

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Appeal No.D-17 of 2020

along with
Criminal Conf. Case No.D-16 of 2020
Criminal Jail Appeal No.S-20 of 2020
Criminal Jail Appeal No.S-21 of 2020
Criminal Jail Appeal No.S-22 of 2020
Criminal Jail Appeal No.S-23 of 2020

Present:

Mr. Justice Amjad Ali Sahito
Mr. Justice Ali Haider 'Ada'

Appellants : Ghulam Hussain @ Sodho,
Muhammad Ali, Fahad Hussain &
Ghulam Ali, all sons of Nooruddin,
through Mr. Habibullah G. Ghouri,
Advocate.

Complainant : Muhammad Salih Marfani Chandio,
through Mr. Noorullah Gulsher Khan
Rind, Advocate

Respondent : The State through Mr. Ali Anwar
Kandhro, Additional Prosecutor
General, Sindh.

Date of hearing : **28.10.2025**

Date of decision: **28.10.2025**

J U D G M E N T

AMJAD ALI SAHITO, J; Through the captioned Appeals, the appellants have assailed the five Judgments dated 24.02.2020 passed separately by learned First Addl. Sessions Judge/MCTC, Kamber vide Cases viz. Sessions Case No.55 of 2017, Sessions Cases No.87, 88, 89 & 90 of 2016, arising out of FIRs viz. Crime No.47 of 2016 registered at P.S Drigh, for offence under Section

302, 324, 114, 148, 149, 337-H(ii) PPC, & Crimes No.48, 49, 51 & 53 of 2016 registered with P.S Drigh, for the offence under Section 24 of Sindh Arms Act, 2013, whereby the appellants have been convicted and sentenced in main Crime No.47 of 2019 as under;-

1. For offence U/S 148 PPC (punishable for rioting) with fine of Rs./- each (total RS./-). In case of default each of them will undergo S.I for six months.
2. For offence U/S 302 (b) PPC to Death as Tazir for commission of murder of Shahban Ali Marfani Chandio (now deceased).
3. For offence U/S 302 (b) PPC to Death as Tazir for commission of murder of Mujeeb-ul-Rehman Marfani Chandio (now deceased).
4. For offence U/S 302 (b) PPC to each as Tazir for commission of murder of Noor Ahmed Marfani Chandio (now deceased).

It is therefore, was ordered that these three convicts be hanged by the neck till they are dead subject to confirmation by Honourable High Court of Sindh, Circuit Court, Larkana.

5. Compensation of Rs.5,00,000/- (Total Rs.20,00,000/- Twenty Lacs) for payment to LRs of each deceased in terms of section 544-A Cr.P.C and in case of default thereof, they were directed to undergo S.I for six months.
6. For offence U/S 324 PPC to undergo R.I for five years as well as fine of Rs.30000/- each convict and in case of default thereof, they were directed to undergo S.I for two years.
7. For offence U/S 337-D PPC (Jurh Jaifah) each convict with Arsh of Rs.7,43400,66/- (Equivalent to 1/3 of Diyat which is currently at Rs.2,320,202/-).
8. For offence U/S 337-A(i) PPC (two injuries as Shajjah-i-Khafifah) with Daman of Rs.30000/- each convict.
9. For offence U/S 337-H(ii) PPC with fine of Rs.20000/- (Total Rs.80000/-) each convict.
The sentences so awarded other than Death were directed to run concurrently.

However, in offshoot Cases viz. Crimes No.48, 49, 51 & 53 of 2016, the appellants were convicted and sentenced for offence punishable under Section 24 of Sindh Arms Act, 2013 to five years imprisonment and fine of Rs.50,000/- each, and in default thereof, they were directed to undergo two years imprisonment

which will be in addition to substantive sentence. The benefit of Section 382-B Cr.P.C was also extended to all the accused persons.

2. Mr. Habibullah G. Ghouri, learned counsel appearing on behalf of the appellants submits that there is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, as the ample opportunity was not provided to the both the parties to produce the witnesses or to cross-examine the prosecution witnesses. He further submits that cross-examination of only few lines was conducted from the witnesses. Even the learned trial Court has failed to frame the proper charge as two injured persons namely Kafeel and Sobho were not shown as injured in the charge-sheet. He, therefore, prays for remand of the case as de novo trial. In support of his contention, he places reliance upon an unreported judgment dated 31.05.2023 passed by Division Bench of this Court.

3. On the other hand, Mr. Noorullah Gulsher Khan Rind, learned counsel appearing on behalf of the complainant submits that even they have not been provided a chance to produce injured PWs and the learned trial Court Judge in hasty manner has concluded the case almost within one day; that there is a violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 for non-providing a fair trial to both the parties. Lastly, he submits that impugned judgment may be set-aside and the case may be remanded back to the learned trial Court with directions to provide ample opportunity to both the parties to produce their material witnesses, conduct their cross-examination and thereafter, lerned trial Court may be directed to pass a judgment in accordance with law, after recording statements under Section 342 Cr.P.C,.

4. Mr. Ali Anwar Kandhro, learned Addl. P.G, Sindh, after going through the evidence as well as paper book, affirms the contention and does not oppose the proposal so advanced.

5. We have heard learned counsel for the parties and have minutely gone through the material made available on record.

6. From perusal of record, it reflects that the trial Court has not framed a proper charge and has concluded the trial by examining a few witnesses. The learned counsel for the respective parties have pointed out that even the opportunity was not provided to both the parties to produce the witnesses or to cross-examine the prosecution witnesses even the proper charge was not framed. Learned counsel for the respective parties also argued that even the injured witnesses were not examined and in a hasty manner, the learned trial Court has convicted the accused persons and awarded death penalty to them. Such procedure adopted by the learned trial Court is illegal and demonstrates a lack of diligence and a dismissive attitude towards the proceedings, creating a discrepancy that casts serious aspersions on the trial's conduct. Consequently, a miscarriage of justice has transpired in this case. It is irrefutable that fair trial is a fundamental right of the accused, serving as the sole mechanism to ascertain the veracity or falsehood of the witnesses' testimonies. The procedure employed by the trial Court is unlawful, which cannot be rectified under Section 537 Cr.P.C. It is now incumbent upon us to ascertain whether the manner in which the trial court conducted the proceedings has compromised the integrity of the trial, rendering it vitiated or otherwise. Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 reads as under:-

“10-A Right to fair trial.---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.”

7. Accordingly and in view of above discussion, we hold that the learned trial Court has committed serious illegality while concluding the trial. Such practice is a complete departure from the procedural law. Under such circumstances, we allow the appeals in hand by setting aside the convictions and sentences awarded to appellants vide judgments dated 24.02.2020 and remand the cases back to the trial court for holding de novo trial against the appellants/accused and after providing ample opportunity to both the parties, decide the cases in accordance with law.

8. In view of the above, confirmation case vide Reference No.D-16/2020 stands disposed of.

Office to place a copy of this judgment in the connected appeals.

JUDGE

JUDGE

Zulfiqar