

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Criminal Jail Appeal No.D-38 of 2024

(*Nusrat Husain Kalhoro v/s. The State*)

Date	Order with signature of judge
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Before:

Mr. Justice Muhammad Saleem Jessar.

Mr. Justice Nisar Ahmed Bhanbhro.

Appellant: Nusrat Hussain son of Iqbal Ahmed Kalhoro
Through Mr. Shakeel Ahmed G. Ansari, Advocate.

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

Date of Hearing: 23.09.2025

Date of Judgment: 23.09.2025

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JUDGMENT

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Nisar Ahmed Bhanbhro J.- Through this Criminal Jail Appeal, Appellant Nusrat Hussain Kalhoro has assailed the Judgment dated 10.05.2024, passed by the Court of learned Ist Additional Sessions Judge/MCTC/Special Judge for CNSA, Shikarpur (Trial Court) in Special Case No.170/2024 (*Re- State v/s. Nusrat Hussain*) emanated from Crime No.29/2024, registered with Police Station New Foujdari, Shikarpur for an offence punishable under section 9(c), CNS Act, 1997 (Amended Act, 2022), whereby the appellant was convicted and sentenced to R.I for Life and to pay fine of Rs.800,000/- (Rupees Eight Hundred Thousands only), in default thereof to undergo S.I for 10 years more.

2. The facts germane to the prosecution story as unfolded in the FIR are that on 14.02.2024, complainant SIP Manzoor Ali Khokhar along with police personnel every one namely Imran Ali, Shafique Ahmed, Salman Ahmed left police Station New Faujdari Shikarpur for patrolling. It was about 0800 hours when complainant

party reached near Shaikh Ayaz University at Shikarpur – Jacobabad Road found one suspect standing there. Suspect was arrested by applying professional tricks, on search Charas weighing 19 Kilograms was recovered from bag in his hands. Accused disclosed his name as Nusrat Hussain Kalhoro. Memo of recovery and arrest was prepared at spot, accused was taken to police station, where FIR was recorded against him by complainant Manzoor Ali.

3. Investigation took its course; report under section 173 Cr.P.C showing sufficient incriminating material against accused was sent up for trial before the Court of Learned District & Sessions Judge Shikarpur. Ultimately the case was received by Learned Trial Court for its disposal in accordance with law.

4. It appears from the R&Ps of the case that during trial appellant remained unrepresented, therefore, Learned Trial Court vide order dated 08.04.2024, appointed Mr. Babar Ali Channa, advocate as counsel for appellant on state expenses.

5. The appellant was indicted for charge on 24.04.2024, to which he pleaded not guilty and claimed trial. At trial, the prosecution examined complainant PW 1 SIP Manzoor Ali Khokhar, PW 2 eye witness-cum-Mashir P.C Imran Ali, PW 3 Investigating Officer of the case Inspector Ali Hussain Shah, PW 4 WHC Fateh Muhammad Dal, Incharge Malkhana, thereafter prosecution vide statement dated 08.05.2024 closed its side for evidence. statement of the accused under section 342 CrPC was recorded, wherein, appellant professed innocence, however did not opt to examine himself on oath or any witness in defence.

6. Learned Trial Court after hearing Learned Prosecutor and Defence Counsel convicted the appellant to undergo RI for life and pay a fine of Rs 800, 000 in default of payment to further undergo SI for Ten years.

7. On conviction, appellant preferred instant Jail Appeal against conviction. Appellant remained unrepresented before this Court too. He sent an application through Superintendent Central Prison & Correctional Facility Sukkur to provide legal assistance on state expenses. This Court vide order dated 03.09.2025 appointed Mr. Shakeel Ahmed G. Ansari, advocate as counsel for the appellant on state expenses.

8. Mr. Shakeel Ahmed Ansari Learned Counsel for the Appellant argued that appellant was facing prosecution under the charge of an offence that carried capital punishment. He argued that during trial counsel for appellant engaged on state expenses did not take pains to properly cross examine the prosecution witnesses, which prejudiced the case of appellant. He argued that appellant was denied the right of fair trial, therefore, in the dictates of justice, the right course would be to set aside the impugned judgment with directions to conduct de novo trial of the case. He prayed for allowing the appeal.

9. Mr. Ali Anwer Kandhro Learned Additional Prosecutor General frankly conceded to the fact that during trial prosecution witnesses were not properly cross examined, which resulted into conviction of appellant. He therefore, recorded his no objection, for a de novo trial of the case by setting aside the impugned judgment.

10. Heard arguments. Reappraised evidence on record. It transpired from the record that all the prosecution witnesses were examined on the same day viz. 08.05.2024. Counsel appointed on state expenses did not conduct the cross examination of the witnesses properly; even it appears that the cross examination of the material witnesses PW 1 SIP Manzoor Ali Khokhar and PW 2 P.C. Imran Ali was mere reproduction in a copy paste manner. For the sake of convenience, cross examinations of both the prosecution witnesses are reproduced below:

Witness No.1 Manzoor Ali

Cross examination to Mr. Babar Ali Channa, advocate for accused appointed on state expenses

*It is incorrect to suggest that we neither arrested present accused nor recovered chars from his possession on 14.02.2024 at 08.00 a.m.
It is incorrect to suggest that I foisted Chars upon present accused.
It is incorrect to suggest that I wrote all documents at P.S. It is also incorrect to suggest that I have deposed falsely.*

Witness No.2, Imran Ali

Cross examination to Mr. Babar Ali Channa, advocate for accused appointed on state expenses

It is incorrect to suggest that we neither arrested present accused nor recovered Chars from his possession on 14.02.2024 at 08.00 a.m.

