

JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Jail Appeal No.S-50 of 2024
[Nanji vs The State]

Counsel of Appellant : Mr. Pervaiz Akhtar Talpur and
Mr. Taimoor Ali Qureshi, Advocates.

Counsel of Respondents : Mr. Neel Parkash, Deputy P.G Sindh.

Counsel of Complainant : Mr. Santosh Kumar Khatri, Advocate.

Amicus Curiae : Mr. Maisum Hussain Sahar, Advocate

Date of Hearing : 28.09.2026

Date of Judgment : 08.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: Through this Criminal Jail Appeal, appellant Nanji son of Guneso Kolhi has impugned the judgment dated 06-07-2019 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.271 of 2017, arising out of Crime No.29 of 2017 of Police Station Taluka Mirpurkhas, registered under sections 302, 324, 337-A(ii) and 337-U PPC. By the impugned judgment, the appellant was convicted under section 302(b) PPC and sentenced to imprisonment for life as Ta'zir, with compensation of Rs.100,000/- payable to the legal heirs of deceased Shrimati Hamzo under section 544-A Cr.P.C., and, in default thereof, to suffer simple imprisonment for six months. He was further convicted under section 337-A(ii) PPC and sentenced to rigorous imprisonment for two years and payment of Arsh equivalent to five per cent of Diyat, quantified by the trial Court at Rs.116,010/-, to injured Shrimati Shami. The sentences were ordered to run concurrently, with the benefit of section 382-B Cr.P.C.

2. Briefly stated, the prosecution case is that deceased Shrimati Hamzo alias Hamdo, sister of complainant Shevo, was married to the appellant and had been residing at the complainant's house after leaving her matrimonial home. According to the complainant, the appellant had approached the family for her return, but she declined to accompany him. It was alleged that on 31-07-2017, at about 0130 hours, the appellant entered the complainant's house situated in village Muhammad Hashim Shoro, Taluka Shujaabad, District Mirpurkhas, armed with a hatchet, and inflicted

a sharp-side blow on the neck of Shrimati Hamzo, causing her death. When Shrimati Shami intervened, the appellant allegedly inflicted a hatchet blow on her upper lip, resulting in injury to her teeth. The appellant thereafter left the place of occurrence. The dead body and the injured were taken to hospital, and the complainant lodged the FIR on 01-08-2017 at 1300 hours.

3. Upon completion of investigation, the challan was submitted before the competent Court. The charge was framed on 01-11-2017, to which the appellant pleaded not guilty and claimed trial. The prosecution examined its witnesses and produced the relevant documents. Thereafter, its side was closed at Ex.15, and the appellant's statement under section 342 Cr.P.C. was recorded at Ex.16. The appellant denied the allegations and pleaded innocence. After hearing the parties, the learned trial Court pronounced the impugned judgment.

4. At the very outset, Mr. Pervaiz Akhtar Talpur, learned counsel for the appellant, raised a preliminary objection that the statement recorded under section 342 Cr.P.C. did not bear the verification and certification of the learned Presiding Judge as required by section 364(2) Cr.P.C. He contended that an examination lacking such judicial authentication could not be treated as a duly recorded statement of the accused and was of no legal value for the purposes of concluding the trial. Learned counsel confined his request for remand to this sole ground and prayed that, without entering into the merits of the prosecution case, the impugned judgment be set aside and the matter be remanded to the trial Court from the stage of recording the appellant's statement under section 342 Cr.P.C. He placed his reliance upon *Muhammad Faisal v. The State* (2025 SHC HYD 2582).

5. Mr. Maisum Hussain Sahar, learned Amicus Curiae, conceded the objection and submitted that the statutory requirement of certification under the hand of the Presiding Judge had not been complied with. He agreed that the appropriate course was to remit the matter for recording the appellant's statement afresh in accordance with sections 342 and 364 Cr.P.C. Mr. Neel Parkash, the learned Deputy Prosecutor General likewise conceded the objection and did not oppose remand on this ground.

6. I have heard learned counsel for the appellant, the learned Deputy Prosecutor General and the learned Amicus Curiae, and have perused the record. The question requiring determination at this stage is

whether the appellant's examination under section 342 Cr.P.C., admittedly lacking the certification of the Presiding Judge required by section 364(2) Cr.P.C., constitutes lawful compliance with the prescribed procedure, and, if not, what consequential order should follow. The merits of the accusation do not fall for determination in this judgment.

