

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-187 of 2020
[Pir Bux & others v. The State]

Appellant:	Pir Bux and Ali Khan through Mr. Ghulam Mustafa Burdi, Advocate.
The State:	Through Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General, Sindh.
Complainant:	Dur Muhammad through Mr. Talib Khan Bhatti, Advocate.
Date of hearing:	18.09.2026
Date of judgment:	18.09.2026

J U D G M E N T

ZULFIQAR ALI SANGI, J. - Through this Criminal Appeal, the appellants/convicts, namely Pir Bux and Ali Khan, have called in question the legality, propriety and correctness of the judgment dated 26.10.2020, passed by the learned Vth Additional Sessions Judge/MCTC, Shaheed Benazirabad, in Sessions Case No.283 of 2019, arising out of Crime No.01 of 2019 registered at Police Station Mirzapur, for offences punishable under Sections 302, 337-J, 311, 147, 148 and 149, P.P.C. By the impugned judgment, the learned trial Court convicted the appellants under Section 302(b) read with Section 149, P.P.C. and sentenced each of them to imprisonment for life; they were further convicted under Section 148, P.P.C. and sentenced to two years' rigorous imprisonment with fine of Rs.10,000/- each; in case of default whereof to undergo further S.I. for three months. They were also directed to pay Rs.200,000/- to the legal heirs of the deceased under Section 544-A, Cr.P.C., and in default whereof, they were ordered to undergo S.I. for five months. However, benefit of Section 382-B, Cr.P.C. was extended to them.

2. Briefly stated, the facts relevant for disposal of the present appeal are that complainant Dur Muhammad son of Jamal Kaloi reported the occurrence at Police Station Mirzapur. According to the prosecution, on 31.01.2019, the complainant, his

son Muhammad Hayat and his two nephews Shah Murad and Sikandar had gone to their cattle pen after taking meal and thereafter went to sleep. At about 0200 hours, Muhammad Hayat left the cattle pen to urinate. The complainant stated that he heard cries of his son and along with his two nephews, proceeded towards the place of occurrence carrying torches. There, according to him, they allegedly saw Pir Bux holding a bottle of pesticide, Sain Bux armed with a lathi, Muhammad Hassan armed with a pistol, Ali Khan armed with a gun and one unidentified person armed with a lathi. It was alleged that Muhammad Hayat had been overpowered and that the accused persons were forcibly administering poisonous pesticide to him. On seeing the complainant party approaching, the accused persons allegedly fled towards the river side. Muhammad Hayat was thereafter taken for treatment, but he subsequently died on 02.02.2019 at about 0400 hours. After completion of legal formalities and burial, the complainant, according to the FIR, consulted notables of the village and thereafter lodged the case.

3. Learned counsel for the appellants contended that the charge framed by the learned trial Court was materially defective and did not correspond with the prosecution case disclosed in the FIR. In particular, the charge alleged that the murder had been committed “on account of honour killing due to suspicious illicit relations with Mst. Shazia, the daughter of accused Pir Bux Kaloi.” Learned counsel pointed out that no such allegation is contained in the FIR, which does not attribute the occurrence to any alleged illicit relationship between the deceased and Mst. Shazia, nor does it set up honour as the motive for the occurrence. He contended that the insertion of such a specific and serious allegation in the charge, which was not part of the foundational prosecution version, materially altered the nature of the case which the appellants were called upon to meet. According to learned counsel, a charge is not a mere formality; rather, it constitutes the foundation of the criminal trial and is intended to give an accused clear and precise notice of the allegation and offence which he is required to defend. Learned counsel further contended that,

particularly in a case involving an offence punishable under Section 302, P.P.C., the accused are entitled to a meaningful and effective opportunity to defend themselves. If the charge introduces a factual allegation or motive which was not disclosed in the FIR and thereby changes the complexion of the prosecution case, the accused may be misled in preparing their defence, conducting cross-examination and producing defence evidence. Such defect, according to learned counsel, is not a curable technical irregularity where it has occasioned prejudice and failure of justice. Learned counsel, therefore, prayed that instead of finally adjudicating the appeal on merits, the impugned judgment be set aside and the case be remanded to the learned trial Court for a *de novo* trial from the stage of framing of charge, after framing a fresh charge, with full opportunity to the appellants to defend themselves and to cross-examine the prosecution witnesses in accordance with law.

