

Judgment Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Criminal Appeal No.S-30 of 2024
(Farooq Dashti v/s. The State)

Date	Order with signature of Judge
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Before:

Mr. Justice Nisar Ahmed Bhanbhro

1. For orders on office objections at flag "A".
2. For hearing of main case.
3. For hearing of M.A.No.2087/2024 (426 Cr.P.C.).

Appellant: Farooque son of Shoukat Dashti
Through Mr. Abdul Ghani Bijarani, Advocate.
The State: Through Ms. Rubeena Dhamrah, Assistant Prosecutor
General, Sindh.
Date of Hearing: 26.05.2025
Date of Decision: 26.05.2025

JUDGMENT

Nisar Ahmed Bhanbhro, J.:- This appeal is directed against the Judgment dated 16.04.2024 (the impugned judgment), passed by the Court of Learned 1st Additional Sessions Judge/ MCTC Kandhkot (Trial Court) in Sessions Case No.278 of 2023 Re The state Versus Farooque Dashti, emanating out of Crime No.140 of 2023, of Police Station Kashmore for offence punishable under sections 23(i)- A and 25 of Sindh Arms Act, 2023, whereby the appellant / convict Farooque Dashti was convicted and sentenced to suffer Rigorous Imprisonment (RI) for 14 years and to pay fine of Rs.3,00,000/- (Rupees Three Hundred Thousands only); in case of default in payment of fine, to suffer simple imprisonment (SI) for three years with a benefit of section 382-B CrPC.

2. The facts leading to the filing of this appeal are date on 25-06-2023, Sub Inspector Riaz Ahmed Soomro recorded FIR at police station Kashmore alleging therein that, on the eventful day complainant along with PC Kehar Khan, PC Ghulam Rasool, DPC Allahdad, left Police Station Kashmore, vide Entry No. 16, at 1640 hours for investigation in Crime No. 124 of 2023. For offence, punishable under Section 302, 337H2 PPC. During patrolling, when the complainant party reached near Dakhan bungalow, they received a spy information that the accused involved in the commission of murder of Zahid Hussain Dashti were present at Pat Feeder curve near house of Iqbal Dashti. On receiving such information, the police party proceeded towards pointed place, when at about 17.40 hours, they reached near the house of Iqbal Dashti, they saw two persons sitting there, who upon seeing police party tried to skip away. Police party stopped vehicle and applying tricks apprehended the accused persons. On inquiry one accused disclosed his name as Jazib, on personal search one TT pistol with 7 live bullets in magazine was recovered from his possession, other accused disclosed his name Farooque Dashti, on personal search one T pistol with 6 live bullets in magazine was recovered from his possession. The accused disclosed that it was the same pistol which was used in the commission of murder of Zahid Hussain Dashti. Such mashirnama of arrest and recovery was prepared in presence of witnesses namely PC Kehar Khan and PC Ghulam

Rasool. The accused along with recovered property were taken to police station where FIR was lodged against them on behalf of state.

3. During investigation IO recorded statements of witnesses under section 161 CrPC, inspected place of incident and sent recovered weapons for forensic analysis, on completion of formalities, he submitted report under section 173 CrPC before the Court of Learned Trial Magistrate. the case was sent up for trial to the Court of Learned Sessions Judge Kashmore @ Kandhkot, it was assigned for trial to Learned Trial Court.

4. In compliance of the provisions of section 265-C Cr.P.C the necessary case papers were supplied to the appellant, he was indicted for the charge, to which he pleaded not guilty and claimed trial.

5. To prove its charge, the prosecution examined PW 1 PC Kehar Khan, PW 2 Complainant Riaz Ahmed Soomro, PW 3 dispatch rider Barkat Ali Lashari and PW 4 WHC Ashiq Hussain Naich in charge of malkhana. Thereafter, the side of prosecution evidence was closed by learned prosecutor.