*It is incorrect to suggest that I foisted Chars upon present accused.
It is incorrect to suggest that I wrote all documents at P.S. It is also
incorrect to suggest that I have deposed falsely.*

11. Reappraisal of the examination in chief and cross examination of the above two witnesses, revealed that there was no significant difference in evidence of both the witnesses recorded before Trial Court. The conduct of witnesses to utter ditto copy facts of the incident was an act humanly impossible. This led to an inference rather conclusion that the evidence of both two witnesses was copied and pasted. The evidence of the witnesses was not recorded in line with the intent and wisdom of the legislation articulated under Section 353 Cr.P.C. and articles 130, 131, 132 and 133 of the Qanun e Shahadat Order 1984, which offended the fundamental rights of the Appellant as to "Fair Trial" enunciated under Article 10-A of the Constitution, of Islamic Republic of Pakistan, 1973.

12. It is a matter of great concern, that the Counsel engaged on state expenses did not discharge his professional duties in accordance with the code of conduct of legal ethics laid down under the Legal Practitioners and Bar Councils Rules 1976. He treated the evidence of prosecution witnesses a mere formality. If Learned Counsel was not interested to pursue the matter with professional ethics, he should have refused to accept his engagement as defence counsel on state expenses. It was the duty of the counsel engaged on state expenses to come properly prepared and conduct cross examination on all the aspects of prosecution case with which the witnesses charged the appellant in their statements recorded during investigation, including the manner of arrest, recovery and safe custody and transmission of the recovered contraband from place of recovery to police station and then to forensic laboratory.

13. The Right to cross examination is not an empty formality but a valuable right, cross examination is instrumental to evaluate the evidence of witness and to reach a conclusion about the veracity of the testimony of the witness. Cross examination helps arrive at a just and fair decision of the case. The criminal cases rest on the oral testimony of witnesses, the cross examination is legal engine devised to unearth truth, therefore, in all fairness the cross examination should be properly conducted. Trial Court seized with the matter is also required to remain vigilant during recording of evidence, particularly in the cases where accused was unable to engage the services of private counsel. Since the appellant was a layman,

he was not aware about the consequences of lacuna and shortcomings in cross examination, Trial Court was burdened to see whether the counsel engaged on state expenses was capable of proceeding with the matter and well equipped with the professional command to handle the case. If Trial Court found Counsel not well equipped with the art of conducting cross examination, the matter should have been adjourned and case could have been assigned to another Counsel.

14. It is settled law that omission to cross examine the witness on any particular fact or point amounts to admission of the same. Perusal of the cross examination conducted by the Learned Defence Counsel in the present case revealed that witnesses were not cross examined on the recovery, arrest and seizure proceedings thus evidence of the prosecution witnesses to that extent remained unchallenged and stood admitted. This aspect of the case went unnoticed by the Trial Court and trial culminated into conviction and sentence of appellant for a rigorous imprisonment to life and fine.

15. Under the principle of safe administration of justice, the Court is not expected to accord any undue favour or preferential treatment to the either side. The Court is burdened with an uphill balancing task to play a fair and impartial role to ensure fair trial in compliance with the due process of law. It is necessary that the Court plays a neutral role between the parties and adopts measures necessary to avoid erroneous verdicts, essential for the reinforcement of the public trust in the judicial system.

16. Since the opportunity of fair trial was not accorded to the accused/appellant, the counsel engaged on state expenses failed to discharge his duty in accordance with law, he remained apathetic to cross examine the prosecution witnesses and put suggestions to the extent of mere denial of prosecution story, which otherwise amounted to admission of the charge.

17. For the above reasons, it can be safely held that the trial in the present case was not conducted in accordance with law. The error and omission in the trial noticed above resulted in failure and miscarriage of justice. The mistake so committed during trial vitiated all the proceedings including the conviction of the appellant. The errors and omissions in the trial were of such grave and serious nature that could not be cured under section 537 of the Cr.P.C.

18. For the aforementioned reasons, we have reached to an irresistible conclusion, that the conviction and sentence awarded to the appellant was not sustainable under the law, a case for indulgence of this Court under the appellate jurisdiction is made out. Consequently, this appeal is allowed. The impugned Judgment dated 10.05.2024 passed by the Court of learned Ist Additional Sessions Judge/MCTC/Special Judge for CNSA, Shikarpur in Special Case No.170/2024 (*Re- State v/s. Nusrat Hussain*) emanated from Crime No.29/2024, registered with Police Station New Foujdari, Shikarpur for an offence punishable under section 9(c), CNS Act, 1997 (Amended Act, 2022), is hereby set aside. The matter is remanded back to the trial Court for *de novo* trial from the stage of recording of the evidence of prosecution witnesses.

19. Learned Trial Court on receipt of the order shall seek the production of appellant for trial and enquire from appellant/accused about his willingness to engage a counsel of his choice. In case appellant demonstrates inability to engage private counsel, the trial Court shall provide him counsel on state expenses. Keeping in view the fact that the appellant is facing trial in a case that carries capital punishment, the trial court shall engage the service of the counsel on state expenses having adequate knowledge and expertise to conduct cross examination properly.

20. It is expected that learned Trial Court on receipt of this order shall proceed with the trial expeditiously and conclude the same, preferably, within a period of six months from the date of the receipt of the order.

Office is directed to return the R&Ps to the trial Court along with copy of this order.

Judge

Judge

Manzoor

Larkana

Approved for reporting