4. The above submissions of learned counsel for the appellants have fairly been conceded by learned A.P.G., Sindh.

5. Conversely, learned counsel for the complainant supported the impugned judgment and submitted that the learned trial Court had rightly convicted and sentenced the appellants. He, however, contended that even if there was some defect in the charge, the same was curable and could not by itself furnish a ground for setting aside the conviction. He prayed for dismissal of the appeal.

6. I have heard learned counsel for the appellants, learned A.P.G., Sindh and learned counsel for the complainant, examined the available record and considered the relevant provisions of law.

7. The controversy before this Court is narrow but fundamental: whether the charge framed against the appellants contained a material departure from the prosecution case and, if so, whether such departure was of a nature which could have

misled or prejudiced the appellants in their defence so as to occasion a failure of justice.

8. It is trite that framing of charge is the foundation of a criminal trial. The purpose of a charge is not merely to identify the penal provision invoked against an accused, but to communicate with reasonable precision the factual allegation which the prosecution undertakes to prove. Section 221, Cr.P.C. requires the charge to contain the particulars necessary to give the accused adequate notice of the matter with which he is charged, while Section 222 requires particulars as to the time, place and person or thing concerned, and, where necessary, the manner in which the offence was committed. The Supreme Court of Pakistan in the case of *Zain Shahid v. The State and another* (2024 SCMR 843) has recently reiterated that proper framing of charge is the foundation of trial and its object is to enable the accused to know the exact nature of the allegations and offences so that he may reasonably prepare and conduct his defence. The Supreme Court further held that where necessary ingredients are not mentioned or the charge is incomplete, defective or vague in a manner which may mislead the accused, failure of justice may result. At the same time, the apex Court recognized that every omission or error is not necessarily material; the decisive consideration under Section 225, Cr.P.C. is whether the accused was in fact misled and whether the error occasioned a failure of justice.

9. Section 225, Cr.P.C. itself embodies the same principle. It provides that an error in stating the offence or particulars required in the charge, or an omission to state such particulars, is not to be treated as material unless the accused was in fact misled by the error or omission and it occasioned a failure of justice. Likewise, Section 537, Cr.P.C. recognizes that an error, omission or irregularity in the charge or mode of trial does not ordinarily invalidate a proceeding unless it has in fact occasioned a failure of justice. The statutory safeguard, therefore, does not permit the Court either to invalidate every imperfect charge mechanically or, conversely, to overlook a defect which has

materially affected the accused's right of defence. The Court has to examine the actual nature of the defect, the prosecution case, the charge framed and the possibility of prejudice in the circumstances of the particular case. The object of a charge is to place the accused on notice of every material particular which he is required to meet and that the trial, for practical purposes, proceeds upon the charge which is read and explained to the accused. Where the charge materially generalizes or alters the allegation contained in the prosecution case in a manner capable of misleading the accused in preparing his defence, the resulting prejudice cannot be treated as a mere technicality.

10. The charge specifically alleged that the appellants, along with their co-accused, had committed qatl-i-amd “on account of honour killing due to suspicious illicit relations with Mst. Shazia, the daughter of accused Pir Bux Kaloi.” Yet, as pointed out by learned counsel for the appellants and borne out from the FIR reproduced in the record before this Court, no such allegation was made in the initial version. The FIR does not set out any illicit relationship involving the deceased and Mst. Shazia, nor does it state that the occurrence was committed as an honour killing. The distinction is material. A motive based upon an alleged illicit relationship and honour is not a mere descriptive detail. Once incorporated in the charge, it becomes part of the specific factual case which the accused is called upon to answer. It may affect the line of cross-examination, the explanation furnished by the accused, the defence evidence considered necessary and the manner in which the prosecution witnesses are confronted. The introduction of such a factual premise, absent from the foundational version of the occurrence, therefore, cannot safely be treated as a harmless drafting error.

11. It is also material to observe that the charge framed against the accused suffers from a substantial defect and does not faithfully reflect the prosecution case as set out in the FIR and the material allegedly collected during the investigation. The charge proceeds on the allegation that the accused, along with

absconding co-accused Sain Bakhsh, Muhammad Hassan Kaloi and one unidentified person, formed unlawful assembly and, in prosecution of their common object, committed the qatl-i-amd of Muhammad Hayat by forcibly administering poisonous pesticide to him, allegedly on account of an honour related motive arising out of his suspected illicit relationship with Mst. Shazia, daughter of accused Pir Bux Kaloi. However, the FIR does not attribute such a collective and common act to all accused in the manner subsequently incorporated in the charge. Rather, the specific version set out by the complainant is that, upon reaching the place of occurrence, he and his companions allegedly saw Pir Bux holding a bottle of pesticide, Sain Bakhsh armed with lathi, Muhammad Hassan armed with pistol, Ali Khan armed with gun and one unidentified person armed with lathi, while Muhammad Hayat was allegedly being overpowered and poisonous pesticide was being forcibly administered to him. Thus, the FIR itself assigns distinct roles and weapons to the respective accused and does not, in terms, allege that all the accused jointly administered the poisonous substance to the deceased.