6. The statement of the accused under sec 342 Cr.P.C was recorded, to which he denied prosecution allegations and claimed innocence. He did not opt to examine himself and any witness in defense. Learned Trial Court after hearing the prosecution and defense, convicted the appellant as aforementioned. Hence this appeal.

7. Mr. Abdul Ghani Bijarani Learned Counsel for the appellant submitted that the appellant was a juvenile at the time of his arrest and recovery. He submitted that after the arrest of appellant he was produced before the Court of Learned Civil Judge and Judicial Magistrate II Kashmore (Trial Magistrate) for obtaining police custody remand, such request of the investigation officer was declined and appellant was sent under judicial custody to Juvenile Prison Sukkur. He referred case diary dated 26.06.2023, wherein the appellant was treated as juvenile and sent to juvenile prison. He contended that the trial of the appellant was held under general law and he was not treated as juvenile offender by the Learned Trial Court. He contended that the rial of the Appellant was not conducted in accordance with, thus impugned judgment was not sustainable. He prayed for setting aside the impugned judgment and de novo trial of the appellant under Juvenile Justice System Act 2018 (JJSA).

8. Ms. Rubeena Dhamrah Learned Assistant Prosecutor General submitted that the appellant was involved in the murder case of Zahid Hussain Dashti. Appellant is facing trial in murder case, when confronted whether the trial of the appellant was held under the special law relating to juvenile offenders or under ordinary law, she sought time to seek confirmation from Learned Trial Court. The matter was kept aside, and taken up again after tea break. Learned Prosecutor confirmed that trial of the appellant was held under the ordinary laws and even in murder case he is facing a joint trial with other accused persons who are not juvenile. She therefore conceded that the impugned judgment was not sustainable and liable to be set aside, matter be remanded back to the Trial Court for trial under juvenile laws.

9. Heard Arguments, examined evidence, perused material on record.

10. Meticulous perusal of record revealed that the Appellant was a juvenile offender and on the first date of hearing viz. 26.06.2023, when appellant was produced before Learned Trial Magistrate, he was declared juvenile and lodged in a juvenile jail. The case of a juvenile

accused cannot be tried under the general law, for determination of the accused as juvenile, if under dispute, he can be referred for ossification test or his educational testimonial may be believed as a proof for age. The Court can determine the age of accused from his physical appearance. It appears from the record that the Learned Trial Magistrate from the physical appearance of the accused determined that he was a minor and he be proceeded under the juvenile laws. The case diary dated 26.06.2023 of the Learned Trial Magistrate has been perused, available at page-1 of the paper book, which confirms that the appellant was declared juvenile, when he was produced before by IO for obtaining police custody remand for further investigation. Learned Trial Magistrate refused police custody remand of the appellant and sent him to juvenile jail Sukkur under judicial custody. After completing formalities Challan of the case was submitted before Learned Trial Magistrate and ultimately sent up for trial to the Learned Trial Court. Perusal of the case diaries of the Learned Trial Court transpired that appellant faced trial under general criminal law in violation of mandatory provisions of special law which overrides the general law. The case of the appellant was not tried by the Juvenile Court, established or designated under JJSA, this illegality on the part of Learned Trial Court cannot be condoned.

11. In order to provide a holistic (complete) framework to ensure legal accountability and well-being and developmental needs of the juvenile offenders and to deal children involved in the criminal offences differently from adults within the legal system, the parliament enacted ACT XXII OF 2018, JUVENILE JUSTICE SYSTEM ACT, 2018, An Act to provide for criminal justice system for juveniles with following preamble

WHEREAS it is expedient to provide for criminal justice system and social reintegration of juveniles;

12. Under the definition clause of JJSA the child has been defined as a person who has not attained the age of eighteen years; and diversion carries the purpose and intent as an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings; "juvenile" has been defined as a child who may be dealt with for an offence in a manner which is different from an adult; and "Juvenile Court" means a court established under section 4; "Juvenile Rehabilitation Centre" means a place where a juvenile may be kept and given education, vocational or technical training for his mental, moral and psychological development and includes certified institutions, juvenile training institutions, borstal institutions, vocational centres, dar-ul-amaan and women crises centres established by the Government or by voluntary organizational certified by the Government; "Juvenile offender" means a child who is alleged to have committed or who has been found to have committed an offence; "observation home" means a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from Juvenile Court or otherwise for conducting inquiry or investigation for the purposes of this Act; "suitable person" means any person, trust, association or society duly recognized by law whose object is welfare and protection of children. The definition clause of the JJSA is purposive and intended to provide a reformatory concept of dealing with the juvenile offenders.

