

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Appeal No.S-143 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on M.A. No.7492/23.*
2. *For hearing of main case.*

Appellant.	:	Through Mr. Achar Khan Gabole, Advocate
The State.	:	Through, Syed Sardar Ali Shah, Addl.PG.
Date of Hearing	:	13.02.2025
Date of Judgment	:	13.02.2025

J U D G M E N T

Riazat Ali Sahar, J. This order disposes of the Appeal filed by the appellants, namely Zulqarnain, Jehanzeb, Dost Muhammad and Aslam Parvez, assailing the impugned judgment dated 01.12.2023, passed by the learned Additional Sessions Judge-III, Ghotki in Sessions Case No.224 of 2017, arising out of Crime No.329/2016, registered under Sections 459, 382, 336, 336-B, 337L(ii) and 34 of the PPC at Police Station 'A' Section, Ghotki. Through the impugned judgment, the appellants have been convicted and sentenced to undergo rigorous imprisonment as under;

- i). *For committing offence u/s 336 PPC r/w Section 34 PPC, the accused are sentenced to pay Arsh equivalent to the value of diyat u/s 337-R PPC which is equivalent to Rs.6,757,902/- (Rupees six million seven hundred fifty seven thousand nine hundred and two only)*

vide notification No.F.8(3)IF-III/91-311 dated 04.09.2023, and to suffer rigorous imprisonment for 05 years each.

- (ii) *For committing offence u/s 459 PPC r/w Section 34 PPC, the accused are sentenced to undergo rigorous imprisonment for 05 years and to pay fine/compensation of Rs.50,000/- (Fifty thousand) each payable to the injured/victim Zahoor Ahmed Soomro, and in case of default thereof, the accused shall undergo simple imprisonment for three months more, and read with for committing offence u/s 336-B PPC r/w Section 34 PPC, the accused are sentenced to undergo rigorous imprisonment for life and to pay fine/compensation of Rs.10,00,000/- (Ten lac/One Million) each payable to the victim Zahoor Ahmed Soomro, and in default thereof, the accused shall undergo simple imprisonment for six month more.*
- iii). *For committing offence u/s 382 PPC r/w Section 34 PPC, the accused are sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs.5,000/- (five thousand) each and in default thereof, the accused shall undergo simple imprisonment for 15 days more.*
- iv). *For committing offence u/s 337-L(ii) PPC r/w Section 34 PPC, the accused are sentenced to undergo rigorous imprisonment for two year as Ta'zir and also to pay Daman of Rs.5000/- each to be paid to injured/victim and in default thereof, they shall undergo simple imprisonment for 15 days more.*

The convictions and sentences for the offences u/s 336, 336-B, 382, 459 and 337-L(ii) r/w 34 PPC shall run concurrently and the benefit of Section 382-B PPC is also extended to the accused.

2. Precisely, the case of prosecution is that on 27.12.2016, the complainant, Muhammad Tayab, lodged an FIR, alleging that one

Zahoor Ahmed, his cousin, was due to be married, and for that purpose, they had purchased gold ornaments. On 24.12.2016, the complainant, along with Zahoor Ahmed, Saif-ur-Rehman, their relative Allah Dino Soomro, and other family members, placed the said gold ornaments in a rented house situated in Shahbaz Colony, Ghotki, before retiring for the night. At approximately 12:00 a.m., the complainant and his relatives were awakened by an unusual noise. Upon investigation, they allegedly saw the accused persons, namely Dost Muhammad, who was holding a bottle, along with Zulqarnain and Aslam Parvez, both armed with pistols, unlawfully trespassing into the house while carrying articles belonging to the complainant party. It is further alleged that when Zahoor Ahmed resisted, the accused Dost Muhammad poured a bottle of acid upon him, specifically targeting his head, chest, hands, arms, and back, resulting in severe burns. Thereafter, the accused persons fled from the scene, taking with them the stolen valuables. Upon assessing the loss, the complainant party discovered that five tolas of gold ornaments and Rs. 37,000/- in cash had been stolen. Seeing Zahoor Ahmed in critical condition, the complainant party immediately transported him to the police station, where they obtained a referral letter for medical treatment. After receiving first aid, the victim was subsequently referred to Sukkur for further medical attention. Following these events, the complainant returned to the police station and formally lodged the FIR. Upon completion of the investigation, the police submitted the challan of the case before the competent court.

3. The prosecution in order to prove its case examined ten witnesses, who produced the relevant documents at trial. Thereafter, prosecution side was closed vide statement at Ex.44.