12. More importantly, the record before this Court does not demonstrate that the appellants were ever placed on clear notice, at the proper stage, that they were required to defend themselves against an allegation of honour killing founded upon alleged illicit relations with Mst. Shazia. A criminal trial cannot be permitted to develop upon a factual allegation introduced through the charge which was not part of the prosecution's original accusation, without ensuring that the accused has a fair and meaningful opportunity to meet that allegation. The principle becomes particularly important because the charge is required to be read and explained to the accused and his plea is then recorded. The defence is consequently entitled to structure its response with reference to the charge. If the charge conveys a materially different factual basis from the one disclosed in the prosecution's foundational case, the accused cannot be expected to anticipate an allegation which was not clearly communicated to him at the commencement of the trial.

13. Learned counsel for the complainant has relied upon the curative principle embodied in Section 225, Cr.P.C. Such principle is undoubtedly well established. However, Section 225 does not cure an error merely because it is described as curable; it requires the Court to determine whether the accused was actually misled and whether failure of justice resulted. In the present case, the insertion of the alleged honour motive into the charge, despite its absence from the FIR as reproduced, is capable of materially affecting the defence. The defect therefore crosses the threshold from a technical irregularity to a procedural infirmity affecting the fairness of the trial. Nor, in the circumstances of the present case, can the omission of the defence to challenge the charge at the earliest stage be treated as decisive. The duty to frame a lawful, clear and unambiguous charge rests primarily upon the trial Court. The question, therefore, is not whether the prosecution may ultimately be able to prove the charge. That question must be left entirely open. Nor is this Court required, for purposes of the present appeal, to undertake a reappraisal of the evidence and record a finding regarding the guilt or innocence of the appellants. The immediate question is whether the trial was conducted upon a legally proper foundation. In my considered view, it was not. Once the charge itself is materially defective in a manner capable of prejudicing the accused, the appellate Court must adopt the course which restores the parties to a position where the case can be tried fairly and according to law. In such circumstances, merely altering the charge at the appellate stage and proceeding to decide the case on the existing record would not be an appropriate course, particularly where the alteration concerns a factual allegation capable of affecting the manner in which the defence was prepared and prosecution evidence was tested. This consideration is also consistent with the principle that an appeal is a continuation of the proceedings, but the appellate Court should not ordinarily convert itself into the Court of first instance where doing so would deprive either party of a lawful stage of trial or of the right to challenge the evidence after a properly framed charge. I am, therefore, persuaded that the defect in the present

charge has occasioned a failure of justice within the contemplation of Sections 225 and 537, Cr.P.C. The impugned judgment, having been rendered upon a trial founded upon such defective charge, cannot safely be sustained.

14. For the foregoing reasons, this Criminal Appeal is partly allowed. The impugned judgment is set aside. The matter is remanded to the learned trial Court for a *de novo* trial from the stage of framing of charge. The learned trial Court shall **(a)** frame a fresh charge strictly in accordance with law, containing all necessary particulars and confined to the allegations supported by the material available on record; **(b)** read over and explain the fresh charge to the appellants in accordance with law and record their pleas; **(c)** thereafter proceed with the prosecution evidence afresh, affording the appellants full and effective opportunity to cross-examine every prosecution witness; **(d)** permit the appellants to make their statements under Section 342, Cr.P.C. and to produce defence evidence, if any, in accordance with law; **(e)** thereafter hear the learned counsel for the parties and decide the case afresh strictly on the basis of the evidence brought on record during the *de novo* trial; and **(f)** to conclude the trial expeditiously, preferably within four months from the date of receipt of this judgment, subject to the ordinary requirements of law and without granting unnecessary adjournments.

15. Nothing contained in this judgment shall be construed as an expression of opinion on the merits of the case. The direction for *de novo* trial is not intended to confer any advantage upon either side and the learned trial Court shall pass judgment without influence of observation made hereinabove.

16. The appeal stands **disposed of** in the above terms.

JUDGE