

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.D-34 of 2020

Criminal Confirmation Case No.D-32 of 2020

Before:

*Mr. Justice Shamsuddin Abbasi.
Mr. Justice Ali Haider 'Ada'.*

Appellants	:	1). Imdad son of Attur Junejo, 2). Saeed @ Shoukat son of Photo @ Rasool Bux Junejo <i>through</i> Mr. Rukhsar Ahmed Junejo, Advocate.
The State	:	<i>through</i> Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh
Complainant	:	Gullan son of Dilawar Junjo <i>through</i> Mr.Habibullah G. Ghouri, Advocate
Date of Hearing	:	07-10-2025.
Date of Decision	:	07-10-2025.

JUDGMENT

Ali Haider 'Ada':- Through this Criminal Jail Appeal, the appellants have assailed the judgment dated 01.10.2020, passed by the learned Additional Sessions Judge-VI, Larkana, (trial Court) in Sessions Case No.656 of 2014, arising out of FIR No.39 of 2014, registered at Police Station Bakrani, for offences punishable under Sections 302, 324, 337-F(ii), 337-H(ii), 148, and 149, PPC. By the impugned judgment, the appellants were convicted to death, and directed to pay fine of Rs.25,00,000/- (Rupees Twenty-Five Lacs) each to the legal heirs of the deceased, in terms of Section 544-A, Cr.P.C., and in case of default, to further undergo simple imprisonment for six months. The learned trial Court also made a reference for confirmation of the death sentence under Section 374, Cr.P.C.

2. The precise facts of the prosecution case are that on 12.04.2014, at about 08:00 a.m., the appellants along with other co-accused allegedly committed the murder of Ajaz Ali, Irfan, Mubeen, and Mehboob, while one Muhammad Dawood (PW) also sustained injuries. Subsequently, the incident was reported to the police by the complainant, resulting in registration of the FIR. After usual investigation, the case was sent up for trial before the learned trial Court. Initially, charge was framed on 22.09.2014

against appellant Imdad. Upon arrest of co-accused Ghulam Ali and Nusrat, the charge was amended on 03.02.2015. Again, on 09.10.2018, another amended charge was framed against Saeed (appellant No.2), Ghulam Ali, and Nusrat; however, notably, the name of appellant Imdad was omitted from that charge. After framing of charge, PW-01 Muhammad Aslam was examined, who produced the mashirnama of arrest. Subsequently, on 16.07.2019, yet another amended charge was framed against both appellants (Imdad and Saeed) along with co-accused, without properly ascertaining the facts, roles, and place of occurrence, to which the accused pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined several witnesses including PW-02 Sofi Fayaz Hussain (Tapedar), who produced the site sketch, and PW-03 Gulzar Ali (constable), who produced memos of dead bodies and relevant receipts. The complainant was examined as PW-04, who produced the FIR. The injured witness Muhammad Dawood and eye-witness Sadaruddin were also examined. Further, PW-06 Muhammad Irfan produced memos of arrest and recovery of weapon and bullets, while PW-07 Zulfiqar Ali and PW-08 Nazir produced various memos of injuries, recovery of blood-stained earth, empties, motorcycle, inquest reports, etc. The medical officer Dr. Abdul Rab produced post-mortem reports, lash chakas forms, and MLCs of the injured. Police officials including PW-10 ASI Mukhtiar Ahmed, PW-11 SIP Laiq Ali, PW-12 Muhammad Aslam, and PW-13 Khalil Rehman (I.O.) were examined. The investigating officer produced Roznamcha entries, Chemical Examiner's report, and Forensic Science Laboratory report. Thereafter, the prosecution closed its side.

4. After closure of the prosecution evidence, the statements of the appellants under Section 342, Cr.P.C. were recorded, wherein they denied the allegations and professed innocence. Appellant Saeed Ahmed also produced certain documents in his defence and they prayed for justice. Thereafter, the learned trial Court, after hearing the parties, passed the impugned judgment, which is now under challenge before this Court.

5. Learned counsel for the appellants submits that the charge was not properly framed, as it neither disclosed the specific role of each accused nor mentioned the exact nature of the offences, thereby misleading the defence and causing serious prejudice. It is argued that even at the time of framing

the amended charge, the defect was pointed out, as reflected at page 133 of the paper book, wherein the appellant Imdad was not charged, but despite that, the learned trial Court again failed to properly amend it. He further submits that after the amended charge, the witnesses who had been examined earlier were not re-summoned for cross-examination in light of the amended charge, nor were the relevant documents re-exhibited, which is a material irregularity affecting the fairness of the trial. Therefore, in the interest of justice, and considering the capital punishment involved, it is prayed that the matter be remanded for a fair and proper trial.

6. Learned counsel for the complainant supported the contention and submits that the charge, as framed and later amended, did not clearly attribute specific roles to the accused as required under Section 221, Cr.P.C. He further submits that the trial Court was under a legal duty to ensure no procedural lacuna that could give rise to technical doubts, and therefore, he has no objection if the matter is remanded for retrial.