4. The learned trial Court after hearing the parties and appraising the evidence passed impugned judgment.

5. Learned Counsel for the appellant, at the very outset contended that the impugned judgment passed by learned trial Court is against the norms of criminal administration of Justice and is not sustainable under the law as the appellant was deprived by the trial Court from the valuable right of cross examination by his Counsel, therefore he prayed for setting aside the judgment and remanding the case back to the trial Court for affording opportunity to the appellant to engage a Counsel of his choice and to cross examine the complainant.

6. Learned Deputy Prosecutor General appearing for the state does not oppose the proposal so advanced by the learned counsel for appellant.

7. Having heard the learned counsel for the respective parties and upon a meticulous examination of the impugned judgment, as well as the record available before me, it is evident that certain fundamental legal principles have been disregarded, thereby vitiating the proceedings. During the initial phase of evidence, PW-1/Complainant Muhammad Tayab was examined. Subsequent to the amendment of the

charge, the prosecution once again produced him for the purpose of recording his evidence. During his second examination-in-chief, he merely stated that ***“I am complainant in this case, I have already appeared before the court but I don’t remember that date when my statement was recorded. I say that my statement is same and I don’t want to depose fresh statement before this court. Arrested accused Dost Muhammad and Badardin Kalhoro present in court are same.”*** requesting that the earlier evidence be treated as his formal statement, which is a blatant violation of Section 353 Cr.P.C. It was well established in ***Zahid Karim and others v. The State [2005 PCr.LJI]*** that ***“Such contravention of the provisions of S.353, Cr.P.C. could not be termed as an error, omission or irregularity so as to be curable under S.537, Cr.P.C., as it was nothing but a downright illegality vitiating the relevant proceedings of the trial of accused”;*** whereby, this stance was reaffirmed in ***Zubair Ahmed v. the State [PLD 2023 Sindh 151]***. This clearly demonstrates that the appellants were not afforded a fair opportunity to cross-examine the complainant, which constitutes a manifest violation of Article 10-A of the Constitution of Pakistan, guaranteeing the fundamental right to a fair trial. The evidentiary value of testimony recorded under such circumstances is, at best, negligible. A conviction cannot be safely based on evidence unless the credibility of the witnesses is subjected to rigorous scrutiny through cross-examination, which is regarded as the litmus test of veracity. The failure to provide the accused with a fair

opportunity to challenge the complainant's testimony is not a mere procedural irregularity but a fatal defect—*non curat lex*—that renders the trial inherently flawed and contrary to the cardinal principles of criminal jurisprudence. It is a well-settled principle that a trial vitiated by defective evidentiary proceedings offends the principles of natural justice (*audi alteram partem*) and violates the accused's inviolable right to a fair trial. The learned trial court, having proceeded on an erroneous premise, has rendered a judgment that is *coram non iudice* and, therefore, legally unsustainable. In light of these glaring infirmities, the impugned judgment suffers from *ex facie* legal defects and cannot be upheld under the law. In such circumstances, the case must be remanded to the trial Court for a retrial commencing from the stage of cross-examination of the complainant. In this respect, reference may be made to the precedent set in Zubair Ahmed & Others v. The State (PLD 2023 Sindh 151), wherein it was unequivocally held that the adoption of such evidence is contrary to the mandatory provisions of Section 353 Cr.P.C.

8. Keeping in view the aforementioned legal position, I allow the instant appeal, set aside the impugned judgment dated 01.12.2023, passed by the learned Additional Sessions Judge-III, Ghotki, and remand the case back to the trial Court with the direction to ensure a fair opportunity for the appellants to engage legal counsel of their choice and to effectively cross-examine the complainant as well as other witnesses. The examination-in-chief of the witnesses shall be

duly recorded, and upon completion of the proceedings, after hearing the counsel for the parties, the trial Court shall render an appropriate judgment in accordance with the law.

9. As per the judgment, all the appellants, except appellant Dost Muhammad, were on bail at the time of its pronouncement. Therefore, they shall continue to remain on the same bail, subject to the furnishing of a fresh affidavit of surety before the trial Court or the provision of a fresh surety, as deemed appropriate. Furthermore, appellant Dost Muhammad, who was in custody at the time of the pronouncement of the impugned judgment, shall remain in custody unless otherwise directed by the competent Court in accordance with the law.

10. In view of the foregoing, the learned Sessions Judge, Ghotki is directed to proceed with the matter either by himself or to assign the same to any Additional Sessions Judge, as he deems fit and proper, in the interest of justice. Furthermore, the learned trial Court is directed to ensure the *expeditious disposal of the matter* by securing the attendance of prosecution witnesses and concluding the trial strictly within a period of “*three months*”, adhering to due process of law.

11. In view of above stated legal position, this appeal is disposed of along with listed applications, if any.

JUDGE

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