

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, MIRPURKHAS**
Criminal Appeal No.D-29 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For hearing of M.A No.5479/2023
- 2. For hearing of main case

06.10.2026

Mr. Afzal Karim Virk advocate for the appellant.
Mr. Shahzado Saleem A.P.G.

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At the very outset, learned counsel for the appellant has drawn the attention of this Court to the charge framed by the learned Trial Court on 18.06.2021, which reads as under:—

“That on 11.04.2021 at 2030 hours, at Hyder Shah Imam Bargah situated in Muhallah Babo Theba Mirwah, you, duly armed with knife attacked upon the complainant party with intention to kill them and also caused knife injuries to PWs Aijaz and Muhammad Rafique, injured them and also intentionally committed Qatl-e-Amd of complainant’s son namely Mumtaz by causing knife blows to him, thereby you committed offences punishable under sections 302, 324 PPC within the cognizance of this Court.”

Learned counsel submits that, according to the prosecution case itself, the alleged occurrence involved three accused persons; however, while framing the charge, the learned Trial Judge attributed the entire occurrence and all the alleged acts exclusively to appellant Rashid Ali son of Muhammad Younis Jat. According to him, the charge, therefore, does not correctly reflect the prosecution case and suffers from a material defect which goes to the fairness of the trial. Learned counsel has further pointed out that while examining the appellant under Section 342, Cr.P.C., the learned Trial Court, instead of putting each material and incriminating circumstance emerging

from the prosecution evidence to the appellant in a clear, specific and intelligible manner, substantially reproduced/copy-pasted portions of the depositions of the prosecution witnesses in the form of questions. He submits that such examination does not satisfy the object and requirement of Section 342, Cr.P.C., as an accused must be afforded a meaningful opportunity to explain every material circumstance appearing against him in the prosecution evidence.

We have examined the record in the light of the objections raised by learned counsel for the appellant. Prima facie, the contentions carry substance. A charge is required to clearly and precisely inform an accused of the accusation which he is called upon to meet so that he may effectively defend himself. Likewise, examination under Section 342, Cr.P.C. is not an empty formality; rather, every material circumstance intended to be used against an accused is required to be distinctly and fairly put to him so as to afford him a proper opportunity of explanation.

In the present case, the manner in which the charge was framed, coupled with the manner in which the statement of the appellant under Section 342, Cr.P.C. was recorded, reflects material procedural irregularities having a direct bearing upon the fairness of the trial. Such defects cannot appropriately be cured at the appellate stage without affording the appellant the procedural safeguards guaranteed to him under the law. Learned A.P.G. for the State, upon examination of the aforesaid aspects, raises no objection if the impugned judgment is set aside and the matter is remanded for a fresh trial in accordance with law.

Accordingly, without touching upon the merits of the prosecution case or the defence of the appellant, the impugned judgment dated 31.05.2023, passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.190 of 2021, is hereby set aside. The matter is remanded for trial afresh, strictly in accordance with law, after framing a proper charge and observing all mandatory procedural requirements, including a proper examination of the accused under Section 342, Cr.P.C.

The learned District & Sessions Judge, Mirpurkhas, shall either try the case himself or assign/transfer the same to any competent Additional Sessions Judge, who shall proceed with the matter expeditiously and conclude the trial preferably within a period of four (04) months from the date of receipt of the record, after providing a fair and reasonable opportunity to both sides, under intimation to this Court. The S.S.P., Mirpurkhas, is also directed to ensure the attendance of all prosecution witnesses before the learned trial Court on the dates fixed for recording of their evidence, without any unnecessary delay or excuse, so that the trial may be concluded within the stipulated period.

Let a copy of this order be communicated to the learned District & Sessions Judge, Mirpurkhas, as well as the S.S.P., Mirpurkhas, for information and strict compliance. Let copy of this order along with memo of charge and impugned judgment dated 31.05.2023 be transmitted to MIT -II, Karachi for information. The instant Criminal Appeal stands disposed of in the above terms.

JUDGE

JUDGE