13. For the Trial of Juvenile Offender the Government is under an obligation to establish Juvenile Court in each province through consultation with the concerned High Court, sub section 4 of the Section 4 grants an exclusive jurisdiction to the Juvenile Court for the trial of juvenile offenders, sub section 5 of section 4 provides that on commencement of the JJSA all the cases pending before other Courts shall stand transferred to the juvenile Courts. This provision of law makes it crystal clear that an offender aged below shall be treated as juvenile

offender and no court other than a juvenile court established under section 4 of the JJSA shall conduct trial of the case. The sub section 4 and 5 of section 4 of JJSA read as under:

4. Juvenile Court. (1)

(2)

(3)

(4) The Juvenile Court shall have exclusive jurisdiction to try cases in which a juvenile is accused of commission of an offence.

(5) Subject to subsection (4), on commencement of this Act all cases pending before a trial court in which a juvenile is accused of an offence shall stand transferred to the Juvenile Court having jurisdiction.

14. Sections 5 and 7 of the JJSA envisage the mechanism for arrest and investigation of the juvenile offender, the provisions of law provide that the juvenile offender shall be kept in a observation home and information as to his involvement in the crime shall be laid to his guardian, the report under section 173 of the Code shall also describe the steps taken by the officer-incharge of the Police Station for referring the matter to the Juvenile Justice Committee for disposal of case through diversion, where it was so required under section 9 and the investigation of the case shall be held under the supervision of Superintendent of police of SDPO and assisted by a probation officer. Section 9 of the JJSA requires disposal of the cases through diversion by the consent of juvenile or his guardian by referring the case to the Juvenile Justice Committee for disposal of the same through diversion. Which can be exercised at any stage during the course of investigation by the police and during trial by the prosecution and the Court where the case is referred to the Juvenile Justice Committee by the police, the submission of report of police officer required under section 173 of the Code shall be postponed till the final order of the Committee. The Juvenile Justice Committee shall dispose of a case, with consent of the person against whom the offence was committed, by resorting to different modes of diversion including, restitution of movable property; reparation of the damage caused; written or oral apology; participation in community service; payments of fine and costs of the proceedings; placement in Juvenile Rehabilitation Centre; and written and oral reprimand: in case where the complainant is state functionary and the offence has not been committed against a private person, the Juvenile Justice Committee may dispose of the case through diversion with consent of the concerned public prosecutor. The law provides a special provision for child welfare that for the purposes of diversion, all offences either minor or major shall be compoundable. Diversion shall be exercised in the prescribed manner in cases where a juvenile is accused of commission of minor offences; and where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.

15. Section 11 of the JJSA, obligates the Juvenile Court to observe a special procedure for trial of the juvenile offender, which aims at preserving the modesty and decency of the child, section 11 reads as under:

11. Procedure of Juvenile Court. ---(1) Juvenile Court shall follow the procedure provided for in the Code unless provided otherwise in this Act.

(2) No person shall be present at any sitting of the Juvenile Court, except,-

(a) staff and officers of the Juvenile Court;

(b) parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;

(c) guardian of the juvenile; and

(d) such other persons as the Juvenile Court directs to be present.

(3) At any stage of proceedings, the Juvenile Court may in the best interest of a juvenile's decency or morality, direct any person to withdraw from Court for such period as the Court may direct.

(4) If at any stage of proceedings, the Juvenile Court is satisfied that the attendance of the juvenile is not essential for the purposes of the trial, the Juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the juvenile.