7. Learned Deputy Prosecutor General has also raised no objection to the remand of the case, considering the defects in the framing of charge and the requirements of Section 221, Cr.P.C.

8. Heard learned counsel for the parties and perused the record with their assistance.

9. It appears that the charge was amended on 09.10.2018, but surprisingly, the name of appellant Imdad was omitted, despite his being in custody. Furthermore, after such amendment, prosecution witness was examined, yet when the charge was again amended on 16.07.2019, those witness was not re-examined, as mandated by law. The learned trial Court proceeded to record evidence and pass the judgment without properly considering the legal implications of these defects, thereby vitiating the trial.

10. Now, coming to the main aspect of the matter, the defect in framing of charge, which, in the considered view of this Court, has resulted in miscarriage of justice. To properly appreciate the legal position, it is expedient to reproduce the relevant provision of **Section 221, Cr.P.C**, which reads as under:

221. Charge to state offence. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) *Specific name of offence; sufficient description.* If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) *How stated where offence has no specific name.* If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) *The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.*

(5) *What implied In charge.* The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particulars case.

(6) *Language of charge.* The charge shall be written either in English or in the language of the Court.

(7) *Previous conviction when to be set out.* If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in section 299 and 300 of the Pakistan Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to sections 300 or that, if it did fall within Exception 1, one or other of the three provisos to that exception apply to it.

(b) A is charged, under section 326 of the Pakistan Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Pakistan Penal Code, and that the general exceptions did not apply to it

(c) A is accused of murder cheating, theft, extortion, adultery or criminal intimidation or using a false property-mark. The charge may state that A committed murder, cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Pakistan Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Pakistan Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

11. The object of framing a charge is to ensure that the accused is fully aware of the exact nature of the accusation made against him, so that he is

not misled by any vagueness or ambiguity in the charge, and that no miscarriage of justice occurs due to any defect or irregularity therein. The purpose of Section 221, Cr.P.C. is to inform the accused, before the commencement of the trial, as precisely and concisely as possible, but with all material particulars, regarding the matter for which he is charged. This enables him to effectively prepare and present his defence.

12. It is further required under the law that each distinct offence with which the accused is charged must be described separately, so that he may know the specific allegation against him and defend himself accordingly. The underlying intention behind the framing of charge is thus to make the accused fully conscious of the allegations levelled against him, and it is evident that the same was not done in the present case. Support in this regard is drawn from the case of *Muhammad Younus Habib v. The State (PLD 2006 SC 153)*.

13. The charge must contain all material particulars relating to the time, place, and specific nature of the alleged offence, along with the manner in which the offence was committed and the particulars of the accused, so as to enable the accused to fully understand the accusation levelled against him and afford him a fair opportunity to explain and meet the same. The purpose of incorporating such particulars is to ensure that the accused is not misled or prejudiced in preparing his defence, and that the trial proceeds in accordance with the principles of natural justice. Support in this regard is drawn from the judgment of this Court in *Mumtaz Ali and another v. The State (2000 P.Cr.L.J. 367)*.

14. Effect of material error in the charge, where the appellate court finds that there was a material error or defect in the charge framed by the trial court on which the accused was tried, it may, under Section 232, Cr.P.C., direct a retrial on a properly framed charge, provided that the accused was misled in his defence by such error or omission. Support in this regard is drawn from the case of *Haji Kabir Khan v. The State (2003 YLR 1607)*. Further the **Section 232 Cr.P.C** is read as under:

232. Effect of material error. (1) If any Appellate Court, or the [Court of Session] in the exercise of revision or of its powers under Chapter XVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, It shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration

A is convicted of an offence, under section 196 of the Pakistan Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

15. After a careful examination of the impugned judgment, we have reached the conclusion that impugned judgment appears a lack of judicial application of mind, but also results in a failure of justice, which cannot be cured or validated under the provisions of Section 537, Cr.P.C.

16. Keeping in view the above facts and circumstances of the case, this Criminal Jail Appeal is hereby partly allowed with the following directions:

(a). The learned trial Court shall frame a proper and specific charge in accordance with the provisions contained in Chapters XIX and XXII-A of the Code of Criminal Procedure, 1898, after ascertaining all relevant facts and circumstances of the case. The trial Court shall ensure that the appellants are not misled in their defence due to any defect or absence of charge.

(b). The learned trial Court is further directed to conduct a retrial of the case strictly in accordance with law and to conclude the same within a period of three (03) months positively. No unnecessary adjournments shall be granted to either party, except in rare and exceptional circumstances, if deemed fit by the trial Court.

17. Consequently, the impugned judgment dated 01.10.2020, whereby the death sentence was awarded to the appellants, is set aside in view of the above observations. The reference made by the trial Court for confirmation of the death sentence is answered in the negative.

JUDGE

JUDGE