIR and other material collected during the investigation was that he was holding her right arm and unknown accused was holding left arm whereas accused Muhammad Haneef was strangulating the neck of deceased with a piece of rope. The trial court had not specified the allegations in the charge. Furthermore, the evidence which came on the record had not properly been put to the appellant in his statement recorded under section 342 Cr.P.C. to explain the same and in

Question No.1 same words which were used in the charge were reproduced nothing was put to the appellant in respect of his independent allegation and it was used against the 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 under the law and liable to be set aside.

3. Learned A.P.G. has not rebutted the above facts and further pointed out that the judgment itself is defective having not been recorded following the law. Therefore, he frankly conceded that the judgment be set aside and the matter be remanded for re-trial.

4. We 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 the accused/appellant along with absconding accused Muhammad Haneef @ Popal and an unknown accused in furtherance of common intention intentionally & knowingly committed Qatl-e-Amad of Mst: Parvezan by strangulation with rope, after levelling Karap allegation. The contents of FIR and statements under section 161 Cr.P.C. speak otherwise. The allegation against the present appellant was that he was holding her right arm while her left arm was held by an unknown accused and accused Muhammad Haneef was

strangled with piece of a rope. The allegations as levelled against the appellant and the co-accused are not mentioned in the charge and the charge is generalized. The Division Bench of this Court under the above circumstances in the cases of ***Mubeen alias Haji Muhammad Mubeen vs. The State (2006 YLR 359)*** and ***Bashir Bughio vs. The State (2022 MLD 1405)***, has also remanded the case for de novo trial.

6. It is settled law that 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 the prosecution witnesses was not confronted to the appellant in his statement u/s 342 Cr.P.C. to explain the same. The trial court adopted the same procedure as adopted for framing the charge. The role against the appellant and the other co-accused played by them as deposed by the prosecution witnesses in their evidence and the manner in which the incident took place as per the evidence of prosecution witnesses was not confronted while recording the statement of the appellant under section 342 Cr.P.C.and careful perusal of the impugned judgment,it 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 aforementioned 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 2022, and the appellant is in custody for 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 confirmation reference sent by the trial court is decided in negative.

8. The appeal filed by the appellant and the confirmation reference sent by the trial court are, therefore, disposed of in the above terms.

J U D G E

J U D G E