(5) When a juvenile who has been brought before the Juvenile Court is found to be suffering from serious illness, whether physical or mental and requires treatment, the Court shall send such juvenile to a hospital or a medical institution where treatment shall be given to the juvenile at the expense of the State.

This provision of law enunciates that the trial of the juvenile offender shall be held in presence of his guardian and any other person against whom the offence is committed, deviation from this procedure will vitiate the proceedings. The juvenile court while conducting the trial of juvenile court is required to observe the above procedure by making an order that during trial of juvenile accused no person shall be present in court room. The Trial Court is required to pass a specific order while dealing with the cases of juvenile offenders, as in province of Sindh the Ordinary Courts are designated to act as the Juvenile Court.

16. Section 12 of the JJSA provides for holding a separate trial of the juvenile offenders from adult accused and obligates the trial Court to bifurcate the case of juvenile offender from adult accused, if Juvenile Court deems it appropriate for the welfare of juvenile offender it may hold joint trial. For holding joint trial of the juvenile offender, the Trial Court will ensure that the moral, decency, modesty of the child is protected and he is provided every facility including his exemption from personal attendance during trial proceedings. The Court seized with the matter if decides to hold a joint trial it shall record reasons that how joint trial will benefit the juvenile offender, in absence of reasons demonstrating welfare of child, the proceedings conducted would stand nullity in the eyes of law. Section 12 of JJSA reads as under:

12. Trial of juvenile with adult person. ---(1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force and subject to the provisions of subsections (2) and (3), no juvenile may be charged with and tried for an offence together with an adult.

(2) A juvenile may be charged with and tried together with an adult by the Juvenile Court if the Court is satisfied that it is in the interests of justice to hold a joint trial.

(3) In case of joint trial, the Juvenile Court may dispense with the physical presence of the juvenile before it without any application in this regard and juvenile may be allowed to join the Court proceedings through audio-visual technology link.

17. The review of the provisions enacted under this special law, clarify the wisdom and intent of the legislature for enactment of JJSA. The main objective of the JJSA is to modify and amend the law relating to the criminal justice system for juveniles, with a special focus on disposing of their cases through diversion and social reintegration. This law is a reformatory with a basic principle and policy of molding and reshaping the child as a useful tool for the society. JJSA encourages rehabilitation of child through education, social interaction, remorse rather than punishment, recognizing the potential for growth and change in young individuals. The JJSA provides juvenile justice system to cope up with the problems faced by the juvenile

offenders and operates under the premise that juveniles are different from adults and require special attention, care and treatment. Since juveniles are more amenable to rehabilitation than adults, the juvenile justice system is designed to rehabilitate, emphasizing correction and guidance to help children develop into responsible citizens in future as adults. A range of factors underscore the need for a special justice system for juveniles. The Juvenile Justice System provides a distinct mechanism contrary to the ordinary criminal justice system, latter being punitive in nature and former a rehabilitative and restorative model which helps in reshaping the child as a responsible citizen from the criminal. Heart and Soul of this system is the principle of the 'welfare and best interest of the juvenile offender', which ensures the fulfillment of a juvenile's basic rights, needs, identity, social well-being, and physical, emotional and psychological development. The rationale behind this non-punitive approach is that public safety is best served through rehabilitation rather than the incapacitation and punishment of juveniles. Under the Constitutional command the state has mandated the welfare of child and family system as a principle of policy, article 35 of the Constitution obligates the state to ensure protection and promotion of family as a basic social unit.

18. Juvenile Justice System Act 2018 carries overriding effect being the special law and section 21 of the act provides that the provisions of JJSA 2018 shall have 'overriding effect notwithstanding anything contained in any other law for the time being in force'. This provision of law provides that while dealing with the juvenile offender this enactment shall prevail over the ordinary laws. This is quite strange that the Learned Trial Court being in the knowledge that the appellant was a juvenile offender, it did not adhere to the provisions of JJSA 2018 while conducting trial of the case, more so awarded very harsh sentence of 14 years rigorous imprisonment to the appellant and even did not send him to Juvenile Home despite of the fact that at the time of recording his statement under section 342 CrPC on 04.04.2024 appellant disclosed his age as 17 years and losing sight of the fact he was convicted on 16.04.2024, without adopting due course of law enacted through JJSA 2018.