7. The object of section 342 Cr.P.C. is to afford the accused a fair opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence. The examination is a material stage of the trial, undertaken after the prosecution evidence has concluded and before the accused is called upon to enter his defence. Each material circumstance relied upon against the accused must be put to him distinctly and intelligibly so that he may offer his explanation. The provision requires a meaningful opportunity of explanation, and its observance cannot be reduced to a formal recital that the accused denies the prosecution case.

8. Section 364 Cr.P.C. prescribes the manner in which such examination is to be recorded and authenticated. Subsection (1) requires the whole examination, including every question and answer, to be recorded in full in the language in which the accused is examined or, where that is impracticable, in the language of the Court or in English. The record must be shown or read to the accused and, where necessary, interpreted in a language which he understands. He must also be afforded liberty to explain or add to his answers. Subsection (2) then requires both the signature of the accused and that of the Magistrate or Judge, together with certification under the judicial officer's own hand. For ready reference, section 364(2) Cr.P.C. is reproduced below:

“(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.”

9. The statutory certification serves a definite purpose. It authenticates that the examination took place in the presence and hearing of the Presiding Judge and that its record faithfully reproduces the accused's statement. The signature of the accused, by itself, does not fulfil the separate obligation placed upon the Judge. Nor does a reference in the

judgment to the recording of a statement under section 342 Cr.P.C. substitute for the certification prescribed by section 364(2) Cr.P.C. In the present matter, the absence of the requisite judicial verification and certification is the admitted basis of the preliminary objection. The parties' concessions accord with the statutory requirement; the decision to remand nevertheless rests upon that requirement and not merely upon their agreement.

10. The same question was considered by this Court in *Muhammad Faisal v The State* 2025 SHC HYD 2582, decided on 17-09-2025. The Court held that the statement under section 342 Cr.P.C. must be recorded and authenticated in accordance with section 364 Cr.P.C., and that omission of the Presiding Judge's signature and mandatory certification warranted setting aside the conviction and remanding the matter from the stage of the accused's examination. The evidence already recorded was preserved, and the trial Court was directed to decide the matter afresh within thirty days. The principle applies to the admitted defect in the present case.

11. In *Muhammad Faisal (supra)*, this Court also relied upon *Khadim Hussain v The State* 2022 MLD 95, concerning the obligation to put the incriminating circumstances to the accused, and *Gul Jehan v The State* 1998 MLD 288, concerning the mandatory requirements of section 364 Cr.P.C. Following the reasoning adopted in the judgment in *Muhammad Faisal (supra)*, the failure of judicial certification in the present matter cannot be treated as a harmless formality or cured merely by invoking section 537 Cr.P.C. The examination must be undertaken afresh with the safeguards required by law before a fresh adjudication is made.

12. Consequently, without touching the merits of the case, the impugned judgment dated 06-07-2019, including the convictions and sentences recorded therein, is set aside. The matter is remanded to the learned trial Court to proceed from the stage of recording the appellant's statement under section 342 Cr.P.C. afresh, strictly in accordance with section 364 Cr.P.C. Every incriminating circumstance appearing in the prosecution evidence and proposed to be relied upon shall be distinctly put to the appellant for his explanation. The examination shall be recorded in full, read over or interpreted to him in a language which he understands, and he shall be afforded the opportunity to explain or add to his answers.

The record shall thereafter be signed and certified in the manner expressly required by section 364(2) Cr.P.C.

13. The evidence already recorded shall remain intact and need not be re-recorded. After completing the appellant's examination, the learned trial Court shall afford him the opportunity to exercise his rights regarding examination on oath under section 340(2) Cr.P.C. and production of defence evidence, if he so chooses. Thereafter, upon hearing the parties, the learned trial Court shall announce a fresh judgment, independently and strictly in accordance with law, within thirty (30) days from receipt of this judgment and the record and proceedings. No observation made herein shall be construed as an expression upon the credibility of any witness, the admissibility or weight of any item of evidence, or the guilt or innocence of the appellant.

14. The learned trial Court shall fix the matter promptly and issue the necessary production order for the appellant, if he is in custody, to ensure compliance with the above directions. The office shall transmit a copy of this judgment along with the record and proceedings forthwith to the learned trial Court.

The instant Criminal Jail Appeal is disposed of in above terms.

JUDGE

FAISAL