19. It is another surprising aspect of the case that the appellant is allegedly involved in the commission of murder of Zahid Hussain and has been sent up for trial in the said case, before the same Trial Court. Learned Prosecutor confirmed that even in the murder case the appellant is facing joint trial and he has not been declared juvenile. The joint trial of the appellant in the connected murder case is also illegal, void ab initio, the Trial Court is obligated to declare the appellant as juvenile in the said case and if any dispute as to the determination of age of the appellant is involved, he may be referred for determination of the age per the provisions of JJSA. If the Trial Court is of the opinion that joint trial is in the welfare of juvenile accused, it may pass an order under section 12(2) of the JJSA as discussed supra. Since the learned Trial Magistrate had already opined that the appellant was a juvenile, therefore, it is expected that the trial in main case under section 302 P.P.C would also be conducted in accordance with the provisions of JJSA 2018.

20. in its appellate jurisdiction this Court can rectify the illegality committed during trial but in the present case, the illegality committed by the trial Court is not curable under section 537 Cr.P.C as a particular mode of conducting trial has been provided for juvenile offender, departure from the special procedure vitiated all the proceedings, more so appellant has been awarded conviction which is harsh and militates the concept of juvenile justice system. Trial Court has failed to adopt the due process of law and trial of the appellant under general law has violated fundamental rights as to fair trial guaranteed to him through JJSA and article 10 – A of the Constitution. Trial Court lost sight of the fact that on the very day of production of appellant before the Court of Trial Magistrate, it was observed that the accused shall be lodged

in juvenile facility and then in the Statement of accused/appellant recorded under section 342 Cr.P.C. on 06.04.2024 after about eleven months of the alleged recovery, appellant disclosed his age as 17 years, despite of that the trial Court did not observe the legal process by conducting a de novo trial by framing charge afresh and by recording evidence in a manner provided under the Special law. The lapse on the part of Trial Court is not condonable in any manner, Trial Court down trodden the juvenile justice system in a slipshod manner which is not expected from of court of law conducting sessions trial. All the Courts of law dealing with the criminal cases are required to observe reasonable caution in trial of juvenile offenders and reasonable restraint while awarding conviction and sentencing the juvenile offenders. Para No 28 of the impugned judgment transpired that the appellant was lodged to the Central Prison and Correctional Facility, Sukkur (a prison for adults) along with conviction slip and conviction warrant; his bail bond was cancelled and surety discharged. The learned trial Court instead of sending the accused to Juvenile Facility, sent him to a prison of the adult accused; even that was in direct conflict with the provisions of Juvenile Justice System Act, 2018. The trial Court was required to facilitate the appellant on conviction by remanding him to a juvenile facility, which was a right granted to him under the statute and denial of such right was beyond the scope of law.

21. For what has been discussed herein above, the appellant being juvenile offender has been seriously prejudiced during trial by non-observing the juvenile laws, the trial against the appellant has been conducted in violation of laws, which vitiates the entire proceedings. The Appellant has made out a case for indulgence by this Court, under its appellate jurisdiction, consequently this appeal is allowed, the impugned judgment dated 16.04.2024 is set aside, conviction and sentence awarded to the appellant stands nullity, the R & Ps of the case are returned back to the trial Court for a de novo trial of the case by treating the appellant as juvenile offender and to conduct his trial under JJSA 2018. Since the appellant was on bail during trial and his bail bond was cancelled at the time of recording of the conviction, therefore, his bail stands restored, he however shall be released on bail subject to furnishing a fresh solvent surety in the sum of Rs.10,000/- (Ten Thousand) to the satisfaction of the Learned Trial Court

Instant Criminal Appeal stands disposed of in the above terms.

JUDGE

Manzoor